

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2018081203

DECISION

Laurie R. Pearlman, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on October 16, 2018, in Torrance, California.

Claimant was present and was represented by his mother who acted as his authorized representative.¹ Harbor Regional Center (Service Agency or HRC) was represented by its Manager of Rights and Quality Assurance, Latrina Fannin. Spanish interpretation for mother was provided by Lilly Lucas.

Oral and documentary evidence was received. The matter was submitted for decision on October 16, 2018.

ISSUE

Must HRC fund, or provide Claimant's mother with, a written Spanish-language translation of all documents relating to Claimant including third-party,

¹ Names are omitted in this Decision to protect the privacy of Claimant and his family.

vendor-prepared documents, such as assessments, and progress reports; job descriptions of Service Agency employees; and internal ID Notes, both retroactively and in the future?

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EVIDENCE

Documents: Service Agency exhibits 1-15.

Testimony: Kelly Carmichael, HRC Client Services Manager; Latrina Fannin, HRC Manager of Rights and Quality Assurance; and Claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 14-year-old male client of HRC who qualifies for regional center services based upon a diagnosis of Autism Spectrum Disorder and Intellectual Disability. He resides at home with his mother and older sister.²

2. At a meeting on August 7, 2018, mother requested that HRC provide or fund a written Spanish-language translation of all documents pertaining to Claimant.

3. On August 7, 2018, HRC sent a letter to mother denying this request.

² Mother testified that she and Claimant have relocated from Long Beach to Riverside. The Service Agency contends that, as a result, Claimant is no longer in HRC's catchment area since Riverside residents are served by Inland Regional Center. Mother disputes this assertion. That issue was not raised in either the Fair Hearing Request or the Notice of Proposed Action, and will not be addressed in this Decision.

4. On August 28, 2018, mother signed a timely Fair Hearing Request (FHR). In the FHR, mother seeks “[t]ranslation of consumer-related documents including ID notes, evaluations or any document that HRC provides to me in relation to the consumer.” (Exhibit 2.) This matter ensued.

BACKGROUND INFORMATION

5. Mother’s native language is Spanish and she is unable to clearly understand information that is provided to her in English. Claimant does not speak Spanish. He has limited language skills (one word or short phrases) and uses a communication application on his iPad to communicate. Claimant is dependent on others for assistance with his self-care needs. Claimant requires constant care and supervision to ensure his safety.

6. HRC provides Claimant with a variety of services. These include monthly respite services and personal care assistance. Claimant also receives Medi-Cal benefits and receives hours of In Home Supportive Services (IHSS), which provides personal care services such as dressing, eating, toileting, bathing, grooming and protective supervision.

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7. Meetings were held on April 12, 2018 and July 31, 2018, to develop Claimant’s Individualized Program Plan (IPP; exhibits 5 and 6), including discussion of services provided by HRC and requests for additional services.

TRANSLATION SERVICES PROVIDED BY HRC

8. Kelly Carmichael, HRC Client Services Manager, testified at the hearing. Ms. Carmichael explained that all verbal and written communications from HRC are provided to mother in Spanish in compliance with Welfare and Institutions Code (Code) section 4646, subdivision (h)(1). HRC provides a written Spanish-language translation of IPP documents, as well as all correspondence from HRC to

mother. In addition, Lucy Salazar, Claimant's service coordinator at HRC, is bilingual and conducts all communications with mother in Spanish. At mother's request, Ms. Salazar also provides a verbal translation from English to Spanish of any written documents, including internal ID Notes and documents prepared by third-parties pertaining to Claimant. However, mother asserts that this is insufficient and that not having a written translation of all documents pertaining to Claimant puts him at a disadvantage.

9. An Occupational Therapy (OT) evaluation funded by HRC was performed by Step By Step Pediatric Therapy, Inc., on February 2, 2018. HRC's service coordinator verbally translated the OT report for mother. Mother contends that when OT services subsequently became the subject of an appeal, she was at a disadvantage in her role as Claimant's authorized representative because she did not have a written translation of the OT report to utilize at the administrative hearing. Mother testified that she needs written translations of all documents pertaining to Claimant so that she "can be at the same level as the regional center" in order to adequately advocate for Claimant at administrative hearings.

10. Mother questioned Ms. Carmichael about "disparity" funding provided by the California Department of Developmental Services to address the disparity in access to regional center services for Hispanic and other minority communities who may underutilize services to which they are entitled. These disparity funds are allocated to support efforts by regional centers and community-based organizations to reduce these disparities by improving access to needed services and enhancing outreach to populations underrepresented in regional center caseloads. The goal is to promote equity and reduce purchase of Service disparities for these underserved communities. HRC credibly established that Claimant does not underutilize regional center services. The evidence presented

did not establish that disparity funding is relevant to the issue to be decided in this matter.

11. Under the Lanterman Developmental Disability Services Act (Lanterman Act) (Welfare and Institutions Code section 4500 et seq.) HRC is a payor of last resort and is required to explore all options, including generic resources, prior to using public funds to pay for services. HRC contends that it is the vendors' responsibility to provide written Spanish-language translations of vendor-prepared documents pertaining to Claimant. Moreover, upon request, HRC is willing to assist Claimant's mother to obtain written translations from those vendors, including translations of assessments, reports and other correspondence prepared by vendors that provide HRC-funded services.

12. Pursuant to the Lanterman Act, a regional center must communicate in the native language of the consumer or his family during the planning process for the individual program plan, including during the IPP meeting. Additionally, a regional center must provide a copy of the IPP in the native language of the consumer or his family.

13. HRC has provided mother with written Spanish-language translations of all communications sent to her that are authored by the Service Agency. This includes the IPP, as well as all correspondence from HRC to Claimant, such as decision letters and Notices of Proposed Actions. However, there are no statutory or regulatory provisions requiring that regional centers provide or fund a written translation of all documents pertaining to clients, including outside agencies' communications, internal ID Notes, or job descriptions of regional center employees.

14. Claimant's HRC service coordinator continues to be available to meet with mother to verbally translate all documents pertaining to Claimant into Spanish. HRC's denial of Claimant's request for written translation of any

documents that are not either an IPP or HRC correspondence, is upheld. However, if requested to do so by mother, HRC shall assist her to obtain from vendors a written translation of reports, assessments, and other documents generated by these vendors.

LEGAL CONCLUSIONS

1. HRC is not legally required to provide, or fund the cost of obtaining, a written Spanish-language translation of all documents pertaining to Claimant. (Factual Findings 1 through 14; Legal Conclusions 3 through 14.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available by an appeal of a regional center decision to deny a service. (Welf. & Inst. Code, §§ 4710-4714.) Claimant timely requested a hearing following the HRC's denial of requested services, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking services or funding for services not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (See Evid. Code, § 115.) In seeking to have the Service Agency fund or provide written Spanish-language translations of all documents pertaining to Claimant, Claimant bears the burden of proving by a preponderance of the evidence that the funding or service sought is necessary, and that generic sources or natural supports are not available. Claimant has failed to meet this burden, as more fully described below.

4. Services, as relevant to Claimant's request, are governed by the Lanterman Act. These laws establish basic principles which support HRC's denial of the requested written translation. These basic principles are:

- a. Before a service can be provided, HRC must assess the need for that service. HRC is required by law to consider the obligations of these other sources, sometimes referred to as generic resources, as part of the assessment process.
- b. If another source, such as a vendor or provider, is legally required to provide a service and it is either not providing the service or is not providing enough services, HRC is available to assist Claimant to get more services from these other sources before HRC is required to fund for the services.

5. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he 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 or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

6. Under Welfare and Institutions Code section 4646, the IPP is to take into account the individual needs of the client, through a process to determine those needs. The IPP may include services purchased by the regional center or obtained from generic agencies. (Welf. & Inst. Code, § 4646, subd. (d).)

7. Welfare and Institutions Code section 4646, subdivision (h)(1), provides that a regional center shall communicate in the native language of the consumer or his family during the planning process for the IPP, including during the IPP meeting.

8. Welfare and Institutions Code section 4646, subdivision (h)(2), provides that a regional center shall provide a copy of the IPP in the native language of the consumer or his family.

9. Welfare and Institutions Code section 4646.4 provides, in part, that regional centers shall have a process to “(a) [E]nsure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: [¶] (1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434. [¶] (2) Utilization of generic services and supports when appropriate.”

10. Under Welfare and Institutions Code section 4646.5, the IPP planning process shall include, among other things, gathering information and conducting assessments, including information from service providers (subd. (a)(1)), and “A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports.” (Subd. (a)(4).)

11. Welfare and Institutions Code section 4647, subdivision (a), describes the service coordination process to benefit clients, and includes “assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person’s

individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

12. The regional center may not provide a service that another agency is required to provide by law. As stated in Welfare and Institutions Code section 4648, subdivision (a)(8): “Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

13. Under Welfare and Institutions Code section 4659, subdivision (a)(1), the regional center is required to “identify and pursue all possible sources of funding for consumers receiving regional center services.”

14. Claimant has not presented sufficient evidence to establish that HRC is legally required to fund, or provide a written Spanish-language translation of, all documents pertaining to Claimant, retroactively and prospectively. HRC will not be ordered to do so. However, upon request, a Service Agency shall assist Claimant’s mother to obtain written translations of third-party documents, including reports and assessments, from the vendors who have prepared those documents, or other generic resources, if any.

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ORDER

1. Claimant’s appeal of HRC’s refusal to provide, or fund the cost of obtaining, a written Spanish-language translation of all documents relating to Claimant including, but not limited to, third-party, vendor-prepared documents, such as correspondence, assessments, and progress reports; job descriptions of

Service Agency employees; and all ID Notes, both retroactively and in the future, is denied.

2. If requested to do so by Claimant's mother, the Service Agency shall assist mother to obtain from the vendor, or another generic resource, a written Spanish-language translation of documents authored by the vendor pertaining to Claimant, including correspondence, progress reports, and assessments.

DATED:

LAURIE R. PEARLMAN
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.