

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2015010516

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by John E. DeCure, Administrative Law Judge with the Office of Administrative Hearings, on May 15, 2015, in Los Angeles, California. Claimant was represented by her mother and authorized representative (Mother).¹ Frank D. Lanterman Regional Center (Service Agency or FDLRC) was represented by attorney Pat D. Huth. Victor Ramos, a certified court interpreter in Spanish/English languages, translated the proceeding on behalf of Mother, who is a Spanish-language speaker.

Oral and documentary evidence was received. During the Service Agency's presentation of its evidence, a standard 10-minute recess was called. Mother repeatedly expressed her general displeasure with the proceedings thus far and stated her intention to leave the premises rather than continue with the fair hearing following a recess. Mother was informed that despite her displeasure, the fair hearing would continue to proceed as scheduled. Following the recess, Mother, who had removed her personal items from the hearing room during the recess, did not return to the hearing room. FDLRC personnel searched for Mother but could not locate her on the premises. The matter proceeded on the record, with the Service Agency completing its presentation of evidence. The interpreter was not excused, in the event that Mother might return. When the Service Agency rested its case, Mother had still not returned. After the Service Agency conducted another search of the premises and could not locate Mother, the record was closed, and the matter was submitted for decision.

¹ The names of Claimant, her mother, and her family members are omitted throughout this Decision to protect Claimant's privacy.

On May 27, 2015, without leave to do so, Mother filed a one-page written request with the Office of Administrative Hearings, in the Spanish language, asking to essentially re-open the record in order to provide Mother with an opportunity to “present my case in its totality.”² Mother’s stated reasons for leaving the hearing on May 15, 2015, were that she did not feel well and “was anxious.” Mother did not serve counsel for FDLRC with a copy of her request, which was thereby ex parte.

Mother’s rationales for abandoning the May 15, 2015, fair hearing while it was still in progress were unpersuasive. Mother’s request was not made in good faith and was not supported by evidence establishing good cause for such a request to be granted. On his own motion, the Administrative Law Judge re-opened the record to permit the Service Agency to comment on the ex parte communication, while denying Claimant’s request to re-open the record so she could present further evidence. The Service Agency did not submit a written response regarding the ex parte communication and the record was closed on June 11, 2015.

ISSUE

Should FDLRC be required to continue funding a bus pass for Mother in light of the fact that Mother uses the bus pass for purposes other than accompanying Claimant?

EVIDENCE

Documentary: Service Agency exhibits 1-10; Claimant’s Exhibit A (marked for identification but not received in evidence).

Testimonial: Jacqueline Hernandez, Service Coordinator, FDLRC; Davonna Jenkins, Regional Manager, Adult Unit, FDLRC.

FACTUAL FINDINGS

1. Claimant is a 28-year old female consumer who was found eligible for FDLRC services when she was diagnosed with Mild Intellectual Disability (formerly known as mild mental retardation). Claimant and her twin sister, who is also a Service Agency client due to the same disability, live at home with Mother. Claimant is verbal and ambulatory. She is very independent and requires minimal assistance in completing her adaptive living skills. She has a monthly bus pass to provide transportation to her daily activities, which until recently, included attending classes

² The Spanish-language letter submitted by Claimant, along with a Spanish-English translation of the document provided by the Office of Administrative Hearings, were marked as Claimant’s Exhibit A for identification, but were not admitted into evidence.

at California State University, Los Angeles (CSULA), where she is working toward earning a degree in Criminal Justice. FDLRC funds Claimant's bus pass and agrees that Claimant benefits from using public transportation to attend to her daily schedules and access the community. Claimant's only current medical appointments are yearly physical examinations and dental appointments. (Exhibit 3.)

2(a). FDLRC Service Coordinator Jacqueline Hernandez (Service Coordinator Hernandez) testified credibly at the fair hearing regarding the needs of Claimant, to whose case she has been assigned for over five years. She sees Claimant in person at least once per year for an annual review and more recently has seen Claimant and Mother about eight to twelve times per year, due to Claimant and Mother's frequent visits to FDLRC to inquire about services and service-related issues. Claimant is intelligent and mature, speaks coherently and is capable of normal conversation with other adults. Claimant is excited about graduating with a degree in Criminal Justice. She goes to the doctor once per year for a physical examination and to the dentist about once per year as well. She and her twin sister take the bus together to CSULA.

2(b). Mother has told Service Coordinator Hernandez that she continues to use the bus pass FDLRC has been funding since 2003 in order to accompany Claimant on community outings and to medical and other appointments. Mother has also admitted that she wants her own bus pass so that she can go wherever she likes with or without Claimant.

2(c). On December 15, 2014, FDLRC informed Mother that FDLRC would terminate Mother's monthly bus pass within 30 days, due to Claimant's ability to travel independently by bus, the diminished need for Mother to accompany Claimant on Claimant's bus trips, and Mother's use of her bus pass for her own purposes. Service Coordinator Hernandez also offered ACCESS services as an alternative solution on occasions when Mother may still wish to accompany Claimant on a trip.³ Claimant's federal Social Security benefits qualify her for the ACCESS program. To that end, Service Coordinator Hernandez provided Mother with the paperwork for Claimant to apply for ACCESS services. With ACCESS, Mother would still be able to ride for free when accompanying Claimant on an outing. (Exhibit 1) Mother filed a timely fair hearing request on January 16, 2015, contesting the Service Agency's decision to discontinue her bus pass, and this proceeding ensued. (Exhibit 2.)

3. At the fair hearing, Davonna Jenkins, the Manager of FDLRC's Adult Unit and Service Coordinator Hernandez's supervisor, testified credibly that Mother's fair hearing request, which stated that FDLRC was terminating both Claimant's and

³ ACCESS is the service name of the ADA Complementary Paratransit service for functionally disabled individuals in Los Angeles County.

Mother's bus passes, was incorrect because FDLRC never intended to terminate Claimant's monthly bus pass. Instead, only Mother's bus pass was to be terminated.

4. Mother left the fair hearing during the first recess and did not return or participate in either the proceedings or the presentation of evidence.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing on receipt of the Service Agency's denial of funding Mother's monthly bus pass, and therefore, jurisdiction for this appeal was established. (See Factual Finding 2(c).)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary. Thus, in proposing to discontinue funding Mother's bus pass, the Service Agency bears the burden of proving by a preponderance of the evidence that the change is necessary and that the services are no longer needed to meet Claimant's needs. The Service Agency has met its burden.

4(a). A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

4(b). Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of

the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

4(c). Cause does not exist to grant Claimant's appeal and to order the Service Agency to continue funding Mother's bus pass. Claimant has not established that the Service Agency must continue to fund a monthly bus pass for Mother in order to meet Claimant's individual needs and preferences. Claimant's bus pass provides her with the mobility she needs. Should Mother wish to accompany Claimant on a trip, the ACCESS program is a viable option at no apparent cost to Claimant or Mother.

ORDER

Claimant's appeal of Service Agency's decision is denied. Service Agency is not required to continue funding Mother's monthly bus pass.

DATED: June 18, 2015

_____/s/_____
JOHN E. DECURE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.