

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CYNTHIA V.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2011110732

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 9, 2012, in Culver City.

Cynthia V.¹ (claimant) was present and represented herself, with the assistance of her mother, Guillermina V.

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (Service Agency or WRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 9, 2012.

ISSUE

Whether the Service Agency may terminate funding for claimant's independent living skills (ILS) services.

¹ Initials and family titles are used to protect the privacy of claimant and her family.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-14.

Testimony: Lisa Basiri; Guillermina V.

FACTUAL FINDINGS

1. Claimant is a non-conserved 27-year-old woman who is a consumer of WRC based on her qualifying diagnoses of seizure disorder and borderline intellectual functioning. Claimant lives with her mother and grandmother.

2. Claimant receives Service Agency funding for 18 hours per month of ILS instruction provided by Arcos ILS Program.

3. Jose Reyes is claimant's service coordinator at the Service Agency. His report of claimant's most recent Individual Program Plan (IPP) review on June 3, 2011, attended by Reyes, claimant, claimant's mother, and claimant's ILS instructor, reflects that claimant performs all of her self-care needs, helps perform household chores, keeps her room tidy, and makes simple purchases independently. She uses her own credit card at Target and makes payments with the assistance of her ILS counselor; she also writes out the checks for her mother's bills. Claimant makes simple meals such as sandwiches and cereal. She does not cook complex meals; her mother does. She has been working with her ILS counselor on menu planning, grocery shopping, and cooking, and would like to know how to cook for herself. Claimant uses public transportation independently but, fearing a seizure, she does so sparingly. She has minimal reading and writing skills. Claimant has a boyfriend. She does not attend a day program due to her seizure activity. She hopes to reside on her own one day. Claimant's mother recently bought the house that she and claimant live in.

4. The report of claimant's previous IPP review, conducted on April 21, 2010, was virtually identical with respect to the issues detailed in Factual Finding 3. At that time, claimant's mother was hoping to borrow money to buy a triplex, so that claimant could live in her own apartment next to her mother's.

5. Claimant's most recent ILS Cost Statement from the Arcos ILS Program, dated August 2011, states that claimant has made progress towards moving out of her family home, "but still requires continual instruction and support with maintaining a clean home;" requires prompting to begin chores; "needs to continue to develop her shopping skills in terms of having a weekly grocery list and using coupons;" still struggles with all aspects of money management; and has limited cooking skills and safety concerns about using the stove because of her seizures. (Ex. 5.)

6. By a notice of proposed action (NOPA) and letter dated November 1, 2011, the Service Agency notified claimant's parents that it would terminate funding claimant's ILS services, effective November 30, 2011. The NOPA states that the reason for the action is

that, “[t]ypically, Westside Regional Center provides these services for a period of two years or when an individual is ready to reside independently.” (Ex. 2.) The letter cited WRC Funding Standards ILS, page 28, and Welfare and Institutions Code section 4648.5² as a basis for terminating the services, stating that:

it was determined to not fund the independent living services that you requested, as you have received these services for more than two years. The [Purchase of Services] Committee is recommending that a personal attendant be substituted as a new service option in order to provide support for you.

(Ex. 2.)

7. On November 17, 2011, claimant submitted to WRC a Fair Hearing Request, appealing the termination of funding for ILS services.

8. By letter dated December 16, 2011, after an informal meeting with claimant and her ILS worker, Mary E. Rollins of WRC wrote to claimant upholding the decision to terminate ILS services funding and changing the effective date to January 31, 2012. She wrote:

Your Mother currently is your [SSA] payee and takes on the major responsibility for managing the household. The majority of your ILS hours are used for taking you to doctors’ appointments; this is not the appropriate use of ILS. As your service coordinator has informed you this is an issue of personal assistance which he can request for you.

(Ex. 3.)

9. Ms. Basiri testified at hearing that there is no indication that claimant has made any significant progress in increasing her independence and has no plans to move out of the family home in the immediate future. Claimant’s ILS instructor assists claimant in making medical appointments and drives her to those appointments. This is contrary to the purpose of ILS training, which is to teach the consumer to get to the appointments on her own or with minimal assistance. If claimant requires this transportation service, the Service Agency will provide personal assistance services to claimant. If ever claimant has a definite plan to live independently, the Service Agency will reconsider funding ILS services.

10. WRC’s service standard for ILS notes that the goal of ILS “is to enable adults to live independently in their own homes in the community, or to increase independence while living in the home of a family member or caregiver.” ILS “does not involve care and

² All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

supervision, nor large blocks of time in giving support and assistance,” and can be provided to prepare the consumer to move, or “to assist the adult to attain more independence while still living in the current environment.” (Ex. 14.) When the adult is still living at home, ILS is provided for a maximum of two years, with the consumer’s progress to be evaluated every year, “and the results of the evaluation must indicate that sufficient progress is being made toward gaining independence to warrant continuation of the service.” When the intent of the service is to prepare the adult to move out of the family home, ILS will be terminated after one year if the adult does not move out of the family home. If ILS is terminated, and the consumer later chooses to move out of the family home, and a definite moving date is established, WRC may assist with the move and resume ILS.

11. Claimant’s mother testified that, since claimant had surgery, her seizures have become more short-lived and less violent. They are still “drop attacks,” and leave her sleepy or fearful. Claimant’s current ILS instructor is very helpful in teaching claimant how to cook and wash, but when claimant has several seizures on the same day, she forgets what she has learned. Claimant’s mother still hopes to buy a duplex so that claimant can live on her own but be near her mother, but “it won’t happen very fast.”

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s decision to terminate funding for ILS. Jurisdiction in this case was thus established. (Factual Findings 1-6.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that it is entitled to terminate funding for claimant’s ILS services. (Evid. Code, § 115.)

3. The Lanterman Act is a comprehensive statutory scheme to provide “[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (§ 4501.) The services and supports should “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option

in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. The Service Agency established by a preponderance of the evidence that it is entitled to terminate funding for claimant's ILS services. Under the Service Agency's service policy, ILS services are intended to be time-limited, helping consumers to develop the skills necessary to live independently. Claimant has been receiving ILS training for over five years, far longer than the time set forth in the service policy. Claimant has made little progress in developing independent living skills and has no plan to live independently in the foreseeable future. Her mother testified that she hopes to purchase a duplex so that claimant can live in her own apartment, but she is not currently in the process of purchasing one. (Factual Findings 1-11.) Instead of ILS services, the Service Agency has offered to provide funding for a personal assistant to help claimant make and get to her doctors' appointments. Based on the lack of any plan for claimant to move out of the family home in the near future, her minimal progress, and the offer of alternative services and supports appropriate to meet claimant's current needs, the continued provision of ILS services is unnecessary at this time.

ORDER

Claimant's appeal is denied. WRC is not required to fund claimant's ILS services.

DATED: January 19, 2012

HOWARD W. COHEN
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.