

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2014110324

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on December 9, 2014, in Santa Rosa, California.

Claimant was present at hearing and was represented by her father.

G. Jack Bengé, Attorney at Law, represented North Bay Regional Center (NBRC), the service agency.

Submission of the case was deferred until December 16, 2014, pending receipt of closing briefs. Claimant's closing brief was timely received and marked for identification as Exhibit G. NBRC's brief was timely received and marked for identification as Exhibit 11.

The record closed and the matter was submitted for decision on December 16, 2014.

ISSUE

May NBRC discontinue funding supported living services (SLS) when a claimant resides with, and is receiving adequate support from, a parent?

FACTUAL FINDINGS

1. North Bay Regional Center (NBRC) case management supervisor Ellisa Reiff, M.S., LMFT, claimant's parents, and claimant testified at the hearing. Their testimony and the documentary evidence established the facts set forth below.

2. Claimant is a 27-year-old client of NBRC by reason of her diagnosis of mild intellectual disability. From January 2014 until the latter part of September 2014, she rented a room in an apartment in Petaluma, where she lived with her roommate. While claimant lived in the rental, she received Supported Living Services (SLS) and Independent Living Services (ILS) through Oaks of Hebron pursuant to her Individual Program Plan (IPP).

3. On September 19, 2014, due to circumstances beyond her control, claimant was forced to move out of her rental. Claimant then moved in with her mother, who resides in San Francisco. NBRC informed claimant that NBRC could not continue providing her with SLS while she lived with her mother and received generic support from her mother. NBRC, however, informed claimant that it would provide her with Living Arrangement Assistance (LAA) services. LAA services are tailored to help consumers find and secure housing. NBRC assured claimant that her SLS will resume as soon as she moves out of her mother's home and into a rental.

4. In a Notice of Proposed Action dated October 28, 2014, NBRC notified claimant of its intention to discontinue providing her with SLS. NBRC's Notice of Proposed Action also stated that effective December 1, 2014, it will provide claimant with LAA services in the amount of 35 hours over a six month period. Claimant appealed, and this hearing followed.

5. Claimant is an articulate, capable, and highly motivated young woman. She presently works at Food Maxx in Rohnert Park, where she is a valued employee. Claimant commutes to her job from her mother's home in San Francisco on her own. Several nights per week she stays with her boyfriend, whose home in Petaluma is located near claimant's workplace. Claimant does not pay rent to her mother or her boyfriend. Claimant wishes to find affordable housing and live on her own.

6. While living with her mother, claimant takes care of her own needs and does not require her mother's assistance, with two exceptions. Claimant's mother transports claimant to and from her medical appointments, and she assists claimant with managing her finances. Claimant previously received assistance with these responsibilities from her SLS provider. Claimant's mother is able to assist claimant with these tasks, as she is not currently employed. Claimant requests that SLS be provided to assist her with these two tasks.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500 et seq.)¹ The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) The Act further directs regional centers to secure services and supports that enable adult consumers to live as independently as possible in the community. (§ 4648, subd. (a)(1).)

2. The Act provides consumers with SLS to enable them to live independently. The purpose of SLS is to "provide opportunities for adults to live in their own homes." (§ 4689.) A variety of services are available under section 4689, including assistance in finding a home, social, behavioral and daily skills training, and personal care assistance. (§ 4689, subd. (c).) Section 4686 also sets forth a host of procedures and guidelines for the provision of SLS.

3. While the Act affirms the importance of honoring the consumer's choices and preferences, these choices and preferences must be balanced against competing factors such as cost. Indeed, as the Act repeatedly makes clear, regional centers must select the most cost-effective method of providing services to consumers. (§ 4646, subd. (a); § 4512, subd. (b); § 4648.) Towards this end, regional centers are prohibited from funding services that are otherwise available to a consumer from a generic resource or a natural support. (§ 4646.4, subd. (a)(2); § 4659.)

4. The SLS statute also contains a similar limitation to the provision of SLS. Section 4689, subdivision (f), mandates the planning team to "confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer." Thus, SLS may not be provided under section 4689 unless natural and generic supports have been fully exhausted.

5. In the instant case, claimant requests SLS to assist her in managing her finances and transporting her to medical appointments. The evidence established, however, that a natural support exists for the provision of such services, in that her mother has been assisting her in these two domains and is willing and able to continue doing so. Against this background, under section 4689, subdivision (f), NBRC is prohibited from providing claimant with SLS since her mother, a natural support, is available to provide claimant with

¹ All citations are to the Welfare and Institutions Code unless otherwise indicated.

the help that she needs. To hold otherwise would contravene the statutory mandate that “the provision of services to consumers and their families . . . reflect the cost-effective use of public resources.” (§ 4646, subd. (a).)

6. NBRC is fulfilling its obligation to assist claimant in living as independently as possible by providing claimant with LAA services to help her secure affordable housing. Once that goal is achieved, NBRC will resume providing claimant with SLS.

7. NBRC and claimant submitted legal arguments on the issue of whether SLS may be provided to claimants who are living with a parent. While the language in section 4689 suggests that SLS are intended for consumers who are living in homes that they lease or own, it is not necessary to decide this issue because even assuming, *arguendo*, that claimant is eligible for SLS while she lives with her mother, NBRC is prohibited from providing her with SLS for the tasks outlined in Factual Finding 6, because claimant’s mother is willing and able to provide claimant with the assistance she presently requires. (Legal Conclusions 3 through 5.)

8. All contentions made by the parties not specifically addressed herein were considered and are found to be without merit or inapposite to the issue on appeal.

ORDER

Claimant’s appeal is denied.

DATED: 12/18/14

_____/s/_____
DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.