

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2018090914

DECISION

Administrative Law Judge Carmen D. Snuggs, Office of Administrative Hearings, State of California, heard this matter in Torrance, California, on January 22, 2019.

Claimant, who was not present, was represented by his mother.¹

Latrina Fannin, Manager of Rights and Quality Assurance, represented the Service Agency, Harbor Regional Center (HRC or Service Agency).

The record was closed and the matter was submitted for decision on January 22, 2019.

ISSUE

Shall HRC be responsible for funding orientation and mobility training for Claimant?

¹ Initials and family titles are used to protect the privacy of Claimant and his family.

EVIDENCE CONSIDERED

The Service Agency's Exhibits and Witnesses: Service Agency's exhibits 1-10, and 14-16. Service Agency witnesses included Judy Samana-Taimi, Aho Sahba, M.D.

Claimant's Exhibits and Witnesses: Claimant did not offer any exhibits. Claimant's mother testified on Claimant's behalf.

FACTUAL FINDINGS

1. On September 8, 2018, the Service Agency sent a letter to Claimant's mother indicating that Claimant's request for the Service Agency to fund orientation and mobility training, was denied. Claimant filed a timely request for fair hearing.

2. Claimant is a 13-year-old male consumer of the Service Agency who is eligible for services due to mild intellectual disability and "Autistic Disorder" (Ex. 4, p. 2.) diagnoses. Claimant also suffers from bilateral optic nerve hypoplasia, which has resulted in profound visual impairment such that he requires navigation assistance at home, at school, and in the community. He also suffers from pituitary gland disorder and allergies. Claimant is enrolled in a Medi-Cal managed care plan with Kaiser.

3. Claimant's Individual Person-Centered Plan (IPCP),² dated June 11, 2018, indicated that Claimant lacked safety awareness and required constant supervision at all times. The IPCP further noted that Claimant required supervision when navigating in both familiar and unfamiliar settings due to his visual impairment. Claimant's mother reported that Claimant used a walking cane to guide him and that he was receiving mobility orientation training at school.

² HRC uses the designation IPCP instead of Individualized Program Plan (IPP), to which the Developmental Disabilities Services Act (Lanterman Act) refers. However, any statutory references to IPPs are applicable to HRC's IPCPs.

4. Claimant attends middle school in the Los Angeles Unified School District (LAUSD) and receives orientation and mobility training from LAUSD for one hour twice per month. LAUSD defines orientation and mobility services as “instruction to students with visual impairments in the specialized skills needed to understand, orient, and travel in various physical environments and spaces.” (Ex. 7, p. 1.) LAUSD’s Position Paper on Orientation and Mobility Services states that the services are provided:

to teach students with visual impairments to access and safely negotiate school, home, and community environments. Training areas include settings that a sighted student would typically need to traverse, such as classrooms, school campuses, residential neighborhoods, small and large business districts, commercial centers, and rural environments.

. . . Orientation and Mobility services enable students with visual impairments to attain systemic orientation to and safe movement within their environments in school, home, and community

(Ex. 7, p. 2.)

5. HRC follows its General Standards policy when authorizing consumers’ and families’ service requests. (Ex. 15.) HRC’s General Standards policy prohibits HRC from purchasing services and supports for its clients where the service is available through a public resource that has not been utilized to the fullest extent possible, or where the service is available through private insurance or another health care service plan. In addition, HRC may only purchase a service and support where a consumer’s need is

associated with a developmental disability or a condition determined by an interdisciplinary team to present a risk of developmental disability.

6. Judy Samana-Taimi, HRC's Client Services Manager, testified at the hearing. She has a Bachelor of Arts degree in social work and was previously employed as a social worker for children. Ms. Samana-Taimi worked as a HRC Service Coordinator for three and one-half years and currently manages Claimant's Service Coordinator, Tian Chiang. She assisted with assessing Claimant's need for orientation and mobility training and with drafting the September 5, 2018 denial letter described in Factual Finding 1. Ms. Samana-Taimi is familiar with the statutes governing the provision of HRC services as well as HRC's General Standards policies. Her testimony established, consistent with the General Standard Policy, that HRC is a payor of last resort. In other words, if another program or insurer has the responsibility to pay for the costs of a service or support needed by a HRC client, that entity is generally required to pay for all or part of the services prior to HRC funding the service or support.

7a. Ms. Samana-Taimi testified that LAUSD is the primary funding source for orientation and mobility training for Claimant. She explained that HRC was not able to fully assess Claimant's need for the training or address Claimant's mother's contention that the training does not include Claimant's home community because Claimant's mother refused to provide HRC with a copy of Claimant's Individualized Education Program (IEP). In addition, Claimant's mother refused to provide consent for Ms. Chiang to attend Claimant's IEP meeting, she refused to provide Claimant's medical records to HRC, and she refused to provide consent for HRC to communicate with, request information from, or give information to other agencies, institutions, or persons concerning Claimant. As such, Claimant has failed to cooperate with HRC in assessing the availability of funding for orientation and mobility services through a generic resource.

7b. Ms. Samana-Taimi contended that Claimant's mother could request orientation and mobility training from various organizations in the community, as well as parent training. Her contention is based upon consumer transaction notes created by Ms. Chiang regarding her discussions with representatives at the Blind Children's Learning Center and the American Foundation for the Blind. However, Ms. Samana-Taimi acknowledged that the program described by the Blind Children's Learning Center is located in Orange County, which is not a viable option for Claimant.

8. Ahoo Sahba, M.D., is a Board certified pediatrician who was in private practice for five and one-half years prior to working at HRC, and she has worked at HRC as a Physician Consultant for three and one-half years. Her duties include reviewing medical records, communicating with the physicians of HRC clients, and participating in the eligibility decision-making process for potential HRC clients.

9. Dr. Sahba testified on behalf of HRC. She explained that optic nerve hypoplasia is a condition marked by the underdevelopment of the optic nerve, which is responsible for capturing impulses from the retina and transmitting them to the brain, resulting in vision impairment. Dr. Sahba opined that optic nerve hypoplasia is an uncommon medical diagnosis both on its own and in individuals with a developmental disability, and it is clinically identified by a visual exam or magnetic resonance imaging. She further opined that optic nerve hypoplasia is not an eligible regional center diagnosis.³

³ In order to be eligible for regional center services, a claimant must have a qualifying developmental disability, which has been defined as including intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).)

10. HRC denied Claimant's request for funding for orientation and mobility training because Claimant's need for the training was not tied to his regional center eligible diagnoses and a publically funded source (LAUSD) was already funding the training.

11. HRC offered, if Claimant's mother provided consent, to advocate for LAUSD to provide a parent training component in order for Claimant's mother to assist Claimant in the community. HRC also suggested that Claimant's mother apply to receive protective supervision hours for Claimant through In-Home Supportive Services (IHSS) to ensure that Claimant is safe in his home environment.

CLAIMANT'S EVIDENCE

12. Claimant began receiving regional center services at Westside Regional Center (WRC) at two years old and continued receiving services through WRC until he transferred to HRC when he was 10 years old. Claimant's mother testified that Claimant received vision impairment services through WRC pursuant to a low-incidence occurrence diagnosis, and Claimant was not aware that he suffered from Autism Spectrum Disorder until he received that diagnosis at HRC.

13. Claimant's mother explained that Claimant previously had residual vision in one eye that allowed him to see shadows which helped him navigate. However, two years ago, Claimant lost his vision due to retinal detachment and he is now blind. Claimant wants to independently and safely navigate his community and Claimant's mother wants to be properly trained to assist Claimant.

14. Claimant's mother asserted that she understood LAUSD is responsible for assisting students with low vision with community access, and she was informed that LAUSD's interpretation of community access limited training to the local school community. She further asserted that because LAUSD defines community access in that manner, LAUSD will assist Claimant walk to school and navigate the school campus.

However, Claimant rides the bus to the specialized school he attends for students with vision impairment because it is not his "home school." Claimant's mother stated that the orientation and mobility training provided by LAUSD is therefore limited to assisting Claimant navigate to and from the classroom, lunch area, and other areas of the school.

15. Claimant's mother contended that LAUSD representatives informed her that LAUSD is not responsible for training Claimant to navigate his home or community. She explained that Claimant's request to HRC for funding orientation and mobility training is for the purpose of teaching Claimant how to navigate his local community, such as to and from the store, park, and movie theaters, which he cannot do independently. She and her family have attempted to train Claimant how to navigate his local community, but do not want to teach him incorrectly. She expressed fear for Claimant's safety crossing the street and attempting to navigate the community. Claimant's mother testified that Claimant's insurance carrier denied coverage for orientation and mobility training for Claimant, and she expressed frustration that LAUSD and HRC are each denying responsibility for the training and instructing her to contact the other agency for assistance.

16. Claimant's mother stated that she did not allow Ms. Chiang, Claimant's Service Coordinator, to attend Claimant's IEP meeting and she did not submit a copy of Claimant's IEP to HRC because she did not believe it would be in Claimant's best interest. She stated that did not believe HRC would advocate on Claimant's behalf. Claimant's mother explained that Ms. Chiang attended a previous meeting with Claimant's mother and Claimant's special education attorney. Ms. Chiang took notes at the meeting and, in Claimant's mother's opinion, used that information against Claimant. Claimant's mother testified that she was not told that HRC needed Claimant's records from LAUSD or her consent to speak to Claimant's physicians in order for HRC

to perform a complete assessment of Claimant's need for orientation and mobility training and to explore other sources for the training.

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act Lanterman Act).⁴ Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's proposed denial of funding for orientation and mobility training for Claimant. Jurisdiction in this case was thus established.

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Claimant is requesting that the Service Agency fund orientation and mobility training for Claimant. Under these circumstances, Claimant bears the burden of proof.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

4. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their

⁴ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. Regional centers must develop and implement IPPs, which shall identify services and supports "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option . . ." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

6. Regional centers have a duty to identify and pursue all possible sources of funding for consumers receiving regional centers, including governmental or other entities or programs required to provide or pay for a service, Medi-Cal and private insurance. (§ 4659, subd. (a)(1) and (a)(2).) They are prohibited from purchasing any service that would otherwise be available from Medi-Cal, private insurance, or a health care services plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. (§ 4659, subd. (c).) In addition, a regional center is prohibited from purchasing medical services for a consumer unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial, and the regional center determines that an appeal by the consumer or family of the denial does not have merit. (§ 4659, subd. (d)(1).) However, a regional center may pay for medical or dental services while coverage is being pursued, but before a denial is made. (§ 4659, subd. (d)(1)(A).) The regional center may also pay for medical or dental services until the commencement of services by Medi-Cal, private insurance, or a health care service plan. (§ 4659, subd. (d)(1)(C).) HRC's General

Standards and is consistent with the foregoing statutes in that HRC is prohibited from purchasing services where the service is otherwise available through a governmental agency or program, Medi-Cal, private insurance, or a health care service plan. (Ex. 15.)

7. The Individuals with Disabilities Education Act, at Code of Federal Regulations, part 34, section 300.39 (a)(4) provides that as a part of special education, and at no cost to parents, travel training shall be provided to children with significant cognitive abilities, and any other children with disabilities who require travel training, that enables them to:

- (i) Develop an awareness of the environment in which they live; and
- (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

8. California Code of Regulations, title 5, section 3051.3 provides that:

(a) Orientation and mobility training may include:

- (1) Specialized instruction for individuals in orientation and mobility techniques.
- (2) Consultative services to other educators and parents regarding instructional planning and implementation of the IEP relative to the development of orientation and mobility skills and independent living skills.

(b) Orientation and mobility instruction shall be provided only by personnel who possess a credential that authorizes services in orientation and mobility instruction.

9. Claimant has not met his burden of proving that HRC should fund orientation and mobility training. The evidence established that Claimant's need for orientation and mobility training is due to visual impairment caused by optic nerve hypoplasia, which is not a special need associated with a developmental disability. In addition, Claimant's visual impairment and optic nerve hypoplasia has not been

determined by HRC's interdisciplinary team to present a risk of developmental disability. Moreover, HRC is a payor of last resort and, as provided by statute and set forth in HRC's General Standards policy, it is prohibited from purchasing the orientation and mobility services where, as here, the services are available through a generic resource such as LAUSD. Claimant is eligible for Medi-Cal and orientation and mobility training may be available through a generic resource in Claimant's community, however, Claimant's mother has refused to provide the authorization that would allow HRC to obtain and provide information regarding Claimant or to correspond with Medi-Cal representatives or providers of other generic resources in order to secure funding of orientation and mobility training for Claimant. A regional center, such as HRC, cannot comply with its duty pursuant to sections 4659 to pursue all possible sources of funding for Claimant's orientation and mobility training services if it does not have the right or power to do so. At the same time, a person who seeks benefits from a regional center must bear the burden of providing information, submitting to reasonable exams and assessments, and cooperating in the planning process. (See Civ. Code § 3521 ["He who takes the benefit must bear the burden."].) Of course, Claimant's mother can refuse to do anything that she feels works to Claimant's detriment. However, if the exercise of that right interferes with the implementation of the Lanterman Act, then a regional center may have no choice but to refuse to render services, as the failure of cooperation may negate the authority to compel the regional center to fund services and supports.

9. It is undisputed that orientation and mobility training is an appropriate intervention for Claimant. Should Claimant's mother cooperate with HRC and authorize HRC to communicate with, request information from, or give information to other agencies, institutions, or persons concerning Claimant in order to secure funding of orientation and mobility services through the Medi-Cal program or any other generic

resource, HRC should make best efforts to do so and help secure an orientation and mobility training provider.

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10. For the foregoing reasons, Claimant's appeal shall be denied.

ORDER

Claimant's appeal is denied. The Service Agency's denial of Claimant's request for the Service Agency to fund orientation and mobility services is affirmed.

DATED: February 4, 2019

CARMEN D. SNUGGS

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.