

The Court says you can get supports, even if you live at home

In 2004, there was a very important court case that said:

Adults cannot get SLS (supported living services) at home. But, they can get other services and supports that help them to stay at home.

This case (*J.K. v. Office of Administrative Hearings (OAH) et al.*, 2004 WL 2713269, Cal.App.4th Dist.) was about a young woman, called J.K. for short.

J.K. is a Regional Center consumer who needs 24-hour care and supervision. She asked the regional center to approve a supported living plan to meet her needs. But, the regional center denied her request. They said that DDS regulations say that regional centers do not have to provide SLS to adults who live with a parent.¹ J.K. did not agree, and she asked the court to decide.

The California Court of Appeal decided that the regional center had the right to deny J.K.'s request for supported living services because she lives with a parent. But the court also said that the kind of help J.K. asked for is *not* SLS, according to the law. This means that J.K. has the right to ask for supports and services even though she lives at home.

Does this mean I can get SLS if I live with my parents?

No. The Lanterman Act says that you **cannot** technically get SLS if you are an adult and live with your parents.²

¹ Cal. Code Regs., tit. 17 § 58613.

² At the administrative hearing, the Administrative Law Judge (ALJ) held that the SLS regulation does not allow the regional center to provide SLS if 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 www.documents.dgs.ca.gov/oah/dds_decisions/12001100187.084.doc, but note that the Court of Appeal overturned the underlying administrative hearing decision.

Here are some things this case says:

- “[T]he 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...” Welf. & Inst. Code § 4689 (emphasis added).
- “consumers shall have control over the environment within *their own home*.” Welf. & Inst. Code § 4689 (a)(4) (emphasis added).
- “[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 Court said that if you live with a parent, you cannot legally say you live in your own home. Even if you rent the space from your parent, it is still not “your” home. This means that DDS has the right to deny SLS to adults living at home.

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

Yes. The Court said that J.K. needs the “supported living plan” that her parents asked for. She was not technically eligible for SLS. But the law says she is eligible for other services in her plan, because a consumer has the right to get services 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 said that 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. If it is not provided for that purpose, it is not a SLS. This means that the Court decided that the services J.K. asked for were not necessarily SLS.

The Court said:

“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.”

Can the Court’s decision help me?

The Court’s decision is not published. That means you cannot use it in your court case. But it is helpful to read the decision and see how the court interpreted the issue. The court’s analysis can help you make your own arguments.

You can talk about the Court’s decision at your administrative hearing, even though it is not published. Explain that you are using the case to show how the Court came to their decision.

Call PAI or OCRA for a copy of the court decision.

The DDS regulation says: “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).

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. But, if you choose to live with your family and you need supports and services to maintain your living arrangement, 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. So, if you need 24-hour supports to live in your parents' home, or if you need supported employment or transportation, you can ask the regional center to get 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 to qualify for the supports and services you need.

How can I get more information?

For information, call PAI and ask for these publications:

- 5143.01 *Supported Living*
- 5257.01 *General Information and Materials on Supported Living Services*
- 5063.01 *Rights Under the Lanterman Act: Regional Center Services for People with Developmental Disabilities*

You can also download these publications at www.pai-ca.org.