

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DIMITRIOS C.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2013090733

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 12, 2013, in Culver City, California.

Lisa Basiri, Fair Hearing Coordinator, represented the Westside Regional Center (WRC or Service Agency). Claimant Dimitrios C.¹ (Claimant) was represented by his father (Father) and mother (Mother) (collectively, Parents).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on November 12, 2013.

ISSUE

Must the Service Agency provide daily supported living services for Claimant's entire lifetime?

FINDINGS OF FACT

1. Claimant is a 19-year-old man, and a consumer of the Service Agency. Specifically, Claimant has been diagnosed with Autism Spectrum Disorder, and is eligible

¹ An initial is used in lieu of Claimant's surname in order to protect his privacy.

for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² Claimant currently resides with Parents within the Service Agency's catchment area.

2. The Service Agency issued a Notice of Proposed Action (NOPA) on September 13, 2013, denying Claimant's request for 24 hour care in the form of supported living services for the rest of Claimant's life. On September 23, 2013, Claimant filed a Fair Hearing Request. All jurisdictional requirements have been met.

3. Claimant suffers from anxiety, as well as symptoms of obsessive compulsive disorder, which requires Claimant to take a number of medications. Claimant has engaged in aggressive behaviors, such as hitting, kicking, punching, screaming, cursing, kicking doors and walls, has threatened Father with a knife, and has tried to choke Mother. He has also grabbed Parents' genitalia, broken glass, flooded the house, and has urinated all over the house. Claimant also suffers from delusions. Parents have called the police on several occasions concerning Claimant's aggressive behaviors. Claimant has required four in-patient psychiatric hospitalizations: once in January 2012, a second time in March 2012, a third time in August 2013, and a fourth time in October 2013.

4. During Claimant's August 2013 hospitalization, the Service Agency and Parents discussed other residential options in which Claimant could live upon his release from the hospital. However, Parents did not find satisfactory the available residential options. Because Claimant's release from the hospital was imminent, the Service Agency agreed, as an exception, to fund supported living services for Claimant within Parents' home, as opposed to a residence outside of the family home. The Service Agency agreed to provide this supported living services for 24 hours a day, seven days a week, excluding time Claimant spent at school and during in-home support services hours. The Service Agency agreed to provide these services from September 1, 2013 through November 30, 2013.

5. Lisa Basiri of the Service Agency testified at hearing and explained that the Service Agency's supported living program was designed to assist its consumers in living in homes of their own choosing within their community, with the assistance of a range of supported living services, including assistance in finding and maintaining a home, the provision of social and daily living skills training and support, the development of employment opportunities, as well as a number of other supports to facilitate consumers living in their own home in the community. Ms. Basiri also explained that the supported living services program was not intended to be delivered in the family home, as its purpose was to create independent living, to the extent possible, for its consumers, as opposed to them living in more restrictive environments.

6. On September 11, 2013, in response to a request made by Parents asking that the Service Agency provide supported living services to Claimant for the rest of his life, the Service Agency sent Parents a letter stating that it could not authorize services for Claimant's

² All statutory references are to the Welfare and Institutions Code.

lifetime, as it could not predict Claimant's future needs. The letter included a memorialization of its agreement to provide supported living services, namely that it would authorize 455 hours per month of supported living services, representing hours in a 31-day month minus 120 hours for school and 169.4 hours of in-home support services, from September 1, 2013 through November 30, 2013, through its vendor, Adult Assist. The Service Agency also indicated that it was not its intent to necessarily terminate services on November 30, 2013, but given the level of services it was providing, Adult Assist needed to be given an opportunity to fully assess the situation and to determine if adjustments needed to be made. On September 13, 2013, the Service Agency issued a NOPA stating the same, and indicated that the provision of supported living services for Claimant would be reviewed in November 2013.

7. On September 23, 2013, Father filed a Fair Hearing Request on Claimant's behalf, contending that Claimant required supported living services for his lifetime, because Claimant would be impacted by his autism and other impairments for the rest of his life.³ In addition, as Father testified at hearing, he did not wish Claimant's supported living services to be reviewed after only three months of their implementation.

LEGAL CONCLUSIONS

The Service Agency is not required to fund supported living services for Claimant for the rest of his life, as discussed in more detail below:

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

³ Father also focused much of his case-in-chief attempting to support his contention that Claimant should continue receiving supported living services within the family home, as opposed to some other residence. However, the sole issue in this matter concerned the provision of supported living services over the course of Claimant's lifetime, and not where the services should be delivered. As such, Father's arguments concerning the location of services are found irrelevant in this matter.

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

“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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer’s family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . .

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers’ obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer’s every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are

subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

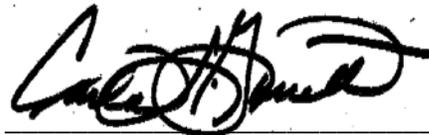
7. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

8. Here, Claimant failed to meet the burden of establishing that the Service Agency should be compelled to fund supported living services for Claimant for the rest of his life. There is nothing in the Lanterman Act that guarantees the delivery of services over a consumer's lifetime, no matter the disability. On the contrary, the Lanterman Act provides for periodic reviews of a consumer's services, as it recognizes that consumers' needs change over the course of time, and provides a mechanism through the IPP process to address the modified needs of the consumer. While Parents prefer for Claimant to receive supported living services for the rest of his life, the Service Agency, as set forth in Legal Conclusion 4, is not required to meet a consumer's every possible desire.

ORDER

Claimant's appeal is denied.

Date: November 20, 2013



CARLA L. GARRETT
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.