

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2014100118

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on November 20, 2014, in Torrance, California.

Julie Ocheltree, Attorney at Law, represented the Harbor Regional Center (HRC or regional center or Service Agency).

Claimant's mother, who is Claimant's conservator, represented Claimant.¹

The matter was submitted for decision on November 20, 2014.

ISSUE

Whether Claimant should move from the Fairview Developmental Center (Fairview) to the regional center-vendored home known as "Ambitions/Pepperwood" (Pepperwood)?²

¹ Names have been omitted to protect the family's privacy.

² At the outset of the hearing, the parties agreed that the ALJ's jurisdiction was limited to whether the regional center conducted a proper assessment regarding the community placement for Claimant. The jurisdiction to order that Claimant remain at Fairview lies with the Superior Court. (See *In Re Irene Hop* (1981) 29 Cal.3d 82.) After the hearing, counsel for the regional center indicated that the Superior Court had renewed Claimant's commitment order to remain at Fairview until June 2015.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-12.

Testimonial: Gigi Thompson, HRC Manager, Rights Assurance; Colleen Mock, HRC Director of Community Services; Doris Bell, Ambitions Program Manager; Juan Bermudez, Claimant's HRC case counselor.

FACTUAL FINDINGS

1. Claimant is a conserved 64-year-old male who qualifies for regional center services based on a diagnosis of severe intellectual disability and a pervasive developmental disorder, not otherwise specified.³

2. In a letter dated September 22, 2014, Claimant's mother expressed her desire that Claimant continue to live at Fairview instead of moving to a community home. HRC interpreted this letter as a Fair Hearing Request and this proceeding followed.

3. An Individual Program Plan (IPP) meeting was held on March 5, 2014, for the purpose of identifying Claimant's preferences, strengths, and needs in order to assist him in reaching his highest potential and prepare him to live more independently. The IPP notes that Claimant has many independent skills, is generally in good health, and has no major behavioral issues. The IPP also set forth the services and supports necessary in order for Claimant to have a successful placement in a community setting. (Exhibit 6.)

4. Juan Bermudez, HRC Community Transition Specialist, testified at the hearing. Bermudez opined that Claimant is an excellent candidate for community living. He opined that the staff at Pepperwood can meet his needs, especially his need for safety. He explained that Claimant is easily directed, and that the Pepperwood staff is very well trained in behavior management. Bermudez also opined that HRC can tailor a day program to meet Claimant's needs. Bermudez thinks that Claimant would be happier living in the community because he will have more choices, be encouraged to exercise independence, and have the opportunity to learn more skills. Pepperwood is less restrictive than Claimant's current placement because Claimant will have more independence, and there will be more consideration for what he wants to do. Claimant will have his own room and bathroom at Pepperwood. He will also have a higher level of care. At Fairview, there is a ratio of one staff to eight clients; at Pepperwood, there are two staff that care for three residents. Bermudez has helped approximately 100 individuals transition to the community. He has observed those individuals become happier and develop different skills, improve their communication abilities, and obtain a wide spectrum of positive effects.

³ Under the Diagnostic and Statistical Manual of Mental Disorders, 4th edition.

5. Colleen Mock, HRC Director of Community Services, testified at the hearing. Mock was Claimant's service coordinator in 1980. At that time, there were not a lot of community resources. Mock acknowledged that Claimant tried living in two community homes and it did not go well. Subsequently, Claimant moved into Fairview. Mock explained that she is more confident about community placement today because there is a lot more state funding, and they have learned from their mistakes. She explained that a private agency buys the home and leases it to Ambitions, so even if Ambitions can no longer provide services, Claimant would not have to move from the Pepperwood home. HRC would bring in another service provider. The concept is that Pepperwood is Claimant's home. HRC had an assessment done (Exhibit 11) to see how and if Claimant could transition into the community. The assessment gave specific recommendations and would train staff on his needs. HRC is prepared to follow those recommendations. Mock addressed many of Claimant's mother's concerns, such as Claimant's safety, how an elopement would be handled, how Claimant's medical needs would be met, and how the transition would occur. Mock also explained that she has worked with other individuals who have moved from more restrictive facilities for 30 years and are now transitioning into the community, and the vast majority of transitions are successful. She has found that the families are satisfied and the individuals have greater access to community. Specifically with regard to Claimant, she noted that the private home will provide him with quiet. She noted that noise agitates Claimant and this is a quiet neighborhood. Claimant will have his own room and his own closet. Mock has seen other clients who have had physical and other improvements after they moved into the community. She explained that supervision is better at a community home because the staff is able to respond more quickly given the smaller setting. Mock says that most clients love the independent access to food, as opposed to an institution where it was prepared in a central kitchen. In sum, Mock thinks that community placement would be beneficial for Claimant.

6. Doris Bell (Bell), Ambitions Program Manager, testified at the hearing. Ambitions is an entity that leases and operates Pepperwood and other facilities. She explained how the Pepperwood home is designed to accommodate Claimant's needs. Bell also answered several hypotheticals such as what would happen if Claimant got hurt or escaped, what he would do in a given day, how he would be transported, whether he could use the restroom as needed, and any other concern that Claimant's family had.

7. Claimant's mother articulated concerns about moving Claimant from Fairview into the community. She is primarily concerned for his safety, and that he will have a productive day. Claimant's mother is also concerned that Pepperwood will have a high rate of staff turnover. Both Bell and Mock addressed these issues in their testimony. At the conclusion of the hearing, all of Claimant's mother's issues were addressed.

LEGAL CONCLUSIONS

1. The parties agreed that HRC bears the burden of proof in this matter.

2. Cause exists to deny Claimant's appeal that community residence at Pepperwood is not appropriate for Claimant, as set forth in factual findings 1 through 7, and legal conclusions 3 through 7.

3. The Lanterman Act, codified at Welfare and Institutions Code⁴ section 4500 et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

4. Section 4502 provides that "persons with developmental disabilities shall have rights including, but not limited to, the following: (a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports [and] (b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings."

5. Section 4646, subdivision (a) provides, in pertinent part, "It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

6 In discussing the individual planning process, section 4646.5, subdivision (a) notes that a consumer's "goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals."

7. Applying these provisions here, Harbor Regional Center met its burden to show that community living is suitable for Claimant, and that Pepperwood is an appropriate placement for Claimant. Fairview Developmental Center is the most restrictive environment available under the Lanterman Act, and Claimant's needs can be met in a less restrictive setting, such as the community placement at Pepperwood. (*See Michelle K. v. Superior Court* (2013) 221 Cal.App.4th 409.) To the extent that Claimant's appeal was construed as alleging that

⁴ All further references shall be to the Welfare and Institutions Code, unless noted.

Pepperwood is an unsuitable placement for Claimant's living arrangement, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied.

DATED: December 4, 2014


AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.