

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

Inland Regional Center,

Service Agency.

OAH No. 2013060429

DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on March 26, 2014.

Taylor Smith and Wade Mitchell, Validate Educate Worldwide, the Supported Living Services provider, represented Claimant, who was present during the hearing.

Stephanie Zermeno, Consumer Services Representative, Fair Hearings & Legal Affairs, represented Inland Regional Center, the Service Agency.

The matter was submitted on March 26, 2014.

ISSUE

Whether the Inland Regional Center should reduce Claimant's supported living services from 40 hours per month to 17 hours per month?

FACTUAL FINDINGS

1. Claimant is a 26-year-old male who is a client of the Inland Regional Center (Service Agency) and is eligible to receive regional center services on the basis of mild

mental retardation. In addition, he has diagnoses of attention deficit hyperactivity disorder, oppositional defiant disorder, dysthymic disorder, anxiety disorder, borderline personality disorder, and learning disorder.

2. Claimant receives a variety of services, to wit: (1) Supplemental Security Income (SSI) of \$865 per month, (2) SSI/State Supplemental Payment of \$61.20, (3) B & R Payee Services, and (4) supported living services (SLS) with Validate Educate Worldwide (VEW) at the rate of 40 hours per month.

3. Until her death in February 2014, Vera Postema (Postema) served as Claimant's Consumer Services Coordinator (CSC); Cynthia Alexander (Alexander) served as Claimant's Program Manager. Alexander testified as a witness in the proceeding.

4. Claimant's most recent Individual Program Plan (IPP) meeting occurred on February 21, 2013. Present at the meeting were Claimant, the Program Manager, the CSC, Wade Mitchell (Mitchell) [VEW SLS instructor], and Taylor Smith (Smith) [VEW Office Manager].

According to the IPP, Claimant lives in the community and receives the following SLS: assistance locating an affordable residence, correspondence/community assistance, financial management, medical/dental health care, home maintenance, meal preparation, and safety and emergency planning.

During the meeting, the CSC and SLS instructor discussed Claimant's SLS hours. Claimant stated that he needed SLS at the rate of 40 hours per month and objected to a reduction of hours. He did not want to discuss his current goals on his customized individual service plan (ISP) from VEW in terms of his progress, skills learned and what ongoing training areas he needed. The meeting ended because Claimant became belligerent and unwilling to listen to the Service Agency's Program Manager and CSC.

In Claimant's absence, the discussion continued outside Claimant's apartment. Smith stated: "we can't justify 40 hours of SLS for him." It was agreed that VEW would submit a revised ISP with fewer hours of SLS based on Claimant's needs.

5. The Service Agency received the ISP from VEW in March 2013. This document was not an exhibit in this proceeding.

6. By letter, dated May 30, 2013, the Service Agency provided Claimant a notice of proposed action, stating, among other things, that it proposed to reduce his SLS to 17 hours per month and explained the procedure to appeal the Service Agency's decision.

Claimant filed a timely Fair Hearing Request, seeking to have his SLS hours maintained at 40 hours per month.

7. The Service Agency argued that Claimant's SLS should be reduced to 17 hours per month based on his needs and abilities.

8. In support of its position, among other things, the Service Agency submitted the Client Development Evaluation Report (CDER) and called Alexander as a witness.

The CDER has diagnostic and evaluation information for clients of the regional center. The CDER is divided into two sections, diagnostic and evaluation. The diagnostic section contains information pertaining to the client's developmental disability (ies), mental disorders, risk factors, major medical conditions, hearing and vision impairments, behavior modifying drugs, special health care requirements, and other special conditions. The evaluation section covers information related to motor, independent living, social, emotional, and communication skills.

The CDER has a rating on a five-point scale; five is the maximum score a regional center client can achieve. The farther away from a score of five, the less ability and skills the client has. On client's CDER, he achieved the following scores: (1) practical independence – 5, (2) personal/social skills – 4.80, (3) challenging behaviors – 4.20, (4) integration level – 4.20, and (5) well being level – 4.60.

The client's Regional Center CSC typically updates the CDER on an annual basis.

9. Cynthia Alexander (Alexander) [Service Agency Program Manager] testified that, without SLS, Claimant has a "lot of independent skills". Among other things, he is a father of a toddler. According to the IPP, Claimant "is an independent man. He is able to walk long distances with no supports. He takes his medication independently. He is able to care for all his personal daily care tasks. He is a non-conserved adult." He is able to move about the community and communicate his needs.

10. Insufficient evidence was offered to establish that Claimant has natural supports.

11. The Service Agency received the ISP in March 2013. The evidence in this case included ISPs dated May 5, 2012, July 5, 2013, and November 5, 2013. According to the reports, Claimant has made "minimal progress." SLS habitation is a teaching service. However, according to the reports, in many instances, the SLS instructor does the cleaning, maintenance of the home. In some areas, Claimant is belligerent towards those working with him and is unwilling to incorporate skills taught. There is some question about whether his lack of progress is a true reflection of his abilities or independent choices that he makes. There is no information regarding skills Claimant has learned, progress he has made, or his identified ongoing training needs.

Based on the facts, in Alexander's opinion, in the absence of information requested from Claimant or VEW, SLS at the rate of 17 hours per month is sufficient to meet Claimant's needs and abilities. No evidence to the contrary was submitted.

12. In the absence of information the Service Agency requested, SLS at the rate of 17 hours per month is sufficient to meet Claimant's needs and abilities.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (§ 4500 et seq.)¹ The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.)

2. SLS is one type of service provided to consumers. Section 4689 states, in part:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. . . .

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

[¶ . . . ¶]

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere. . . .

[¶ . . . ¶]

(6) The services or supports shall be flexible and tailored to a consumer's needs and preferences. . . .

¹ All statutory citations are to the Welfare and Institutions Code.

[¶ . . . ¶]

- (e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:

[¶ . . . ¶]

- (3) Whether the services and supports described in the consumer's individual program plan are being delivered.
- (4) Whether the services and supports are having the desired effects. . . .
- (f) The planning team, established pursuant to subdivision (j) of Section 4512, for a consumer receiving supported living services shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.

[¶ . . . ¶]

- (3) Upon a determination of a reduction in services pursuant to this section, the regional center shall inform the consumer of the reason for the determination, and shall provide a written notice of fair hearing rights pursuant to Section 4701. . . .

3. The Service Agency seeks to reduce Claimant's SLS from 40 hours monthly to 17 hours monthly.

Claimant's preference is to live independently in the community. It was not established that he has natural supports. He has some independent living skills. The Service Agency has funded SLS habitation at the rate of 40 hours per month since 2011. Considering the facts of this case, there is no evidence that the SLS provided is achieving the desired result. The Service Agency made an effort to obtain information from Claimant and VEW regarding skills Claimant has learned, progress made and identified ongoing training needs, to no avail.

Given Claimants abilities and needs 17 hours of SLS habilitation is adequate.

ORDER

1. The appeal of Claimant is denied.
2. The Inland Regional Center shall reduce the hours of supported living services to 17 hours per month for Claimant

DATED: April 9, 2014

_____/s/_____
VALLERA J. JOHNSON
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.