

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RICHARD W.,

Claimant,

v.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2010030427

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Pomona on December 15, 2010. San Gabriel/Pomona Regional Center was represented by Daniela Martinez, Fair Hearing Manager. Claimant Richard W. was represented by his mother.

San Gabriel/Pomona Regional Center presented Exhibits A – G and the argument of the Fair Hearing Manager. Claimant Richard W. presented the testimony and argument of the mother. The exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

Documentary and oral evidence having been received, the Administrative Law Judge submitted this matter for decision on December 15, 2010, and finds as follows:

ISSUE

The issue presented for decision is whether claimant Richard W. should continue to receive services from Independent Community Resources.

FACTUAL FINDINGS

1. Claimant Richard W. was born on December 8, 1967, and is 43 years old. He currently lives with his parents, sister, and sister's child in the family home in San Dimas. Based on his diagnosis of non-specific developmental delay and

attendant developmental delays and disabilities, claimant is eligible for and receives services from the San Gabriel/Pomona Regional Center (Service Agency), including participation in and transportation to a vocational day program at Innovative Rehabilitation Services of La Puente and case management. Claimant also receives seven units per month of services from Independent Community Resources, Inc. (ICR), an authorized vendor in San Dimas that provides supported living services, independent living skills, and social recreational activities.

2. Claimant is in good health. He is ambulatory and exercises for one hour three times each week on a treadmill and “bow flex” exercise machine. He does suffer from glaucoma and is legally blind. He has one prosthetic eye and wears prescription eyeglasses with thick lenses. When walking about the community, he requires the assistance of another person on whose shoulder he places his hand for guidance. Claimant loves to read and uses a visual device that enlarges printed material. He can watch programs on a television if it has a large screen. He is able to perform his self-help tasks and receives support from his mother in the areas of cooking, cleaning, and laundry. His mother also coordinates and drives him to his medical appointments. Claimant does not present with any problematic behaviors, for he is a pleasant and passive person. He is verbal and expressive. Claimant has coverage for medical benefits under Medi-Cal and receives Supplemental Security Income as well as 68 hours per month of In-Home Supportive Services (IHSS). His sister is the provider of the IHSS services. His father is retired and his mother works three days per week.

3. (A) Several years ago, claimant moved out of the family home and lived independently in an apartment with a roommate. During this time period, claimant received supported living services provided by ICR. He also received weekly social and recreation services from ICR.

(B) About five years ago, claimant returned to live with his parents after having problems with his roommate and being unable to find a suitable replacement. He wanted to continue living independently in his own abode but both he and his mother preferred that he have a roommate for safety reasons. Since returning home, claimant has continued to receive services from ICR albeit on a less frequent basis.

4. After an Individual Program Plan (IPP) conference on December 19, 2007, claimant was re-authorized by the Service Agency to receive the eight units of services from ICR to meet his social and recreational needs. At the IPP conference, claimant indicated he wanted to continue participating in activities at ICR, such as dances, parties, and outings, because he was able to interact with others, learn and practice social skills, and participate in physical activities.

5. Claimant has consistently participated in the social recreational activities provided by ICR. On a twice monthly basis on weekends, he has attended

holiday parties and community events, gone to the movies and amusement parks, and taken part in bowling parties and picnics. For each of these activities, claimant's mother has given him money to pay for the activities and buy food. She drives him to the ICR offices and, from there, ICR staff escort claimant and other participants to the outings on public bus lines or vendor-operated vans. Claimant enjoys the activities and outings and has made friends.

6. For the past five years or so, claimant has also been authorized by the Service Agency to attend the vocational day program at Innovative Rehabilitation Services (IRS) in La Puente on a full-time basis. While sitting down and being closely supervised, he performs assembly work and other tasks five days each week from 8:30 a.m. until 3:15 p.m. and earns \$33 to \$50 every other week. He enjoys working at IRS and finds that his peers there are nice. Recent progress reports from IRS show that claimant is cooperative, willing to try new jobs, and has an upbeat and positive attitude.

7. Claimant's mother strongly desires that her adult son continue to receive services from ICR. He has been receiving services from ICR for 15 years and enjoys seeing and interacting with his friends during the twice monthly outings. He is outgoing and sociable and his mother is afraid that he will become isolated socially and from his community if he does not receive the service. He benefits from the service by being able to interact socially and practice his social and living skills in the community while receiving assistance and supervision from ICR staff. Claimant has no other social outlets because he works full-time at IRS during the week and attends church with his family on Sundays. He has only Saturdays available for social events and takes advantage of the ICR program twice monthly on Saturdays. Claimant has also been taking private guitar lessons once weekly but his mother has found that the monthly cost for the guitar lessons has risen to \$80 which may be too expensive for them.

8. As set forth in recent Progress Reports, the objective of the services provided by ICR to claimant is to fulfill his social and recreational needs. ICR staff corroborate that claimant enjoys attending the activities and outings and socializing with his peers. In 2007, claimant went to Oahu, Hawaii', and Laughlin, Nevada, on ICR-escorted tours. In 2009, he went to Disneyland, Los Angeles Zoo, picnics, and an Oktoberfest. In 2010, claimant went to the movies, bowling alleys, and a wildlife sanctuary. At all times, claimant has received assistance from ICR staff to purchase food and other items as well as hand-to-shoulder guidance to maneuver through crowds and to walk to the restroom and to cross streets.

9. (A) In early 2009, the Service Agency asked consumers for their consent or agreement to reduce their services by ten percent as a budgetary or cost-cutting measure. Claimant agreed to have his services at ICR reduced from eight to seven units per month.

(B) On September 23, 2009, the service coordinator informed claimant's mother that the Service Agency would be proposing to suspend her son's services at ICR in accordance with new state law.

(C) On September 25, 2009, the Service Agency issued a Notice of Proposed Action to claimant, proposing to terminate or suspend claimant's services at ICR due to amendments to the Lanterman Developmental Disabilities Services Act (Lanterman Act) curtailing the authority of regional centers to purchase certain services.

(D) On October 1, 2009, claimant's mother filed a Fair Hearing Request, disagreeing with the decision of the Service Agency to "terminate the social program provided by ICR."

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)¹

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) Services and supports may include special living arrangements, training, education, recreation, behavior training, camping, daily living skills, community integration services, social skills training, and community support, and supported living arrangements. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority

¹ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services. Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate.

More recently, effective on August 1, 2009, section 4648.5, was added to the Welfare and Institutions Code and provides, in pertinent part, that the authority of regional centers to purchase camping services, social recreation activities, educational services for children ages three to 17, and non-medical therapies, including specialized recreation, shall be suspended until the Individual Choice Budget is implemented and certified to result in sufficient state budget savings to offset the costs of providing such services. (§ 4648.5, subd. (a).) An exemption may be granted on an individual basis in extraordinary circumstances to permit the purchase of these services when a regional center determines that the services are a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs. (§ 4648.5, subd. (c).)

2. Discussion--In the present appeal, the Service Agency contends that the service claimant receives from ICR is a social recreation activity and must be suspended under section 4648.5 of the Trailer Bill amendments to the Lanterman Act. Inasmuch as it seeks to terminate an on-going service, the Service Agency bears the burden of proving by a preponderance of the evidence that its proposed action is proper. The Service Agency has met that burden in this appeal.

Here, the services provided to claimant by ICR for the past several years are social recreational services intended to meet his socialization and recreational needs. He has been able to participate in various escorted outings and excursions with his peers. He has made friends and been able to continue those friendships during the outings. Claimant enjoys the activities and has benefitted from the social opportunities. As such, the Service Agency has clearly demonstrated that the ICR services are a social recreation program or activity, the provision of which is subject to suspension under section 4648.5.

Moreover, the evidence did not show that the ICR social recreational services are a primary or critical means for ameliorating any physical, cognitive, or psychosocial effects of claimant's developmental disability or are necessary to enable claimant remain in his home and no alternative service is available to meet the consumer's needs. Claimant does not have any inappropriate social behaviors or deficits. He is personable and socially outgoing. He is legally blind and needs physical assistance to attend the ICR outings but does not receive any social or community training at ICR that would enable him to live independently. He does not need the ICR services to remain living in his home. Rather, claimant enjoys the activities and camaraderie afforded by the ICR programming because he works full-time during the week at his vocational day program and has no other social outlet or opportunities. That claimant benefits socially from the ICR activities is not a sufficient basis to qualify the social recreational services provided by ICR for an exemption from suspension under section 4648.5.

* * * * *

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Richard W. from the determination of the San Gabriel/Pomona Regional Center to terminate or suspend funding of services provided by Independent Community Resources, Inc., is denied. San Gabriel/Pomona Regional may terminate or suspend this service at this time.

Dated: December 30, 2010

_____/s/_____
Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.