

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2014040085

DECISION

Administrative Law Judge (ALJ) Laurie R. Pearlman, State of California, Office of Administrative Hearings, heard this matter on April 16, 2014, in Torrance, California.

Gigi Thompson, Assurance Rights Manager, represented the Harbor Regional Center (HRC or Service Agency).

Claimant, who was not present, was represented by Eva Casas-Sarmiento, Attorney-at-Law. Claimant's mother and father¹ attended the hearing.

The parties entered into factual stipulations and documentary evidence was received. The record was closed and the matter was submitted for decision on April 16, 2014.

ISSUE

The question in this matter is whether the Service Agency shall fund sixteen hours per day of Licensed Vocational Nurse (LVN) in-home nursing support for Claimant, on an exceptional basis, while his brother is hospitalized.

¹ Titles are used to protect the family's privacy.

EVIDENCE RELIED UPON

Factual Stipulations, Service Agency's exhibits 1-7 and Claimant's exhibits AA and A-F.

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FACTUAL FINDINGS

1. Claimant is a 24-year-old male who qualifies for regional center services based on a diagnosis of profound intellectual disability, related to his diagnosis of Hunter's Syndrome. He is completely dependent on others for his care. Claimant is non-verbal, incontinent, non-ambulatory, has profound hearing loss, does not respond to his name or follow commands, is at high-risk for respiratory failure, receives all his feedings via gastrostomy tube and has three to five epileptic seizures each week.

2. Claimant lives with his parents, his 26-year-old sister, and his 20-year-old brother (Claimant's brother), who also has Hunter's Syndrome. Two other brothers had the same genetic disorder and are now deceased.

3. On March 12, 2014, Claimant's brother was hospitalized in the Intensive Care Unit (ICU). As of April 16, 2014, he remained in critical condition with little hope of recovery.

4. Claimant requires one-to-one care and supervision 24-hours each day. HRC has been providing Claimant with eight hours per day of LVN services, from 8:30 a.m. to 4:30 p.m., seven days per week. In Home Supportive Services (IHSS) provides Claimant with an additional eight hours of care daily, which is provided by his mother. The other eight hours per day are covered by Claimant's mother, as natural uncompensated support.

5. On March 17, 2014, Mother requested that while Claimant's brother remains in the hospital, HRC fund eight additional hours of LVN in-home services each

day. This would enable Claimant to receive sixteen hours per day of in-home LVN support, in addition to the eight hours daily that Claimant receives from IHSS.

6. At his parents' request, HRC supplemented Claimant's LVN hours in March with additional funding, so that sixteen hours of LVN support funded by HRC was available for him. As of April 15, 2014, all of Claimant's LVN in-home hours had been depleted for the month of April. HRC agreed to fund eight hours a day of LVN in-home services from April 16, 2014 through April 30, 2014, due to the fact that there are no further LVN hours left for the family's use for April.

7. HRC's Service Policy (Policy) regarding In-Home Nursing Services provides that such services are designed to protect the medical well-being of an individual and to prevent the need for hospitalization or placement outside of the family home. The Policy recognizes that medically fragile and technology dependent consumers with a developmental disability may have intensive physical support and medical needs. When such an individual is residing with his family, in-home nursing services may be necessary to maintain the living arrangement and avoid hospitalization or placement in a specialized living environment. The Policy provides that, "HRC believes that families wishing to maintain their family member in the home should be supported in this undertaking, while continuing to be responsible for a daily portion of their family member's care." Pursuant to its Policy, HRC may provide up to sixteen hours per day of shift nursing. (Exhibit 7.)

8. Claimant requested, and was granted, an expedited hearing based on extenuating circumstances in order to request temporary, additional nursing support services to enable both parents to remain at the hospital with Claimant's brother. Claimant's parents wish to remain together at their son's hospital bedside while he remains critically ill. A letter provided by the attending physician for Claimant's brother states that it is "imperative" that his parents remain "at the hospital as much as possible to participate in medical decision- making and to support their son during this critical

time.” (Exhibit E.) For this reason, they are not able to provide the usual care and supervision they provide for Claimant, which allows him to avoid placement in a more restrictive setting, such as a hospital or residential care facility. The goal of HRC’s Policy is to provide up to sixteen hours of in-home nursing support to enable consumers to remain in the family home. The Desired Outcome of his Individual/Family Service Plan (IFSP) is for Claimant to continue to live with his parents, in the least restrictive environment. Providing funding for an additional eight-hour LVN shift would promote the IFSP goal, as well as the Policy goal. Claimant has established that he meets exceptional criteria for a temporary increase in home nursing hours in the amount of one additional eight-hour shift per day, until his brother is no longer in the hospital.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant’s appeal and reverse HRC’s decision to deny funding for sixteen hours per day of LVN-level shift nursing in the home on an exceptional basis while Claimant’s brother remains hospitalized, as set forth in Factual Findings 1 through 8 and Legal Conclusions 2 and 3.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledged the state’s responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that “[t]he determination of which services and supports are necessary for each consumer shall be made through the

individual program plan² 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." (Welf. & Inst. Code, § 4512, subd. (b).)

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ORDER

Claimant's appeal is granted. HRC shall fund two eight-hour shifts of LVN in-home services each day for Claimant from March 12, 2014, until Claimant's brother is no longer hospitalized and until Claimant's annual IFSP meeting is held. Claimant's IFSP meeting shall be held expeditiously once his brother is no longer hospitalized.

If HRC discontinues funding for the second eight-hour shift once Claimant's brother is no longer hospitalized and once Claimant's annual IFSP meeting has been held, aid paid pending shall not apply, since the additional shift is being funded on an exceptional basis.

² HRC uses the designation Individual/Family Service Plan (IFSP) instead of Individual Program Plan (IPP), to which the Lanterman Act refers. However, any references to IPPs apply to HRC's IFSPs.

DATED: April 28, 2014

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.