

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

HARBOR REGIONAL CENTER

Service Agency.

OAH No. 2017120939

DECISION

This matter was heard by Nana Chin, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on April 16, 2018, in Torrance, California.

Claimant¹ was not present but was represented by his parents at the hearing. Harbor Regional Center (HRC or Regional Center) was represented by Julie Ocheltree, Esq., Enright & Ocheltree, LLP.

During the hearing, Claimant moved for admission of a letter from Sonia Dickson, Program Consultant for Transitions Consulting, which was marked for identification as Exhibit C17. The Regional Center objected to its admission on the basis that the document lacks foundation. As the fair hearing need not be conducted according to the technical rules of evidence, the objection is overruled

¹ The names of Claimant and his parents are omitted to protect their privacy.

and the document was admitted into evidence. (Welf. & Inst. Code §4712, subd. (i).)

ISSUE

Whether the Regional Center is required to fund six hours of tailored day services through Reid's Gift from Monday through Friday.

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EVIDENCE

Documents: Service Agency exhibits 1-8; Claimant's exhibits C1-C2, C7, C10-C13, C16, C17, C20, C25-C26, C28, C31, and C33.

Testimony: Liz Cohen-Zeboulon, Service Coordinator Manager; Sina Akai; Rick Travis; William Cefalo; and Claimant's parents

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 22-year old consumer who lives with his parents and younger brother in the family home in Manhattan Beach. Claimant is eligible for and receives regional center services based on a diagnosis of Autism Spectrum Disorder (ASD). Claimant also has a diagnosis of Fragile X Syndrome.

2. From approximately 2014 until December 2017, Claimant attended the CHOICE Program (Choice) located on the Mira Costa High School campus through Manhattan Beach Unified School District (MBUSD) where he had one-on-one support from 8:00 a.m. until 3:00 p.m. Through Choice, Claimant was able to participate in a number of unpaid work opportunities which allowed him to work one to two hours a day, three days a week, at a number of local businesses including, Shade Hotel, the Kiwanis Club and a local senior center. Claimant was

also able to develop his independent living skills by way of community outing activities which included practice with shopping and eating at local restaurants.

3. In December 2017 at the age of 22, Claimant earned his certificate of completion from Mira Costa High School.

ADULT RESOURCE TEAM REFERRALS

4. On November 6, 2017, an Individual Program Plan (IPP) meeting was held with Claimant, his mother and HRC Service Coordinator Vanessa Monroy (SC Monroy) and an Individual Family Service Plan (IFSP) was generated.

5. According to Claimant's IFSP, Claimant lacks safety and stranger awareness and therefore requires adult supervision at all times to ensure his safety. Claimant engages in self-injurious behaviors (SIB) when frustrated and also has a history of eloping from the home but had not engaged in that behavior for over a year.

6. Claimant was described in the IFSP as being fairly independent with his daily living and personal hygiene routines but that he continued to require assistance and prompts to ensure that the tasks were completed thoroughly. Claimant reportedly requires assistance choosing weather appropriate clothing, is unable to manipulate buttons or snaps, and requires assistance with wiping after bowel movements.

7. Though not discussed in his IFSP, Claimant is essentially non-verbal and uses an iPad application, Proloquo2Go, to communicate with others. Claimant does, however, occasionally verbalize some words, including "no," even when it is not accurate, "help," and some initial syllables of words. (Exhibit C2.)

8. In anticipation of Claimant's exit from MBUSD, SC Monroy staffed Claimant's case with HRC's Adult Resource Team (ART) to obtain referrals for Claimant.

ADULT DAY PROGRAM REFERRALS

9. ART is a resource for HRC service coordinators seeking program referrals for their adult consumers. Based on information provided by the service coordinator, ART provides program suggestions they believe will meet the consumer's needs.

10. Rick Travis testified on behalf of the Regional Center. Mr. Travis is a manager for the Department of Community Services at HRC and is a member of ART. According to Mr. Travis, ART does not play a role in determining whether a consumer requires one-on-one staffing. That determination is made by case management through the service coordinator. ART's role is simply to provide referrals in the context of the information provided to them by the service coordinator.

11. Based upon the information provided to ART by SC Monroy, Claimant was referred to Integrated Life, SVS Redondo Beach Inclusion Center, and Cole Vocational Services.

12. After obtaining the referrals, Claimant's mother contacted the three programs but did not believe that the programs met Claimant's needs. Among her concerns were that the programs Claimant had been referred to all had a three-to-one client to staff ratio, and none of the staff at the programs being offered were familiar with Proloquo2Go, Claimant's primary means of communication.

13. In view of these objections, additional referrals were sought from ART. ART referred Claimant to Easter Seals Cotta and Ambitions Carson. Claimant's mother contacted these programs and an additional day program, Ican LA California Abilities. These programs also, however, had a three-to-one staffing ratio and no staff trained in Proloquo2Go.

14. Claimant's mother identified Reid's Gift, an out of area provider vendorized by Westside Regional Center, as a program that would meet Claimant's needs and requested placement with Reid's Gift.

15. A referral packet was sent to HRC for review. A meeting was subsequently scheduled with Client Services Manager Liz Cohen-Zeboulon (PM Cohen-Zeboulon) and HRC executive, Patricia Del Monico. Ms. Del Monico ultimately decided to fund four hours a day of tailored day services through Reid's Gift. There was no evidence that Ms. Del Monico has any knowledge of Claimant other than the information provided to her in Exhibit C13, the request for purchase of service.

16. HRC issued a Notice of Proposed Action (NOPA) dated November 12, 2017, notifying Claimant that the Regional Center was denying Claimant's request to fund seven hours of tailored day services through an out-of-area vendored adult day program, Reid's Gift.

17. Claimant filed a timely fair hearing request on December 18, 2017, to appeal the Regional Center's decision. A hearing in this matter was initially set for February 14, 2018, but was continued at Claimant's request after he waived the 50-day time limit for holding the hearing and the 80-day time limit for a final administrative decision. (Welf. & Inst. Code §§ 4712, subd. (a) and 4712.5, subd. (a).).

ONE-TO-ONE STAFFING

18. PM Cohen-Zeboulon testified on behalf of the Regional Center. As a client services manager, PM Cohen-Zeboulon oversees ten service coordinators who are responsible for coordinating services to approximately 800 adult consumers. These adult consumers are typically individuals who have transitioned to HRC at the age of 22 after exiting the school district.

19. PM Cohen-Zeboulon is SC Monroy's supervisor. SC Monroy has been Claimant's service coordinator for approximately one year and has only had one IPP with Claimant and his mother. PM Cohen-Zeboulon has never met Claimant and does not have any personal knowledge of Claimant. Her knowledge of Claimant's needs and goals is based solely on information provided to her by SC Monroy and Claimant's IPP. According to PM Cohen-Zeboulon, the information SC Monroy provided to her and the information in Claimant's IPP did not indicate Claimant required one-to-one services.

20. According to PM Cohen-Zeboulon, in considering whether one-to-one staffing is appropriate, HRC will look at a consumer's medical and behavioral needs. Typically, HRC will determine that one-to-one staffing is appropriate if a consumer has a severe behavior or a history of elopement.

21. On February 12, 2018, HRC advised Claimant's parents that they would agree to fund Reid's Gift for four hours a day for five days a week. (Exhibit 4.) According to the letter, HRC believed that the day programs that had been offered to Claimant would meet his supervision needs. The letter further states that HRC agreed to the funding as the cost approximated the cost of the other day programs that had been offered to Claimant. There was no rationale or explanation provided as to how HRC came to the determination that the day programs offered by HRC would meet Claimant's supervision needs.

CALIFORNIA MENTOR

22. Sina Akai with California Mentor testified regarding the services offered by her program. According to Ms. Akai, California Mentor is a partial inclusion program. From 8:00 a.m. until 12:00 noon, clients are provided with therapeutic service; then, from 1:00 p.m. to 5:00 p.m., clients could either

participate by going on in the community or remain in house. There is no morning program for those clients that did not require therapeutic services.

23. According to Ms. Akai, California Mentor has a three-to-one staffing ratio and none of her staff is currently trained in Proloquo2Go. However, if a client who utilized such a device were accepted into her program, staff could be trained on the program.

24. The services offered by California Mentor as described by Ms. Akai did not meet Claimant's needs as further addressed in Factual Finding (??).

REID'S GIFT

25. William Cefalo has worked as an Applied Behavior Analysis (ABA)/home care therapist for approximately nine years. Mr. Cefalo has been working with Claimant through Reid's Gift for approximately one month and a half. Prior to Mr. Cefalo, Claimant had been assisted by Willie Harris, another Reid's Gift employee.

26. Typically, Mr. Cefalo arrives at Claimant's home at 9:00 a.m. His first working hour is then spent getting Claimant "warmed up" for the day, letting Claimant know his expectations, and then going through the logistics of getting him ready for the day.

27. Depending on the activity for the day, Mr. Cefalo and Claimant will either take an Uber or walk to their destination. The ultimate goal is for Claimant to be able to utilize public transportation.

28. Claimant currently works at Marine Avenue Park, sweeping, and the Kiwanas club, setting up tables. Claimant has also recently been approved for employment with Shade Hotel. On days he does not work, Mr. Cefalo takes Claimant either to the library or the Farmer's Market.

29. When Claimant is working, he typically works anywhere from 45 minutes to an hour and a half, depending upon Claimant's mental endurance. Mr. Cefalo has seen Claimant's endurance for the work increase over the last few weeks and Claimant now usually works for over an hour. Claimant generally ends his shift at noon and they head back, occasionally stopping at a store to do some shopping. After Claimant has his lunch, Mr. Cefalo's shift has ended.

30. Mr. Cefalo has seen progression in Claimant's work skills. When Claimant first began working at Marine Avenue Park, Claimant would simply hold the dustpan while Mr. Cefalo would sweep four preset piles of rubbish. The last few times, however, Claimant has been able to do the sweeping himself while Mr. Cefalo directs and provides encouragement.

31. Mr. Cefalo believes that through these work activities, Claimant been learning valuable vocational skills. Claimant is exhibiting more engagement, is learning to take direction and is exhibiting more patience.

32. Mr. Cefalo believes Claimant requires one-on-one support as Claimant requires a significant amount of encouragement to get him to engage in his day-to-day routines and work activities.

33. Mr. Cefalo believes that with additional hours, Claimant could take on an additional shift or two. Mr. Cefalo would also use that time to work on repeating additional tasks with Claimant, which he believes is necessary to fostering Claimant's developmental potential.

CLAIMANT'S CONTENTIONS

34. Claimant's parents believe Claimant requires one-on-one support for a variety of reasons, including his history of elopement, his lack of expressive language and his other behaviors.

35. As indicated in Claimant's Augmentative/Alternative Communication Report dated April 14, 2016, Claimant has little expressive language but does verbalize "no." Claimant's mother believes Claimant uses "no" to give himself time to process information. Claimant will often respond "no" even when it does not accurately express his desires.

36. Claimant has a history of elopement. To counter that, Claimant's parents have installed alarms on every window and door in the house, a double lock on the front door, which Claimant is unable open, a bolt on the back gate, and a key pad on the inside of the garage.

37. Claimant's mother is concerned that based on Claimant's behaviors and lack of communication, Claimant would not be given the opportunity to go out in the community and that his behavior would regress. Claimant's mother believes Claimant has already regressed in some areas due to Claimant's shortened hours.

COST OF REID'S GIFT

38. Reid's Gift is vendorized through Westside Regional Center. As such, its rates are set by the Department of Developmental Services for adult tailored services.

LEGAL CONCLUSIONS

JURISDICTION

1. Pursuant to Welfare and Institutions Code² Section 4710.5, subdivision (a), "Any ... authorized representative of the applicant or recipient, who

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

is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall ... be afforded an opportunity for a fair hearing."

STANDARD OF PROOF

2. As the party seeking government benefits or services, claimant bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115 and 500.) Claimant has met his burden of proof.

APPLICABLE LAW

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as HRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4640.7, 4646, 4646.5, 4647, and 4648.)

4. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents,

legal guardian, conservator, or authorized representative at the program plan meeting.” (§4646, subd. (b).)

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

6. A regional center “shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region. If suitable care cannot be found within the region, services may be obtained outside of the region.” (§ 4652.)

7. Pursuant to Section 4512, subdivision (b), “services and supports” mean “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, and normal lives” and include community integration services.

8. Claimant has presented significant evidence that he requires one-on-one support. When part of MBUSD, Claimant was evaluated and provided one-on-one support. There was no evidence presented which would indicate that Claimant had professed to the point he no longer needed one-on-one support since his receipt of his certificate of completion in December 2017. Instead, the evidence established that Claimant’s diagnoses are such that he requires

significant focused support in order to have him engage and participate in the day's activities.

9. The only evidence presented by HRC which would suggest that Claimant did not require one-on-one support was the opinion testimony of PM Cohen. PM Cohen, however, admitted she had no personal knowledge of the Claimant. Her knowledge of Claimant's needs was based on one IFSP, which failed to mention Claimant's communication deficits, and information provided to her by SC Monroy. Additionally, PM Cohen testified that HRC would consider such support when a consumer has medical or behavioral issues such as elopement. As testimony from Claimant's mother established, Claimant has both a history of elopement and other self-injurious behaviors (SIB) behaviors.

10. Additionally, Claimant presented evidence that he requires additional hours of adult tailored services in order to meet his IFSP goal of enhancing his independent living skills. Since receiving his certificate of completion, it was established that though Claimant's work skills have progressed, Claimant's skills in other areas have diminished with the decrease in his supported hours.

11. HRC's refusal to fund additional hours of services for Claimant does not appear to be based on anything other than the cost provision in the Lanterman Act. HRC's reliance on the provision, however, is misplaced.

12. An analysis of the appropriate services and supports to be provided begins with an assessment of which supports are necessary to support the consumer's needs and foster the developmental potential. (§ 4501.) After it is determined which services and supports would support this goal, the analysis requires a consideration of whether the services being requested are subject to

suspension of funding as set forth in Section 4648.5. If necessary services are not subject to suspension of funding, services need to be cost-effective.

13. In the instant matter, HRC failed to consider Claimant's needs when making its referrals. The determination to provide Claimant with only four hours of tailored day services through Reid's Gift appears to have been solely based on a consideration of cost. The evidence established that Claimant requires one-on-one support. The referrals offered by HRC do not meet Claimant's needs as they all operate with a three-to-one staffing ratio. The evidence also established that in order for Claimant to continue to progress and meet his developmental potential, additional hours of support are necessary.

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ORDER

Claimant's appeal is granted. HRC will fund six hours of tailored day services for Claimant through Reid's Gift.

DATED:

NANA CHIN

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.