

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
State of California

In the Matter of:

CLAIMANT,

vs.

Harbor Regional Center,

Service Agency.

OAH No. 2018020717

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Torrance, California on May 11, 2018.

Claimant's mother represented Claimant, who was not present. The names of Claimant and his family members are omitted to protect their privacy.

Elizabeth Stroh, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC).

The matter was submitted on May 11, 2018.

ISSUES

1. Whether HRC should pay for laundry and cleaning supplies for Claimant, carpet cleaning and a carpet runner for his bedroom, and a waterproof mattress protector with a zipper for his bed due to his incontinence and behavior of urinating in a corner of his bedroom.
2. Whether HRC should pay to repair holes Claimant made in the walls of his home.

EVIDENCE RELIED UPON

Documents: HRC exhibits 1 through 11; Claimant's exhibits A through G.

Testimony: Iris Owens; Judy Taimi; Claimant's mother; Claimant's grandmother.

FACTUAL FINDINGS

JURISDICTIONAL FACTS

1. HRC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)¹

2. Claimant is a 12-year-old boy who is eligible for Lanterman Act services due to diagnoses of autism spectrum disorder and severe intellectual disability. In early January 2018, his mother asked HRC to fund laundry and cleaning supplies for him, carpet cleaning and a carpet runner for his bedroom, and a waterproof mattress protector with a zipper to address his incontinence and behavior of urinating in one corner of his bedroom. She also asked HRC to pay to repair two or three holes Claimant made in the walls of their home.

3. HRC denied the request on January 31, 2018, and Claimant's mother submitted a Fair Hearing Request on his behalf dated February 16, 2018, appealing the denial. She later waived the 50-day time limit for holding the hearing and the 80-day time limit for a final administrative decision. (§§ 4712, subd. (a), 4712.5, subd. (a).)

¹ Undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

4. Claimant lives with his mother, teenage brother, and two younger brothers. He is nonverbal and communicates via constructing picture-exchange Velcro sentence strips and pointing to preferred objects. He requires prompting, redirection, and assistance with daily living tasks and all of his self-care needs. He is not toilet trained and wears diapers, but takes them off because he does not like wearing them. He also engages in tantrums, protesting, and eloping behaviors. He stopped attending school in June 2016 due to a dispute between his mother and local school district, but recently began attending a non-public school.

5. Claimant is covered by Medi-Cal and is assigned to L.A. Care Health Plan, which funds his diapers, mattress slip covers (every four months), and 65 hours per month of behavioral health treatment, among other items. California Psychcare provides the behavioral health services. Claimant also receives \$700 per month in Supplemental Security Income (SSI), and 240 hours of In-Home Supportive Services (IHSS). His mother and grandmother are his IHSS workers.

6. Claimant's most recent Individual Family Service Plan from HRC, dated June 8, 2017, states that he has two or three toileting accidents per week during the day. It describes various areas of "Progress" and "Desired Outcome[s]," including that he will have fewer accidents, learn how to wipe himself after a bowel movement, continue to live in a safe home, be cared for while his mother has a break, and continue to have Applied Behavioral Analysis services through Medi-Cal to assist with behaviors. HRC is currently providing 90 hours quarterly of respite care through Cambrian Home Care, and has also stated it is providing "[a]dvocacy with ensuring the appropriateness of [Claimant's] behavioral service goals and treatment plan through . . . California Psychcare." (Exhibit 3.) Claimant's grandmother is his respite caregiver.

REQUESTS TO HRC

7. In early January 2018, Claimant's mother asked for assistance from HRC with paying for cleaning supplies and a plastic mattress cover for Claimant's bed. She stated her son's frequent bedwetting and behavior of urinating on a particular spot on his bedroom carpet were making the cost of cleaning supplies unmanageable, and that the mattress covers provided through Medi-Cal were not waterproof and broke down with frequent washing. In a later call with HRC, she also reported that the smell of urine on the carpet was very hard to eliminate, and she could not afford a professional carpet cleaner. She also stated that Claimant defecated on himself, requiring her to hand wash his underwear.

8. On January 19, 2018, HRC Service Coordinator Nancy Paredes visited Claimant's home in response to the request. Claimant's mother told Paredes she would like HRC to fund laundry detergent and liquid fabric softeners, liquid Clorox, Clorox wipes, Lysol, hand soap, gloves, baby wipes, and vinegar. Claimant's mother also stated she would prefer waterproof mattress covers with zippers because Claimant took off the slip-on mattress covers provided through Medi-Cal. She also requested deep cleaning of Claimant's room carpet, a plastic carpet runner, and repair of two or three holes Claimant had made in the walls with a recliner chair.

9. Claimant's mother walked Paredes through Claimant's bedroom and Paredes saw "gnats flying all over the room" and smelled a strong odor of urine and wet carpet. (Exhibit 6.) Claimant's mother pointed out where Claimant tore the plastic around the mattress, and Paredes also observed feces on it. Claimant's mother also reported her son had urinated on the mattress, and pointed out the left corner of the room where he would urinate on the carpet.

10. Claimant's mother also walked Paredes through the restroom that Claimant used and there was urine splashed on the toilet and floor. Claimant's mother

also showed Paredes a set of shorts and underwear with feces on it, stating that such accidents occurred on a daily basis. She also stated that California Psychcare had been providing services to Claimant for almost two years and working with him on toileting goals, but had not been successful. Paredes provided Claimant's mother with information on toileting classes offered through HRC, but Claimant's mother stated she was not interested because she had taken them in the past.

11. After the home visit, Paredes consulted with Judy Taimi, her manager, and Iris Owens, a clinical behavioral analyst for HRC. Paredes also requested records from California Psychcare, receiving a Functional Behavior Assessment from July 2016 and a progress report from early 2017. Those records referenced the need for toilet training and included the goal: "By July 2017, Patient will initiate and independently complete 100% of the steps of toilet training task analysis, across people and settings for 1 month." (Exhibit 8.) Paredes concluded the goal was unmet.

12. On January 31, 2018, Paredes and Taimi wrote a letter to Claimant's mother denying her requests, stating that addressing Claimant's incontinence and behavioral issues was the long-term solution to improving cleanliness and reducing the family's cleaning expenses. Paredes and Taimi recommended consulting a doctor to rule out any medical cause for the problems, and offered to collaborate with California Psychcare on behavioral goals and to advocate to Medi-Cal for different mattress covers and/or ties that were harder to remove. They also stated the burden associated with extra cleaning was already being addressed through Claimant's IHSS hours and SSI income, and that laundry and cleaning supplies, carpet cleaning, a carpet runner, and a mattress cover were not within the kinds of specialized services and supports provided by a regional center under the Lanterman Act.

13. Paredes and Taimi similarly stated that repairing the holes in the walls was a service and support that HRC was unable to provide. According to the letter,

Claimant's mother "shared that [Claimant] sat in the recliner chair and rocked into the wall," but "was not engaged in any maladaptive behaviors at the time." (Exhibit 3.) Therefore, the holes were not tied to Claimant's disability, and the repairs were an expense that would be incurred by any parent of a minor child.

14. Claimant's mother met with Stroh in March 2018 to discuss the denial, but HRC's position did not change. Claimant's primary care doctor also requested household supplies from Claimant's medical group, but the medical group denied the request, stating that household supplies were not a covered benefit under Medi-Cal.

TESTIMONY

15. Taimi testified about the reasons for HRC's denial, reiterating the reasons stated in the letter she co-authored with Paredes.

16. Owens testified she believes California Psychcare is not doing enough to address Claimant's toilet training and associated behaviors. She questions why Claimant has not made progress in those areas after two years of behavioral services, and why the references to toilet training in California Psychcare's documents are so general, with no documentation of the smell of urine in the home or Claimant's habit of urinating on the floor. Owens considers the conditions Paredes observed to be a health and safety concern, and offered to advocate to California Psychcare to make Claimant's toilet training and associated behaviors a higher priority. As of the hearing date, Owens had not begun to do so.

17. Claimant's mother testified that California Psychcare has been doing a good job and has made progress with Claimant's toilet training. However, she still needs the requested items from HRC to improve her family's home environment until he is better able to use the restroom. The money from her IHSS work and SSI are not enough for her to pay for the items, and she has no other way to pay for them. She also testified she asked for different mattress covers through Medi-Cal, but the request was denied. In

addition, she testified the holes in the walls were the result of her son's tantrums, not from her son simply rocking in a chair. She produced pictures of two small holes in the walls and expressed concern her landlord will find out about them. From the pictures, the damage appears to be minor and cosmetic. She believes HRC should be more flexible and creative in addressing her son's needs.

18. Claimant's grandmother testified that Claimant has accidents "constantly" and she needs to clean him up after each one. Some of his accidents involve feces, and he also sometimes urinates on carpets. She needs gloves and cleaning products to clean up the accidents, and Claimant's mother sometimes does not have enough money to pay for them. Claimant also needs something different than the covers he has now to protect his mattress.

LEGAL CONCLUSIONS

LEGAL STANDARDS

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under its fair hearing and appeal procedures. (§ 4706, subd. (a).) "Services and supports for persons with developmental disabilities' means 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." (§ 4512, subd. (b).) The determination of Claimant's services and supports "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." (*Ibid.*)

2. "Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4648, subd. (a)(2).) "The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families," and "[i]t is the intent of the Legislature that regional centers provide or secure family support services that do all of the following: [¶] (1) Respect and support the decisionmaking authority of the family. [¶] (2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time. [¶] (3) Recognize and build on family strengths, natural supports, and existing community resources. [¶] (4) Be designed to meet the cultural preferences, values, and lifestyles of families. [¶] (5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community." (§ 4685, subds. (a), (b).) "This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled." (§ 4685, subd. (c).)

3. At the same time, "[r]egional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).) Regional centers shall also not "[u]se purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor

child's service needs, the family's responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship." (Cal. Code Regs., tit. 17, § 54326, subd. (d)(1); see also § 4646.4, subd. (a)(4).)

4. Claimant has the burden of proving HRC should fund the disputed items (see *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161), and must do so by a preponderance of the evidence (Evid. Code, § 115). A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

DISCUSSION

Laundry And Cleaning Supplies, Carpet Cleaning, Carpet Runner, And Mattress Pad

5. The evidence established that Claimant needs the extra laundry and cleaning supplies his mother requested. His incontinence and behavior of urinating on the carpet are creating that need, as well as a health and safety concern. (See Factual Findings 9, 16.) The evidence also established that Claimant's bedroom requires professional carpet cleaning, and that a plastic carpet runner and different mattress pad would be advisable to protect his carpet and mattress from further damage. Paredes smelled the strong odor of urine and wet carpet in Claimant's room, and the fabric mattress pads provided through Medi-Cal are not waterproof and are too easy to remove. (Factual Findings 8, 9.)

6. The question to answer is whether HRC should pay for these items, and HRC makes several arguments why it should not. First, HRC argues that behavioral treatment is the long-term solution to the cleanliness problem in Claimant's home. While this appears to be true, Claimant and his family need a cleaner home in the short

term, and Owens had not started advocating with California Psychcare for better behavioral treatment of Claimant's incontinence and associated behaviors as of the hearing date. (Factual Finding 16.) Changing Claimant's behaviors will also take time. Therefore, HRC's argument does not foreclose short-term relief.

7. Second, HRC argues that a waterproof mattress cover with a zipper is something that Medi-Cal should fund, and offers to advocate to Medi-Cal on Claimant's behalf to get it. But Medi-Cal has already denied a request for such covers from Claimant's mother (Factual Finding 17), calling into question whether HRC's advocacy will succeed. Claimant will still need a different mattress cover if advocacy does not succeed. Therefore, this argument only justifies giving HRC time to advocate to Medi-Cal for a solution, not denying Claimant's request entirely.

8. Third, HRC argues that the extra cleaning related to Claimant's behaviors is already being addressed through IHSS and income received through SSI. But Claimant's IHSS authorization pays workers an hourly rate for supportive services (see § 12300); nothing suggests that hourly rate includes the cost of household supplies. Furthermore, the requested carpet cleaning is "heavy cleaning," and IHSS will not compensate a parent who is an IHSS worker to do heavy cleaning. (*Basden v. Wagner* (2010) 181 Cal.App.4th 929, 935, fn. 5; § 12300, subds. (b), (e).) Thus, the IHSS payments to Claimant's mother cannot be intended to address it.

9. HRC also did not rebut Claimant's evidence that the income received through SSI is not enough to pay for the items. "The basic purpose underlying the [SSI] program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level." (20 C.F.R. § 416.110; see also *In re S.M.* (2012) 209 Cal.App.4th 21, 28.) Claimant's mother testified the income from SSI is not enough to pay for the requested items, and that she

has no other source of income to pay for them. (Factual Finding 17.) HRC presented no income or expense evidence suggesting otherwise.

10. Finally, HRC argues the requested items are not the types of specialized services and supports provided by a regional center under the Lanterman Act. But the Lanterman Act also allows a regional center to provide “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.” (§ 4512, subd. (b).) Furthermore, the Lanterman Act directs regional centers to “[b]e flexible and creative in meeting the unique and individual needs of families as they evolve over time.” (§ 4685, subd. (b)(2).) Given this flexibility, HRC may fund the requested items as a short-term measure to help alleviate the health and safety concern associated with Claimant’s incontinence and associated behaviors.

11. Based on the above, HRC should provide Claimant with funding for the requested laundry and cleaning products for six months or until Claimant’s incontinence and associated behaviors no longer require them, whichever is sooner. The need, if any, beyond six months can be evaluated at that time. HRC should also fund a professional cleaning of his bedroom carpet, and the purchase of a plastic carpet runner for his bedroom. Absent successful advocacy to Medi-Cal within 30 days, HRC should also pay for a waterproof mattress cover with a zipper or its equivalent for Claimant’s bed.

Repair of holes in walls

12. The requested repairs to holes in the walls of the Claimant’s home do not involve a health and safety concern, unlike the other requests at issue. The holes are small and the damage appears minor and cosmetic (Factual Finding 17), and requiring HRC to pay to repair such damage would not be an effective use of limited state

resources. Such repairs are an expense that could be incurred in any household, and the repairs would have little or no effect on the goals stated in Claimant's Individual Family Service Plan. (See § 4512, subd. (b).) Therefore, the request should be denied.

ORDER

Claimant's appeal is granted in part. HRC shall provide or pay for the following:

1. The requested laundry and cleaning products for six months or until Claimant's incontinence and associated behaviors no longer require them, whichever is sooner.
2. A professional carpet cleaning of Claimant's bedroom.
3. A plastic runner for the carpet in Claimant's bedroom.
4. A waterproof mattress cover with a zipper, unless HRC can obtain such a cover or its equivalent for Claimant from Medi-Cal within 30 days.

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Claimant's appeal is otherwise denied.

DATED:

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.