

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2015040600

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on December 7, 2015, in Van Nuys, California. Claimant was represented by her father and by her mother, who serves as one of her conservators.¹ North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Stella Dorian, Fair Hearing Representative.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 7, 2015.²

ISSUE

Should NLACRC discontinue funding Claimant's Supported Living Services (SLS) through Jay Nolan's Prism Community Services (Jay Nolan/Prism)?

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¹ Claimant's and her family members' names are omitted throughout this Decision to protect their privacy.

² After the record was closed, but prior to issuance of the Decision, Claimant's representative filed and served an additional written closing argument. However, the ALJ had not invited additional evidence or written argument. Consequently, the record was not re-opened, the additional submission was not marked for identification, and its contents were not considered by the ALJ.

EVIDENCE

Documentary: Service Agency exhibits 1-15; Claimant Exhibits A-C.

Testimonial: Bonnie Neely, NLACRC Nurse Consultant; Shannon Morales, NLACRC Consumer Services Supervisor, Adult Division; Claimant's father; Claimant's mother; Aurora Cordoba, Caregiver; Jeffrey Strully, Executive Director of Jay Nolan Community Services.

FACTUAL FINDINGS

1. Claimant is a 50-year-old female who qualifies for regional center services pursuant to diagnoses of autism, epilepsy, and severe intellectual disability. For 15 years she has lived in her own home, a single family residence, purchased for her by her parents.
2. Her mother has been her legal conservator for many years. However, due to Claimant's mother's failing health, two additional individuals were recently appointed as conservators.
3. Since approximately 2002, NLACRC has been funding SLS for Claimant through Jay Nolan/Prism. As documented in Claimant's Individual Program Plans (IPP's) and acknowledged by both parties, the SLS is necessary to meet her individual needs and preferences. Since receiving SLS, Claimant's behaviors and quality of life have improved.
4. Claimant requires one-to-one supervision 24 hours per day, seven days per week to maintain her safety due to her seizures and behavior issues. She is ambulatory, but sometimes needs support walking. She is not toilet trained and wears diapers 24 hours per day. Claimant requires hand-over-hand assistance for her activities of daily living, including meal preparation and all aspects of self-care and personal hygiene (bathing, dressing, grooming, and toileting). She has difficulty sitting still and moves constantly. During the day, she leaves her home and goes into the community with her SLS staff. She requires overnight staff because she wakes up and paces during the night, thus requiring staff to redirect her.
5. Some of Claimant's SLS staff has been with her for many years, and she has become very attached to them. She thrives on this consistency. Change is difficult for Claimant, and she will express frustration by screaming and resisting. She will also engage in self injurious behavior.
6. Claimant is non-verbal, but uses her electronic communication device with assistance from trained staff to communicate her thoughts and feelings. Claimant is a very social person and loves spending time with her family and friends.

7. Prior to 2008, Claimant's parents lived near Claimant's home and visited her several times per week. In 2008, Claimant's parents moved into her home after they experienced financial hardship and health issues. Claimant's parents have no other family with whom to live. They are retired and receive social security income.

8. Claimant's father and mother are 80 and 81 years old, respectively. Claimant's father uses a walker, and her mother must be pushed in a wheelchair by a caregiver. They are unable to, and do not, provide any care for Claimant.

9. On March 30, 2015, NLACRC sent Claimant's parents a Notice of Proposed Action (NOPA), citing California Code of Regulations, title 17, section 58613, subdivision (a)(2)(B), stating that it proposed to terminate funding for SLS for the following reason: "Consumer is not residing independently; parents have been living with consumer in her home and no longer meets criteria for [SLS]." (Exhibit 1.)

10. On April 8, 2015, Claimant's father filed a Fair Hearing Request on Claimant's behalf seeking continued funding of her SLS.

11. At the administrative hearing, NLACRC maintained that Welfare and Institutions Code section 4689 and title 17 of the California Code of Regulations prevent it from funding SLS for Claimant because she is currently living in a home where her parents live. NLACRC pointed out that funding of SLS is dependent on an adult consumer meeting certain criteria, including "living in a home that is not the place of residence of a parent or conservator of consumer." (Cal. Code Regs., tit. 17, § 58613, subd. (a)(2)(B).) According to NLACRC, when it began funding SLS for Claimant in 2002, she met all of the title 17 criteria. At that point, they agreed to fund SLS through Jay Nolan/Prism, which was a "wrap around" service including a day program. However, in 2014, upon confirmation of Claimant's parents living in Claimant's home, NLACRC believed it was precluded by regulation from continuing its funding of Claimant's SLS.³ NLACRC asserts that it can develop an alternative

³ At the fair hearing, the parties disputed when NLACRC knew or should have known about Claimant's parents' permanent residence with her. NLACRC pointed out that Claimant's former Consumer Services Coordinator (CSC), who no longer works for NLACRC, did not document Claimant's changed living arrangement in 2008 and thereafter. According to NLACRC, the living arrangement was not discovered by NLACRC until 2014, when Claimant's new CSC inquired. Claimant's father argued that NLACRC should have known about the living arrangement since 2008. However, the date of discovery is immaterial to the analysis at hand which involves a determination of whether Claimant falls within the asserted regulatory proscription of funding.

plan to allow Claimant to live in the home with her parents and to receive the same or similar type of supports which would involve a combination of personal assistants, In-Home Supportive Services and a day program/personal assistant in lieu of a day program.

12(a). Claimant's father is reticent to change any of Claimant's current supports and living arrangements. Claimant has tried several different arrangements in the past, including a group home and roommates, but the current arrangement has been the best to meet her individual needs and preferences. She has been in her own home for 15 years and is very content there. She has her own bedroom, a private bath with a "spa" tub, and "run of the house." If she was forced to have her parents leave the home in order to keep her SLS, this would decrease her quality of life since she has enjoyed their company for the past seven years. If she was forced to leave her home to provide her parents with a place to live, she would suffer a decrease in her quality of life as well. She could not afford to live on her own, and she would need to find an apartment with a roommate. Claimant's father maintained that Claimant should have the choice of where she lives and with whom.

12(b). Claimant's father asserted that it could not be the intent of the Lanterman Act to prevent Claimant's aging parents from living with her. He pointed out that the Lanterman Act strives to allow persons with developmental disabilities to live in the same manner as people without disabilities, and Claimant's current living situation meets that goal (as a 50-year-old woman whose elderly ailing parents live with her). He did not understand why, based on one line in the regulations, there should be such administrative juggling and paperwork to achieve the same support with an alternative plan. He also noted that there was no guarantee that Claimant would be provided the same or similar support staff.

13(a). Jeffrey Strully, Executive Director of Jay Nolan for 23 years, testified credibly on Claimant's behalf. He has interacted directly with Claimant and with her parents. He noted that 2008 was a "critical year," when Claimant's parents "became homeless," and he and Claimant talked about "what would a daughter do?" When Claimant's parents moved in, they all "looked at it as them moving into [Claimant's] home." Claimant enjoys having her parents in her home. Claimant's parents do not provide any support; they can only provide love and affection because they are not capable of even caring for themselves without outside support.

13(b). Mr. Strully did not believe that the language in the regulation was applicable to Claimant's situation. He persuasively noted that "there is a difference between living with your parents and your parents living with you, which [may have been] an implication that nobody thought about when they wrote the regulations."

13(c). According to Mr. Strully, if Claimant's SLS is not funded, several possibilities could occur. Under one scenario, Claimant and her family would need to work with her CSC to design an array of services in the "family home," but "there is

no way the family can provide support to Claimant.” Mr. Strully noted that, under this scenario, the designed combination could be more expensive than that already in place. The second possibility is that Claimant moves out into an apartment with SLS in place. The apartment will not be as big or have the amenities of Claimant’s home. Also, she does not have a Section 8 certificate so housing cost may be an issue and a roommate is a high possibility. Another option is a group home, which Mr. Strully hoped would not be the case.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant’s appeal of the Service Agency’s discontinuation of funding for SLS provided by Jay Nolan/Prism. (Factual Findings 1 through 13; Legal Conclusions 2 through 13.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.)

3. In attempting to discontinue the SLS provided by Jay Nolan/Prism, NLACRC bears the burden of proving, by a preponderance of the evidence, that the change is warranted. (See, Welf. & Inst. Code, §§ 4646, 4646.5, and 4648.) NLACRC has failed to meet this burden.

4. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (Welf. & Inst. Code, § 4502, subd. (b)(1)); and “maximize opportunities and choices for living, working, learning and recreating in the community” (Welf. & Inst. Code, § 4640.7, subd. (a)).

5. Welfare and Institutions Code section 4689, provides, in pertinent 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. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

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

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

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

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

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

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

[¶] . . . [¶]

(b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.

(c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide

personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

[¶] . . . [¶]

(h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer. . .

6. California Code of Regulations, title 17, section 5613, subdivision (a), provides:

(a) A consumer shall be eligible for SLS upon a determination made through the IPP process that the consumer:

(1) Is at least 18 years of age;

(2) Has expressed directly or through the consumer's personal advocate, as appropriate, a preference for:

(A) SLS among the options proposed during the IPP process; and

(B) Living in a home that is not the place of residence of a parent or conservator of the consumer.

7(a). Welfare and Institutions Code section 4689 codifies the Legislature's intent to allow adults with developmental disabilities to decide where and with whom they live, to control the environment within their homes, to have services tailored to meet their individual preferences, and to be supported "in living arrangements which are typical of those in which persons without disabilities reside." Furthermore, Welfare and Institutions Code section 4689, in combination with California Code of Regulations, title 17, section 58613, ensures that SLS is provided to consumers choosing to live independently without the daily assistance from family or conservators. The statutory/regulatory scheme additionally sanctions arrangements where individuals live with a consumer even though such individuals are not responsible for the consumer's care (e.g. roommates).

7(b). Adult children may choose to have their aging parents reside with them. Such living arrangements are typical among persons who do not have developmental disabilities. The Legislature has endowed developmentally-disabled

adults, such as Claimant, with the same rights as those of typical adults to control the environment in their homes and to choose with whom they live. Thus, similar to an adult without developmental disabilities, Claimant should be able to exercise her right to allow her elderly, ailing parents to reside with her in her home. Additionally, Claimant's exercise of her right to control her environment and to determine with whom she lives does not vitiate her long-established and continuing need for the SLS provided by Jay Nolan. The statute and regulations apparently did not contemplate this specific situation where aging parents residing in the consumer's home are unable to provide the consumer with any care which families/conservators would typically provide in their home (and which is provided solely by SLS staff in Claimant's home). Given the foregoing, Claimant's exercise of her right does not contravene the intent of the statutory/regulatory scheme.

7(c). It was not established that Claimant's living arrangement with her parents renders Claimant ineligible for SLS. Therefore, NLACRC's proposed discontinuation of funding Claimant's SLS through Jay Nolan/Prism is not supported by the evidence and should not be sustained.

ORDERS

1. Claimant's appeal is granted, and North Los Angeles County Regional Center's proposed discontinuation of funding Claimant's SLS is overruled.
2. North Los Angeles County Regional Center shall continue to fund Claimant's SLS provided by Jay Nolan/Prism.

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.

DATED: December 17, 2015

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Julie Cabos-Owen
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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings