BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. NORTH LOS ANGELES COUNTY REGIONAL CENTER, Service Agency.	OAH No. 2015120107

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on December 22, 2015, in Van Nuys, California. Claimant was represented by his authorized representative.[1] North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Stella Dorian, Fair Hearing Representative.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 22, 2015.

ISSUE

Is NLACRC required to provide State Supplementary Payment (SSP) Restoration funds to Claimant, retroactive from January 2009 to August 19, 2012?

EVIDENCE

Documentary: Service Agency exhibits 1-12.

Testimonial: Stella Dorian, NLACRC Fair Hearing Representative; Claimant's authorized representative.

[1] Claimant's and his family members' names are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is an 21-year-old male (born August 20, 1994) who qualifies for regional center services pursuant to diagnosis of Mild Intellectual Disability (formerly referred to as Mild Mental Retardation).

2. Prior to September 2009, he lived with his maternal grandmother and with his mother. His mother and maternal grandmother had legal custody of him at different intervals. However, at some point after September 2009 but before September 2012, he moved out of his mother's home. He currently lives independently in an apartment with his younger brother and his In-Home Supportive Services (IHSS) provider, who is also his authorized representative.

3. Claimant receives Supplemental Security Income (SSI) and State Supplementary Payments (SSP). (See description at Findings 11(a)(1), (2) and (3).)

4(a). NLACRC agreed to fund "SSP Restoration" payments for Claimant effective August 20, 2012, when he became 18 years old.

4(b). "SSP Restoration" payments are different from SSP.

5(a) In a Fair Hearing Request (FHR), dated October 29, 2015, Claimant sought retroactive payment of SSP Restoration payments from January 2009, noting that he had been living independently from his parent since then and was paying rent as would an adult.

5(b). No Notice of Proposed Action (NOPA) denying the retroactive payments was submitted at the hearing. The evidence indicated that the parties had some history of disagreement on the issue; the October 2015 FHR noted that Claimant had "requested SSP check[s] many times in the past." However, the issue had never been addressed by the parties in a prior fair hearing. Nevertheless, the evidence was silent regarding: when the prior SSP payment requests had been made; whether the Service Agency had issued NOPA's denying the request(s); whether Claimant had filed FHR's to appeal any NOPA's or had waived his appeal rights; or whether any appealed SSP denials had resolved prior to fair hearing.

6. At the fair hearing, Claimant's authorized representative asserted that the SSP Restoration payments should not have been dependent upon his attaining the age of majority. He argued that Claimant had been forced to live independently from his mother, who was unable to care for him since 2009, and that the SSP Restoration funds were intended to supplement when an individual is living independently.

7. At the fair hearing, NLACRC asserted that SSP Restoration funds are available only to adults (i.e. individuals 18 years or older), living independently and

receiving SSI payments. Claimant met all of these criteria on August 20, 2012, when he turned 18 years old.

8(a). Stella Dorian pointed to the guidance she sought and received regarding the SSP Restoration eligibility criteria from NLACRC's liaison with the Department of Developmental Services (DDS), Denise Thornquest.

8(b)(1). In a December 8, 2015 email to Ms. Thornquest, Ms. Dorian sought "information SSI/SSP restoration funds." (Exhibit 6.) On December 10, 2015, Ms. Thornquest responded:

> Here is the information that I have so far.
>
> *Per the Controller's office, [SSI/SSP] is a federally funded program which provides income support if you are aged 65 or older, blind or disabled. The SSP Program is the state program which augments SSI. Both SSI and SSP benefits are administered by the Social Security Administration (SSA). Eligibility for both programs is determined by SSA using Federal criteria. If you qualify for SSI, you qualify for SSP.*
> *. . .* ***Those eligible****:*
>
> > *Are aged 65 or over, blind or disabled, or are a blind or disabled child; . . . Meet income and resource limits; . . . Do not reside in a public institution . . . .*
>
> If SSP restoration funding is not made available to these adult individuals (residing in independent or semi-independent settings), given the cost of housing in California, it may require many of them to move into an alternate setting. Since many consumers do not have family or friends they can live with, moving to a licensed residential setting may be the only option. This option is not only more restrictive, it is more costly to the system.
>
> [DDS] does not tell [regional centers] who is and isn't eligible for SSI/SSP Restoration funds. The [regional center] needs to identify whether the consumer is living independently or semi-independently and act accordingly. . . .
>
> **<u>Eligibility Requirements for SSP Restoration</u>**
> In order to be eligible for this payment, a consumer must be an adult living independently and receiving at least $1.00 in SSI benefits. The client CANNOT reside in a licensed residential facility or a [skilled nursing facility] or with a family member. . .

> That is all I have at present. The attachment at the bottom indicates some point of reference, which is where I was going to research next. . .

(Exhibit 6.)

8(b)(2). Although Ms. Thornquest alluded to an attachment at the end of her email, no attachment was presented at the fair hearing.

8(c). On December 11, 2015, Ms. Dorian sent an email to Ms. Thornquest, stating, "Just to clarify, . . . SSI/SSP is available to those eligible; both children and adults. SSP Restoration funds are available to adults only, living independently and receiving SSI funds. Am I understanding correctly?" Ms. Thornquest responded in the affirmative.

8(d)(1). On December 14, 2015, Ms. Dorian sent another email to Ms. Thornquest, stating, "I need further clarification regarding SSP restoration funds. It seems to me SSP restoration fund is a supplemental amount paid by Regional Centers in addition to SSI /SSP payments [. . .] adult consumers living independently receive from the [SSA]. Is my understanding correct?" Ms. Thornquest replied, "I believe your definition is correct."

8(d)(2). In her December 14, 2015 response, Ms. Thornquest also noted "Here is another document I was able to locate. I hope this helps."

8(d)(3). The attachment to Ms. Thornquest's December 14, 2015 email was entitled "Simplifying the Supplemental Security Income Program Options for Eliminating the Counting of In-Kind Support and Maintenance.pdf." The attachment was not submitted at the fair hearing. However, it was available online at www.socialsecurity.gov/policy/docs/ssb/v68n4/v68n4p15.pdf.

8(d)(4). The attachment, which was published as "Social Security Bulletin • Vol. 68 • No. 4 • 2008," did not help to clarify the issue at hand. Its analysis spoke to SSI payments, not SSP Restoration funds. Additionally, it envisioned four different living arrangements: (A) an "adult, noninstitutionalized individual is living in his or her 'own' household or living in the household of another" and "has rental liability, or pays a pro rata share of household expenses"; (B) a "recipient lives in the household of another and receives both food and shelter from other members of the household"; (C) "an eligible child younger than age 18 who lives with a parent"; and (D) "an eligible person living in a public or private medical institution, with Medicaid paying more than 50 percent of the cost of his or her care." (Social Security Bulletin, Vol. 68, No. 4 (2008).) During the time in question, Claimant did not fit into any of the four categories.

9(a). NLACRC argued that it must follow DDS's directive and that NLACRC understood DDS's directive to be that SSP Restoration funds are available to adults living independently and receiving SSI funds. However, the purported DDS "directive" was not adequately established by the evidence.

9(b). It is apparent from the emails that Ms. Thornquest was not well-versed regarding the eligibility requirements for SSP Restoration funds as she engaging in ongoing research to find the answers Ms. Dorian sought.

9(c). Ms. Thornquest never specifically addressed whether SSP Restoration funds would be available to a minor living independently from a parent who was unable to provide care, and Ms. Dorian did not ask Ms. Thornquest specifically if a minor living independently and receiving SSI was eligible for SSP Restoration funds. Consequently, it is not clear that independent minors should be excluded.

9(d). When Ms. Thornquest provided "Eligibility Requirements for SSP Restoration" in her December 10, 2015 email, she did not cite to any federal or state statute or regulation requiring that a consumer be an adult, unlike SSI/SSP eligibility requirements.

9(e). In Ms. Thornquest's December 10, 2015 email, the reasoning for providing SSP Restoration funding was that, given the unavailability of family or friends with whom to live, the only other option would be moving to a more costly and restrictive residential setting. While this scenario generally applies only to adults, the evidence did not establish that the reasoning is inapplicable to minors (such as Claimant) whose parents are unable provide care.

9(f). Ms. Thornquest specifically stated in her December 10, 2015 email that "[DDS] does not tell [regional centers] who is and isn't eligible for SSI/SSP Restoration funds. The [regional center] needs to identify whether the consumer is living independently or semi-independently and act accordingly." Consequently, Ms. Thornquest's emails do not constitute a DDS "directive."

10. Neither party could cite to any statute or regulation (either state or federal) which sets forth the eligibility criteria for SSP Restoration funds.

11(a). The ALJ takes official notice of the following:

(1). "The SSI/SSP payment program is prescribed under Title XVI of the Social Security Act. The statute authorizes federally-funded Supplemental Security Income (SSI) for the aged, blind, and disabled who meet certain eligibility requirements. The statute also provides the states with an option to make State Supplemental Payments (SSP) in conjunction with the federal payments. Under an agreement with the State, the Social Security Administration (SSA) administers the SSI/SSP program in California and determines eligibility of the claimants, makes the

payments, and maintains a master record of all recipients. California reimburses the federal government for the amount of SSP payments made on the state's behalf. The California Department of Social Services is responsible for monitoring federal administration of the SSI/SSP program in California." (*Social Security Administration Review Report, SSI/SSP Program*, State Controller's Office, April 2007.)

(2). "The SSI program is the federal income maintenance program. California augments the SSI payments with an additional SSP payment. The combined SSI/SSP payment is intended to cover the recipient's basic needs and living expenses." (*Id*.)

(3). According to the California Department of Social Services, the entity which monitors the federal administration of the SSI/SSP program in California, "The SSI Program is a federally funded program which provides income support to an individual if he or she is age 65 or older, blind or disabled. SSI benefits are available to qualified blind or disabled children. The SSP Program is the state program which augments SSI. Both SSI and SSP benefits are administered by the Social Security Administration (SSA). Eligibility for both programs is determined by SSA using Federal criteria. If an individual qualifies for SSI, he or she qualifies for SSP." (www.cdss.ca.gov/agedblinddisabled/PG1422.htm)

(4). In a DDS publication in January 2009, entitled "Governor's Budget Highlights, 2009-2010," DDS noted that in order to conform with reductions in other State departments, specifically the change in SSP, there would be an increase of "Independent Living Supplement." As with the term "SSP Restoration," the term "Independent Living Supplement" is not found in any statute or regulation. The January 2009 publication stated:

> The Department of Developmental Services will increase the Independent Living Supplement to the regional center budget consistent with the Department of Social Services proposal in the Governor's Budget to reduce the SSP for adults in independent and supported living arrangements. Beginning in 1992-93, and in each fiscal year thereafter, the regional center budget has been adjusted to reflect the fiscal impact of reductions in SSP. These reductions are to the State's portion of Supplemental Security Income (Federal Social Security Administration portion)/SSP (State Department of Social Services portion) grant payments. The increase in the Independent Living Supplement is necessary to assure that those affected will be able to remain in independent and supported living settings instead of having to move into community care facilities or even more costly institutions.

11(b). The intended recipients of SSP Restoration funds are not clearly designated. The only publication which the ALJ found acknowledging DDS's supplementation of SSP does not use the term SSP Restoration. While a DDS "Independent Living Supplement" was apparently increased in response to the Department of Social Services' reduction of "SSP for adults in independent and supported living arrangements," there is no indication that SSP Restoration funds are limited to only adults living independently. There is no apparent authority (at least none identified by the parties) allowing regional centers to provide SSP Restoration funds, and therefore no language mandating when and how the funds are to be provided.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal of the Service Agency's denial of retroactive payment of SSP Restoration funds from January 2009 to August 20, 2012. (Factual Findings 1 through 11; Legal Conclusions 2 through 7.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.)

3. In seeking retroactive payment of SSP Restoration funds from January 2009 to June 25, 2015, Claimant bears the burden of proving, by a preponderance of the evidence, that the payment is required prior to age 18. (See, Welf. & Inst. Code, §§ 4646, 4646.5, and 4648.) Due to the lack of cited authority mandating such payments, Claimant has failed to meet his burden.

4. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); "foster the developmental potential of the person" (Welf. & Inst. Code, § 4502, subd. (b)(1); and "maximize opportunities and choices for living, working, learning and recreating in the community" (Welf. & Inst. Code, § 4640.7, subd. (a).).

5. A service agency "shall give highest preference to those services and supports . . . that allow all consumers to interact with persons without disabilities in positive, meaningful ways." (Welf. & Inst. Code, § 4648, subd. (a)(1).)

6. Pursuant to Welfare and Institutions Code section 4512, subdivision (b), the "services and supports" which may be provided to a consumer include "supported living arrangements, [and] technical and financial assistance . . . ."

7(a). While the Lanterman Act speaks to a "high priority on providing opportunities for adults with developmental disabilities . . . to live in homes that they

own or lease with support available . . . ” (Welf. & Inst. Code, § 4689), the Act is apparently silent regarding children residing independently from their parents prior to age 18. The Lanterman Act generally supports the habilitation of developmentally disabled persons to live in a manner similar to persons without disabilities. For example, Welfare and Institutions Code section 4689 codifies the Legislature’s intent to allow adults with developmental disabilities to be supported “in living arrangements which are typical of those in which persons without disabilities reside.” However, since children do not typically reside independently from their parents, the Lanterman Act and regulations do not appear to address such a situation.

7(b). More specifically, neither party cited any statute or regulation (either state or federal) which authorizes regional centers to provide SSP Restoration funds. Therefore, there was no authority cited to establish the eligibility criteria for SSP Restoration funds.

7(c). Given the foregoing, Claimant did not establish that he was entitled to receive SSP Restoration funds prior to age 18.

ORDERS

1. North Los Angeles County Regional Center’s denial of retroactive payment of SSP Restoration funds to Claimant from January 2009 to August 19, 2012 is upheld.

2. Claimant’s appeal is denied.

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.

DATED: January 7, 2016

DocuSigned by:
Julie Cabos-Owen
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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings