

# **Court finds people can get services and supports to live with their families, even if the supports and services look like Supported Living Services**

This memo discusses *J.K. v. Office of Administrative Hearings (OAH) et. al.*, 2004 WL 2713269 (Cal.App. 4<sup>th</sup> Dist.), an unpublished California Court of Appeal decision about supported living services (SLS). The court held that, while adult regional center consumers living in their family's home can not receive SLS, they can receive the services and supports they need in order to maintain their living arrangement.

## **What is the *J.K. v. OAH* case?**

In *J.K. v. OAH*, the Court of Appeal decided that the supported living regulation<sup>1</sup> limiting SLS to consumers who do not live with a parent does not violate the Lanterman Act. But the Court found that the supported living regulation as applied to J.K. violates the Lanterman Act because the services J.K. requested were not SLS within the meaning of the Act.

J.K. is a young woman who is an Inland Regional Center consumer. Through her family, J.K. requested that the regional center meet her around-the-clock care and supervision needs by approving a supported living plan. The regional center denied this request and based its denial, among other things, on the reasoning that the DDS regulations prohibit the regional center from providing supported living services to a consumer who lives with a parent.<sup>2</sup>

## **Can I receive SLS if I live with my parents?**

No. The Lanterman Act provides: “[T]he Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of

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<sup>1</sup> Cal. Code Regs., tit. 17 § 58613.

<sup>2</sup> At the administrative hearing, the Administrative Law Judge (ALJ) held that the SLS regulation prohibits the regional center from providing SLS when the consumer lives with a parent. The ALJ ordered the regional center to hold an IPP meeting to revise J.K.'s IPP to meet her needs. You may download a copy of the underlying administrative hearing decision, *J.K. v. Inland Regional Center*, OAH Case No. 2001100187, online at [http://www.documents.dgs.ca.gov/oah/dds\\_decisions/12001100187.084.doc](http://www.documents.dgs.ca.gov/oah/dds_decisions/12001100187.084.doc), but note that the Court of Appeal overturned the underlying administrative hearing decision.

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...” Welf. & Inst. Code § 4689 (emphasis added). The Lanterman Act also says that “consumers shall have control over the environment within *their own home*.” Welf. & Inst. Code § 4689 (a)(4) (emphasis added). Furthermore, the Lanterman Act provides that: “[A]ssessment 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. Welf. & Inst. Code § 4689 (emphasis added).

The regulation provides: “A consumer shall be eligible for [supported living services] upon a determination made through the [individual program plan] process that the consumer ... is living in a home that is not the place of residence of a parent or conservator of the consumer.” Cal. Code Regs., tit. 17 § 58613. The Court of Appeal reasoned that children do not live in their own homes; rather, they live “at home” or “in the home”. Welf. & Inst. Code § 4685 (a) and (c). The Court concluded that when the Legislature referred to a developmentally disabled person’s “own home,” it intended to exclude the home of a parent. Therefore, the Court of Appeal determined that the regulation is consistent with the Lanterman Act. The Court of Appeal found that the fact that J.K. has leased space in her parents’ home did not change the substance of her living arrangement – that she is still not living in her own home, in the sense that the Legislature intended in the Lanterman Act.

## **Can I get supports and services if I live with my parents?**

Yes. After holding that the SLS regulation is consistent with the Lanterman Act, the Court of Appeal considered whether the regulation as applied in this case is consistent with the Lanterman Act. The Court found that there is substantial evidence that J.K. needed the services and supports she had requested, despite the fact that her parents had entitled their proposed plan for services a “supported living plan.” The Court stated that while J.K. was not eligible for supported living services, she was eligible for the actual services proposed because under the Lanterman Act a consumer is entitled to choose whatever services are to be provided, subject only to his or her needs, the cost-effectiveness of the service, and the state’s role as the payor of last resort.

The Court noted that “the characterization of a service as a supported living service is based on its purpose, not its content, type, or nature. If a service is

provided to help a developmentally disabled person live independently in his or her own home, it is a supported living service; and if not, not.” Therefore, the Court of Appeal determined that the fact that J.K. needs round-the-clock care and supervision or the fact that her parents requested to be vendored by the regional center to be her service providers, did not mean that the proposed plan necessarily provided for SLS. “Nothing, either express or implied, in the Lanterman Act makes a developmentally disabled person living with a parent categorically ineligible for round-the-clock care. Round-the-clock care is potentially available to other developmentally disabled persons who do not live in their homes, such as those in a residential or nursing facility.”

### **What does it mean that the case is not published?**

This decision is not officially published. An opinion of a California Court of Appeal that “is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.” California Rules of Court 977.

### **How can I use the Court’s opinion?**

Even though you cannot cite to this decision in a court proceeding and even though the decision is not legally binding authority, it is helpful to be familiar with the decision and see how the court interpreted the issue. At an administrative hearing, you can refer to the unpublished opinion and explain that you are not citing to the decision as precedent. You can, however, use the decision to make a reference to the reasoning the Court used to arrive at the result. Also, you can simply read the decision and use the court’s analysis to help you in making your own arguments.<sup>3</sup>

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<sup>3</sup> A copy of the Court of Appeal’s unpublished decision is attached.

## **Conclusion:**

You can only get SLS when you live in a home that you control. You cannot get SLS if you live with your family. If you choose to live with your family and you need supports and services to help you maintain your living arrangement, however, you can ask your IPP team to include those services in your IPP. It does not matter that the services you are asking for are similar to or serve the same function as supported living services.

The Lanterman Act says that you can get the supports and services you need in order to live in the living arrangement of your choice. For example, if you need around-the-clock supports in order to live in your parents' home, or if you need supported employment or transportation, you can request that the regional center secure these services for you. If you live with your family, you do not have to move out and live in a group home or in a supported living arrangement in order to qualify for the supports and services you need.

## **How can I get more information about SLS?**

For more information about SLS, please call Disability Rights California and ask for publication number 5143.01 (*Supported Living*), and publication number 5257.01 (*General Information and Materials on Supported Living Services*). For more information about regional center supports and services, call Disability Rights California for publication number 5063.01 (*Rights Under the Lanterman Act*). You can also download these publications online at [www.disabilityrightsca.org](http://www.disabilityrightsca.org).

## **Attachment:**

[J.K. v OAH decision](#)