

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

AARON M.

Claimant,

OAH No. 2012070778

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 30 2012, in Alhambra, California.

Arturo De La Torre, Supervisor, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

Claimant Aaron M. (Claimant) was not present, but was represented by his mother (Mother). Claimant's father was also present.

Evidence was received, the record was closed, and the matter was submitted for decision on October 30, 2012.

ISSUES

Whether ELARC must fund advocacy and/or attorney services for Claimant to appeal the reduction in his In Home Support Services (IHSS).

FACTUAL FINDINGS

1. Claimant is a 14 year old boy eligible for regional center services under the eligibility category of Mental Retardation. Claimant has also been diagnosed with Cerebral Palsy, Seizure Disorder, Chronic Respiratory Insufficiency, Severe Muscle Contractures, Scoliosis, Bilateral Hip Instability, Cytomegalovirus Retinitis, Blindness, Hiatal Hernia, and

Gastroesophageal Reflux. Respondent cannot walk and is confined to either a special wheel chair or a bed at all times and requires 24-hour-a-day supervision. He takes all nourishment through a gastrointestinal tube and requires breathing treatments and pulmonary suction multiple times each day.

2. Claimant lives with Mother and his father. Claimant's father is disabled from a work related injury and has only recently returned to the family home. Claimant's two adult sisters visit him and sometimes provide caretaking and financial assistance.

3. Claimant's Individual Program Plan (IPP) dated October 20, 2011 lists the services that Claimant receives from ELARC and other generic resources. The list includes Supplemental Security Income (SSI) payments, special education home school three times per week from Los Angeles Unified School District, 56 hours per week of in-home nursing from Medi-Cal, 160 hours of In Home Support Services (IHSS), 2 cases of Nutricen per month, and two cases of diapers per month provided by Medi-Cal. The IPP lists ELARC as providing an unspecified number of gloves.

4. Claimant's IPP goals are to remain in his family home, maintain his health, continue receiving home school instruction and to enjoy listening to music.

5. As of April 2012, Claimant received 266 hours per month of IHSS hours. Mother and Claimant's sister are Claimant's IHSS providers. Mother was paid for 206 IHSS hours per month and Claimant's sister was paid for 60 IHSS hours per month to provide services for Claimant.

6. Pursuant to a notice dated May 21, 2012, Los Angeles County reduced Claimant's IHSS from 266 hours per month to 160 hours per month effective May 31, 2012 on the grounds that both parents were in the home and able to provide care for Claimant. Mother testified that Claimant's father only recently returned to the home and is disabled by a work related injury which prevents him from caring for Claimant. Claimant's father returned to the family home because he could not support himself and had nowhere else to go.

7. Upon receiving Notice of the reduction in IHSS hours, Mother commenced telephone calls to ELARC seeking assistance with the reduction of IHSS hours. Not having received any return calls from ELARC staff, Mother went to the ELARC office on June 4, 2012 to request assistance. ELARC staff provided Mother with referrals to Clients' Rights Advocates (CRA), advocate Juan Orantes and attorney Matthew Pope (Pope). Mother attempted to contact each by telephone. CRA staff advised Mother that CRA was not accepting new cases at that time and the telephone number for Juan Orantes had been disconnected. On June 22, 2012, Mother met with Pope and he agreed to represent Claimant. Pursuant to Mother's written agreement with Pope, she paid him \$100 in advance and he would retain one third of any funds/hours awarded.

8. On June 28, 2012, Claimant requested that ELARC pay Pope for his services so that the fees would not be deducted from the recovered IHSS funds.

9. On July 10, 2012, ELARC issued a Notice of Proposed Action (NOPA) denying Claimant's request. The NOPA states the following reason for the denial:

ELARC is not required to retain counsel or an advocate for the Claimant, ELARC shall make referrals when asked to make referrals in an effort to assist the Claimant in obtaining an authorized representative or attorney to assist claimant with legal representation. You may request assistance from these advocates.

10. Pope represented Claimant at his hearing on July 31, 2012. Following the hearing, Administrative Law Judge (ALJ) Robert Fugina issued a decision in Claimant's favor which was adopted on August 22, 2012 and released to Claimant on August 27, 2012. In the decision, ALJ Fugina found that there was no statutory authority for the Regulation that Los Angeles County relied upon by to discontinue or limit Claimant's IHSS hours. ALJ Fugina ordered that Claimant's IHSS hours be restored.

11. As of October 30, 2012, Claimant's IHSS hours had not been restored. Mother had not been able to obtain any information from Pope about the status of the restoration of the IHSS hours and was in a dire financial situation.

12. Mother testified that the reduction in IHSS hours has made it difficult for her to provide for Claimant. Specifically, she has been unable to pay the mortgage and is in danger of losing her home. The home in which Claimant lives has been specially adapted to accommodate his wheelchair. Claimant's sister made the down payment on the home and arranged for the mortgage, but is unable to make the payments for Mother. Claimant is in danger of losing his housing at this time.

13. Mother wants ELARC to pay Pope for his services so she will not have to share any recovery with him and seeks additional assistance to determine the status of the restoration of IHSS hours.

LEGAL CONCLUSIONS

1. An applicant seeking eligibility for government benefits or services has the burden of proof. (See Evid. Code, § 500; Welf. & Inst. Code, § 4712, subd. (j).) The burden of proof in this matter is a preponderance of evidence, and rests with Claimant who is seeking to require ELARC to fund attorney/advocacy services for him. (Evid. Code, § 115.)

2. In Welfare and Institutions Code section 4501, the legislature acknowledged the responsibility of the State of California for persons with developmental disabilities and its obligation to them. In doing so, the legislature acknowledged that developmental disabilities affect "hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities,

developmental disabilities present social, medical, economic and legal problems of extreme importance." (*Ibid.*)

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community."

4. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "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." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Those services and supports may include protective and other social and sociolegal services, information and referral services, advocacy assistance, technical and financial assistance. (*Ibid.*)

5. Welfare and Institutions Code section 4648, subdivision (b) requires regional centers to conduct activities including "Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division." This section also provides that whenever the advocacy efforts of a regional center to secure or protect the civil, legal or service rights of any of its consumers prove ineffective, the regional center, consumer or his representative may request the area board to initiate action.

6. Welfare and Institutions Code section 4646, subdivision (d) provides that individual program plans (IPPs) shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer at the program plan meeting.

7. Welfare and Institutions Code section 4646.4, subdivision (a), provides that Regional Centers shall establish an internal process so that, at the time of development, scheduled review, or modification of a consumer's IPP or ISP the process adheres to federal

and state law and regulation when purchasing services and supports. The internal process shall ensure: (1) Conformance with the regional center's purchase of service policies; (2) Utilization of generic services and supports when appropriate and (3) Utilization of other services and sources of funding.

8. Welfare and Institutions Code section 4646.5, subdivision (a)(1) provides that the IPP shall be prepared jointly by the planning team. Decisions concerning the consumer's goals and objectives, and services and supports that will be included in the consumer's IPP and purchased by the regional center or obtained from generic agencies shall be made by agreement between regional center representative and the consumer.

9. Welfare and Institutions Code section 4647 provides that service coordination shall include those activities necessary to implement an IPP, including purchasing or obtaining from generic agencies or other resources, services and supports specified in the person's IPP, coordination, or service, and support information.

10. Welfare and Institutions Code 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 public funds for providing such services.

11. Here, ELARC provided Claimant with referrals to three potential sources for legal advocacy and assistance. Only one of those resources was actually available. Mother entered into an agreement on behalf of Claimant for attorney services for an advance fee of \$100 and one third of proceeds from any recovery. The attorney prepared for and attended the hearing on Claimant's behalf and obtained a favorable ruling for Claimant. However, Claimant's IHSS funds have yet to be restored and the interruption in payment impacts Claimant and potentially his ability to remain in his home.

12. The legislature has clearly acknowledged that persons with developmental disabilities have legal problems of extreme importance. The law authorizes regional centers to obtain, purchase or refer consumers for sociolegal service, information, advocacy, technical and financial assistance. (Welf. & Inst. Code § 4512). Arrangements for such assistance are to be made through the IPP process with agreement of the regional center, the consumer and his family based upon the objectives in the IPP. Those services are coordinated by the regional center. Although the regional center must first explore generic resources and natural supports, it may purchase services for consumers, if needed. (Welfare & Inst. Code §§ 4646, 4646.4, 4646.5, 4647, 4648). Here, Claimant had an urgent need and referrals were made without an amendment to the IPP. Mother, acting on a referral, on Claimant's behalf, made a decision to enter into an agreement with an attorney to obtain legal assistance for Claimant. The evidence at hearing established that initially Claimant's need was met with the referral and generic resources. Service agency is not required to purchase services in every instance. Instead, as in this instance, a referral is appropriate and was adequate to meet Claimant's identified need when Pope agreed to a small advance fee and a contingency fee as payment. ELARC was not a party to the agreement, did not negotiate the agreement and has no obligation to pay Pope for his services.

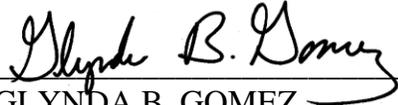
13. As the situation developed, Claimant developed a need for additional legal advocacy and assistance to ascertain the status of the restoration of his IHSS funds and is experiencing a housing emergency due to the financial implications of the IHSS reductions. Claimant and his family are in crisis and may require a change in services and additional service coordination. ELARC must make provision for Claimant's advocacy needs with respect to the reduction in IHSS hours either by purchase, referral or securing generic resources. The financial impact of the loss of Claimant's IHSS hours has impacted his IPP goal of remaining in his home. These needs are properly addressed in an IPP meeting where the Service Agency and the consumer can determine what changes if any are needed to Claimant's services and supports, if any are needed. For the reasons set forth above, Claimant's appeal is granted in part and denied in part.

ORDER

1. The Eastern Los Angeles Regional Center is required to hold an Individual Program Plan meeting within 10 business days of this decision. At the Individual Program Plan meeting, the Eastern Los Angeles Regional Center shall address and provide for Claimant's advocacy needs to ascertain the status of the IHSS appeal and Claimant's care and housing needs. The Eastern Los Angeles Regional Center shall also update and revise Claimant's Individual Program Plan to address his change in circumstances.

2. The Eastern Los Angeles Regional Center is not required to compensate attorney Matthew Pope for his fees.

DATED: December 10, 2012



GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision.