

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

C.R.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2013070555

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Harbor Regional Center, in Torrance, California, on August 12, 2013.

C.R. (Claimant)¹ was present and represented himself. Claimant was assisted by Noelle Bailey-Scoby of Aim for Independence Supportive Services.

Gigi Thompson, Manager Rights Assurance, represented Harbor Regional Center (HRC, regional center, or service agency.)

Oral and documentary evidence was received and argument made. The record was held open until September 12, 2013, at the request of the parties, because at the close of the hearing the parties thought a potential settlement might be possible. No settlement occurred and the matter was submitted for decision on September 12, 2013.

¹ Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

ISSUE

The parties stipulated that the following issue is to be decided by the ALJ:

Shall the service agency be ordered to fund Partnership in Living Services (PLS) as Claimant's Supported Living Services (SLS) provider?

FACTUAL FINDINGS

1. Claimant is a 32 year-old man who is a consumer of the service agency by reason of his diagnosis of mental retardation and epilepsy.

2. Claimant filed a fair hearing request on June 27, 2013, after HRC denied Claimant's request for SLS services to be provided specifically by PLS.

3. Claimant previously received services from South Central Los Angeles Regional Center (SCLARC). At that time, Progressive Behavioral Therapy (PBT) provided supported living services (SLS) for Claimant.

4. When Claimant became a consumer of HRC in approximately May 2013, Claimant requested a "fresh start" with respect to his SLS provider. Claimant had heard positive things about PLS and he requested that HRC authorize PLS as his SLS provider. However, while PLS is vendored with SCLARC and Westside Regional Center, PLS is not vendored with HRC.

5. HRC has offered Claimant the choice of any of its nine vendored SLS providers. Vincente Miles, Program Manager, personally reviewed Claimant's case. He contacted PLS and determined that they offer what he described as "typical" SLS. Mr. Miles described Claimant as articulate and talented. The ALJ agrees with that description. Claimant was articulate during the hearing and made a good witness on his own behalf. Mr. Miles believes Claimant would benefit more by having a vendor that offers services over and above the "typical" SLS. Mr. Miles reviewed HRC's nine vendors, and he believes four of them could offer Claimant superior SLS services in comparison to the SLS services

PLS would provide.

6. Mr. Miles also explained the reason for HRC wanting to use a vendor. A vendor has been pre-approved by HRC and both parties are familiar with expectations. Utilizing a vendor provides HRC the ability to control the quality of services being provided to the consumers, and take corrective action quickly, if necessary. Mr. Miles candidly noted that exceptions are made to the general rule of using a vendor. For example, since Claimant had an existing relationship with PBT when he became a consumer of HRC, HRC would have considered allowing the existing relationship between Claimant and PBT to continue even though PBT was not vendored with HRC. The reason would be because it would be unnecessary and counterproductive to interrupt an on-going positive situation.

7. However, the exception does not apply in this case. First, Claimant no longer wishes to utilize PBT. Therefore, he is open to the idea of trying a new vendor. However, he wants the new provider to be PLS. Claimant did not establish that PLS could provide SLS in a different, or better manner, than HRC's offered vendors. In fact, HRC's vendors actually could provide SLS services to Claimant that would better serve him than those provided by PLS.

8. It is understandable that Claimant would like to try an SLS provider about whom he has heard positive comments. However, HRC has a duty and an obligation to provide services it determines will best meet Claimant's needs. HRC has offered four vendors for Claimant to meet with and to choose whomever he likes best. To date, Claimant has refused this offer. While some situations call for allowing a consumer to pick a provider that is not vendored by a regional center, this is not the case in this situation. Claimant has not even given any of the HRC chosen vendors a chance.

9. It was not established that HRC should fund PLS as the SLS provider. Claimant must first attempt to utilize an SLS vendor offered by HRC.

LEGAL CONCLUSIONS AND DISCUSSION

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welf.& Inst. Code sections § 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, Claimant had the burden of establishing the need for the SLS services to be provided by only PLS. In opposition, HRC contended that Claimant's needs can be met with an HRC approved vendor.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and

² All further statutory references are to the Welfare and Institutions Code.

recreating in the community.” (§ 4502.)

4. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include 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 IPP goals and the identification of the providers of services.

5. Section 4646 states:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*

(b) The individualized program plan is developed through a process of individualized needs determination

6. Section 4648 of the Lanterman Act describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determine will best accomplish all or any part of the IPP. Section 4648, subdivision (a)(8), prohibits the use of regional center funds “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.” These are commonly referred to as “generic resources.” However, subdivision (g) provides that, where there are identified gaps in the system of services and supports, the Department of Developmental Services may provide the services directly.

7. Services provided must be cost effective (§ 4512, subdivision (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, §§ 4640.7(b), 4651(a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the parents of children with developmental disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer’s every possible need or desire, in part because it is obligated to meet the needs of many consumers’ children and families.

8. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. Claimant did not establish that using PLS is necessary to meet his needs. In fact, HRC has offered a number of vendors who can offer superior services to better assist Claimant. While Claimant may be disappointed in not being able to utilize his chosen provider, he only offered testimony that he had heard positive things about PLS. No evidence about the PLS program or the SLS services actually provided was offered into evidence.

9. Noelle Bailey-Scoby (NBS) testified. Someone at PLS called her and asked her to help Claimant. NBS owns her own agency which is not vendored with HRC. She was willing to try to associate with an HRC vendor and assist Claimant if possible. By the due date of submission, no further documents were received indicating that she was able to

work out such an arrangement.

10. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner (§ 4640.7, subdivision (b), § 4646, subdivision (a)). A regional center is not required to provide all of the services which a client may require or desire, but is required to “find innovative and economical methods of achieving the objectives” of the IPP (§ 4651). They are specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as “supplanting generic resources.” Where a service is available elsewhere, the regional center is required to “. . . identify and pursue all possible sources of funding. . . .” (§ 4659, subdivision (a)). However, if a service specified in a client’s IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP (§ 4648, subdivision (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)). In general, a Claimant must first attempt to utilize the generic resource (such as Medi-Cal, County Mental Health, private insurance) or the regional center’s vendors before seeking services from the Service Agency, or outside use of vendors. Until such time as Claimant can establish that HRC’s offered SLS vendors can not meet his needs, he must utilize those HRC vendors.

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ORDER

Claimant C.R's appeal of the Harbor Regional Center's determination denying Claimant's request for funding for SLS services provided specifically by PLS is denied. However, Claimant retains the right to interview, meet with, and ultimately chose an SLS vendor offered by HRC.

IT IS SO ORDERED.

DATED: September 26, 2013,

A handwritten signature in black ink, appearing to read 'CRU', is written above a horizontal line.

CHRIS RUIZ

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.