

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2012120506
2013011002

DECISION

Administrative Law Judge Glynda B. Gomez, Office of Administrative Hearings, heard these consolidated matters on January 23, 2013, July 24, 2013, and August 29, 2013, in Alhambra, California. Claimant was represented by his mother (Mother) and father (Father) (collectively Parents) who are also his conservators. Claimant did not attend the hearing. The Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Judy Castaneda, Fair Hearings Coordinator.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on August 29, 2013.

ISSUE

Whether ELARC must fund parent coordinated personal assistant hours in excess of 217 hours per month from June 2012 to December 17, 2012.

FACTUAL FINDINGS

1. Claimant is a 27-year old conserved adult male. He is eligible for regional center services based upon his diagnosis of Mild Mental Retardation. Claimant has also been diagnosed with an Anxiety Disorder and Autism. Claimant is employed as a part-time bagger at a grocery store in his community and volunteers his time at a local hospital. Claimant takes public transportation to his job and volunteer position.

Claimant's Living Situation

2. From 2007 to June of 2008, Claimant attended Taft College, funded by ELARC. He resided at Taft College during that period. He received independent living skills training (ILS) and vocational training while at Taft College. Parents and ELARC had various conversations about ILS, supported living services (SLS) and possible placement at Villa Esperanza around 2008.

3. Ultimately, Claimant returned home. He lives in a two bedroom house he rents from Parents. He receives Section 8 assistance with his rent. Parents have made up the difference between the mortgage payment and the Section 8 rent subsidy each month. This gap is a hardship for Claimant's family. Parents had hoped and requested that ELARC find a roommate for Claimant to share the expenses.

4. At one time, Claimant had a roommate who was also developmentally disabled. The living arrangement ended when Claimant was assaulted by the roommate. Claimant had a family friend as a roommate from January of 2011 to September of 2011. In June of 2012, Claimant's sister, a recent college graduate, moved into the residence as his roommate to assist Claimant at night on a temporary basis.

History of Supportive Services

5. Claimant received Personal Assistant (PAS) hours from People's Care, Inc. (People's), in September of 2008 while People's prepared its SLS assessment. Once the SLS assessment was completed and then reviewed by ELARC, SLS services were approved by ELARC. People's provided SLS services to Claimant for a time during 2008-2009, but People's gave notice to ELARC that it could no longer service Claimant's needs. Parents had concerns about the services provided by People's and had made complaints to ELARC about the vendor. The SLS services through People's were terminated in February of 2009.

6. In April of 2009, Easter Seals was approved by ELARC to conduct an SLS assessment. While the SLS assessment was pending, ELARC funded ILS through Easter Seals pending completion of the SLS assessment and negotiation of an agreed rate. Easter Seals provided SLS services to Claimant for the period of June to December 2010. Easter Seals provided ELARC with a 30-day notice stating it could no longer provide services for Claimant effective January 2011. At the time of the termination, Easter Seals was approved to provide 217 hours per month of SLS service.

7. Mother has had a pending application for vendorization as an SLS provider on file with ELARC since March of 2010. The application had not been completed because Mother's program design was considered deficient. She was given instructions and guidance as to the necessary amendments to the program design. Over the years, Parents vacillated between wanting to provide the SLS themselves or using an agency. In December of 2010, Claimant's mother met with ELARC representative Cecilia Gonzalez for assistance in preparing the SLS vendor application. As of the close of hearing, Mother's application remained pending.

8. In January of 2011, ELARC agreed to fund 217 Parent Coordinated Personal Assistant (PCPA) hours per month on a temporary basis until Mother completed the SLS vendorization process. The PCPA rate is \$9.78 per hour with a 4.25 percent reduction meaning that the pay rate is \$9.36 per hour.

9. During the two-year period of January 2011 to December 2012, Mother provided PCPA to Claimant with a staff of four to six people.

10. In October of 2011, Claimant's Parents sold their home of 25 years because of financial circumstances. This sale occurred around the same time that Claimant's second roommate moved out. Claimant was very upset about the sale of his childhood home and the loss of his roommate. Claimant's anxiety increased dramatically during this period. His parents stayed with him in his home temporarily for a few weeks in October of 2011 while awaiting a new home. Claimant's anxiety about being alone in his home at night became an urgent situation when he experienced hallucinations and thought that prowlers were in the yard. At that time, Claimant's sleep became disturbed, he had diarrhea and panic attacks and he cried incessantly at night. He often called Parents repeatedly throughout the night. Parents notified ELARC of Claimant's increased anxiety.

11. For a period of time not disclosed by the evidence but during this general time frame, Claimant periodically stayed in Parents' home because of his anxiety and the existence of mold in his bathroom.

12. Parents previously had discussions with the regional center concerning requests for the regional center to find a roommate for Claimant and to subsidize the cost of maintaining the empty second bedroom in Claimant's home over the years.¹ Parents had also kept ELARC apprised of Claimant's difficulties with anxiety and the various adjustments in his life.

13. Through email correspondence, conversations with various ELARC representatives, quarterly meetings and IPP meetings, Parents expressed their concern about Claimant's need for a roommate or a live-in caregiver and advised ELARC that Claimant's psychiatrist also recommended that Claimant not be left alone at night. The concerns were intertwined with other requests for service and the continuing tension about the provision of PCPA service instead of SLS through an agency or a parent-vendor. ELARC recommended SLS be provided through an agency. ELARC staff had concerns about whether Claimant was ready to live independently, but continued to provide support for his choice. The requests for assistance and concerns were confusing at best, because Claimant's Mother used the terms PAS, PCPA, SLS, ILS, roommate and live-in caregiver interchangeably.

¹ Claimant received some temporary housing assistance from ELARC during 2008-2009.

14. On February 3, 2012, Mother sent an email to Claimant's service coordinator requesting information on a variety of topics including whether or not Claimant's sister, a recent college graduate, could serve as a PCPA worker, and whether ELARC provided assistance for live-in caregivers. In the email, Mother clearly indicated that Claimant needed a "live-in caregiver." The service coordinator provided basic information confirming that Claimant's sister could be a PCPA worker. She also asked for clarification of what was meant by a live-in caretaker and clarification of any changes in Claimant's condition.

15. In April of 2012, ELARC approved funding for an SLS assessment by Modern Support Services. This assessment was not immediately undertaken and was ultimately not completed until October of 2012. During this time Parents continued their efforts to meet Claimant's needs with PCPA.

16. It is clear that Mother asked if Claimant's sister could be a PCPA worker. Mother was advised that Claimant's sister could be a PCPA worker provided that her social security number and name had been provided to ELARC in advance. In other communications, Mother referenced Claimant and his sister "moving in together" and that Claimant's sister was his roommate. There is no indication in the evidence that Mother ever sought or obtained approval for Claimant's sister to be paid as a live-in caregiver or a paid roommate. ELARC had no reason to assume that Claimant's sister expected to be compensated for residing in the home overnight as neither of the previous two roommates had been compensated and Mother did not specifically request that she be compensated as a roommate. Nevertheless, Mother compensated sister and billed ELARC up to 10 hours per night for sister's time as a roommate.

17. Mother erroneously believed that she had approval from ELARC to bill additional hours above and beyond the 217 hours per month that had been approved by virtue of having informed ELARC of Claimant's need for a live-in caregiver and that Claimant's sister would be moving in with him in mid-June 2012.²

18. Claimant never requested that ELARC fund PCPA hours above and beyond the 217 hours per month. Nevertheless, Parents seek to be reimbursed for 10 hours per night of PCPA hours which were paid to Claimant's sister in addition to the approved 217 hours per month.

² Part of Mother's confusion was based upon not having ever received copies of Claimant's finalized IPPs which set forth his objectives and services in detail. She received the IPPs in the course of preparation for the administrative hearing when she requested Claimant's entire file.

19. As a PCPA vendor, Mother was required to attend a training session in which she was instructed on ELARC's procedures for submitting timesheets and the requirements for PCPA. Mother was provided with clear instruction and written instructions that provided that all time sheets were to be submitted to ELARC no later than 90 days after rendering service. Mother's timesheets were never submitted on a timely basis. Had the timesheets been submitted on a timely basis, ELARC would have discovered Mother's error earlier. Timesheets for the period of January 2012 to September of 2012 were not submitted to ELARC until October of 2012. This was the second late batch of late timesheets from Mother. ELARC had already instructed Mother to submit the timesheets on a monthly basis. She was also reminded that ELARC would not accept timesheets more than 90 days old. The timesheets at issue were only submitted after an email from ELARC dated September 27, 2012, prompted Mother to submit them. ELARC agreed to accept the late timesheets as an exception to its policies and procedures due to what it deemed to be "extraordinary circumstances." Once the timesheets were submitted, ELARC immediately contacted Mother to discuss the billing for time in excess of the approved 217 hours per month.³

20. Mother was confused about the approval process and misunderstood the chain of events. She erroneously believed that her conversations and email exchanges with the service coordinator were sufficient. While this is understandable given the tremendous stress that she was under managing her son's care and services, serving as his IHSS worker, job coach and administering PCPA, selling her residence, moving and suffering from her own health problems, the fact remains that ELARC was charged for hours in excess of those that had been approved and agreed upon. Although ELARC personnel did what was required of them, it was apparent at hearing that the service coordinator and her supervisor had grown weary of parents and their demands.

21. At some time not established by the evidence, but before March of 2012, Mother was advised by Claimant's service coordinator that ELARC required an updated psychiatric report since Claimant's last report was from 2004. She attempted to obtain consent from Parents for ELARC to obtain the report directly from the doctor, but Parents never signed the consent form. Instead, Parents agreed to have the doctor provide a report to ELARC. In March of 2012 and several times thereafter, Mother requested that the psychiatrist provide a report to ELARC. There was also discussion around this time that a report from the psychiatrist would be useful to support a request for a live-in caregiver and the claims of increased anxiety.

³ ELARC had other concerns about Mother's billings, including the rate the hours attributed to direct care by Mother, administration, training, supported living skills and independent living skills, which it contends were not appropriate, and the failure to obtain the social security number of one of the PCPA workers. These concerns are not at issue in this decision.

22. After submission of the time sheets in October of 2012, ELARC advised Mother by letter that ELARC had yet to receive the psychiatric report and that such a report would be required to consider a request for funding of overnight care for Claimant. Mother was surprised because she had requested the report multiple times and assumed that ELARC already had the report in hand since she had not been advised otherwise. The psychiatrist's report noted Respondent's increased anxiety and need for overnight care. Once ELARC finally received and reviewed the report, 8 hours per night of PCPA hours were approved effective December 17, 2012.

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 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 Frank B. Lanterman Developmental Disabilities Act (The Lanterman Act)⁴ 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

⁴ Welfare and Institutions Code Section Section 4500 et seq.

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, and technical and financial assistance. (*Ibid.*)

5. 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 IPP, 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.

6. Welfare and Institution Code section 4646, subdivision (f), provides that if a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative, or when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

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 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 4646.4, subdivision (g), provides that a fair hearing process is available to a Consumer when he or his representatives do not agree with the IPP. It further provides that disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer.

9. Welfare and Institutions Code section 4646.5, subdivision (a)(1) provides that the planning process for the IPP described in Code section 4646 shall include gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities

10. Welfare and Institutions Code section 4646.5, subdivision (a)(2) provides that the planning process for the IPP shall also include a statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. The objectives are to be stated in terms that allow measurement of progress or monitoring of service delivery, and should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, leisure, increase control over his or her life, acquire

increasingly positive roles in community life, and develop competencies to help accomplish these goals.

11. Welfare and Institutions Code section 4646.5, subdivision (a)(4) provides that the IPP shall include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of services responsible for attaining each objective, including, but not limited to vendors, contracted providers, generic service agencies, and natural supports. The IPP shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

12. Welfare and Institutions Code section 4646.5, subdivision (a)(5) provides that when agreed to by the consumer or his conservator, the IPP process shall include a general health review including medical, dental, and mental health needs. This review shall include a discussion of current medication; any observed side effects, and the date of the last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status referrals shall be made in the consumer's record by the service coordinator.

13. Welfare and Institutions Code section 4646.5, subdivision (a)(7) provides that the IPP planning process shall include a schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled and that consumers and families are satisfied with the IPP and its implementation.

14. 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.

15. 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.

16. With regard to reimbursement, the Lanterman Act does not specifically authorize retroactive reimbursement of service costs to families in the fair hearing context. Nevertheless, general equity principles may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (*See Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

17. Here, Parents paid a family member to stay overnight with Claimant beginning June 15, 2012. The payment was made based upon Mother's erroneous belief that she had approval from ELARC for additional overnight hours of PCPA on top of the 217 hours approved by ELARC as a temporary measure until SLS services could be provided

either by Parents as vendors or by an agency vendor. Understandably, Mother was confused and under tremendous stress during the time period at issue. The combination of factors in her own life coupled with her son's increased needs made it difficult to keep track of all of the demands that were being made of her and to keep track of all of the various requirements for her son's services. While there is evidence that she discussed the need for overnight care or a roommate with ELARC and eventually advised them that her daughter would move in as Claimant's roommate, there is no evidence of a request for an increase in PCPA hours or approval for an increase in PCPA hours. Similarly, there is no evidence that Parents advised ELARC that Claimant's sister was to be a paid live-in caregiver or a paid roommate and that Parents expected ELARC to pay for her services as such. Provision of services to a consumer by a regional center are subject to policies and procedures dictated by the Lanterman Act which requires that services be coordinated by a planning team and based upon an IPP. By reason of factual findings 1 through 22 and legal conclusions 1 through 17, Claimant's appeal must be denied. Here, Claimant did not obtain ELARC's approval for an increase in PCPA hours. For this reason, retroactive payment for hours in excess of 217 hours per month may not be made.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal is denied.

DATED: September 18, 2013



GLYNDA B. GOMEZ
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.