

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2017070792

DECISION

Irina Tentser, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on September 7 and October 10, 2017, in Torrance, California and on December 7, 2017, in Long Beach, California.

Claimant was represented by his mother who acted as his authorized representative.¹ Harbor Regional Center (Service Agency or HRC) was represented by its Managers of Rights and Quality Assurance, Latrina Fannin and Sherry Weeks.

Oral and documentary evidence was received, and argument was heard. The record was left open, without objection by the parties, for Claimant to submit copies of photographs of Claimant with his horse no later than December 22, 2017. The exhibit was received and admitted into evidence.

The matter was submitted for decision on December 22, 2017.

¹ Names are omitted throughout this Decision to protect Claimant's and his family's privacy.

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ISSUES

Should the Service Agency be required to fund the following services for Claimant:

(1) an increase in respite hours from the current 30 hours per month to five hours per day, including weekends;

(2) an \$1,800 voucher to pay for the cost of advocate/defender training for Claimant's mother through the Council of Parent Attorneys and Advocates (COPAA);

(3) the cost of legal representation for Claimant during the fair hearing process ;

(4) HRC-funded evaluation for Speech Therapy (ST) and Occupational Therapy (OT);

(5) a voucher to purchase a specially-trained horse for Claimant or funding to enable Claimant to participate in equestrian therapy through a local agency;

(6) a voucher to buy a pool membership for swimming lessons for Claimant;

(7) two vouchers to fly Claimant and Claimant's mother to Guadalajara, Mexico once per year to obtain homeopathic treatment for Claimant; and,

(8) retroactive reimbursement from 2012 to today plus ongoing payments for home security expenses/equipment of \$39.99 per month to prevent Claimant from eloping.

EVIDENCE

Documentary: Service Agency exhibits 1-26; Claimant exhibits A-UU.

Testimonial: Sri Moedjono, M.D., HRC Physician; Patricia Piceno, Client Service Manager; Miguel Flores, Board Certified Behavior Analyst (BCBA); Kelly Carmichael, Client Services Manager; Ahoo Sahba, M.D., HRC Physician; Pam Hellman, HRC Occupational Therapist; Melissa Greener, HRC Speech Therapist; Antoinette Perez, HRC Director, Children's Services; Latrina Fannin and Sherry Weeks, HRC Managers of Rights and Quality Assurance; and Claimant's mother.

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FACTUAL FINDINGS

1. Claimant is a 13-year-old male client of HRC who qualifies for regional center services based upon a diagnosis of Autism Spectrum Disorder (ASD) and Intellectual Disability. He resides at home with his mother and older sister. Mother reports that she has no natural supports living nearby to assist her with Claimant's care and supervision. Mother has full legal custody of Claimant; his father does not provide any support for Claimant's care and supervision.

2. Claimant has some language (echolalia),² but uses a communication device to express his wants and needs. Claimant is dependent on others for assistance with his self-care needs. Claimant requires constant care and supervision to ensure his safety.

3. Long Beach Unified School District (LBUSD or District) provides funding for Claimant to attend a Non-Public School (NPS), Port View Preparatory, in Yorba Linda. He attends school five days a week for six hours per day. Claimant

² Echolalia is defined as the immediate and involuntary repetition of words or phrases just spoken by others.

receives both OT and ST services through his school district. Mother has not provided HRC with information regarding the OT and ST services provided to Claimant through his school.

4. In addition to services provided at school by the District, HRC provides Claimant with monthly respite services and personal care assistance. Claimant also receives Medi-Cal benefits and receives at least 220 hours per month of In Home Supportive Services (IHSS).³ Mother is Claimant's IHSS provider. Because of Claimant's elopement issues, he receives protective supervision through IHSS in an unknown amount per month. Mother has not provided HRC with details regarding Claimant's IHSS protective supervision. Accordingly, it is unclear how many hours of IHSS protective supervision Claimant is currently receiving. .

NOTICE OF PROPOSED ACTION (NOPA); HEALTH MEETING; FAIR HEARING REQUEST (FHR)

5. Claimant's mother requested that HRC fund an evaluation and services for OT, ST, and Physical Therapy (PT), increased respite services, a voucher to purchase a new horse for Claimant, a voucher to purchase airline tickets for Claimant and his mother to travel to Mexico for Claimant to see a homeopathic doctor , a voucher to purchase swimming lessons, voucher for the cost of law training through COPAA, and reimbursement of home security equipment expenses to prevent Claimant from eloping. Claimant's mother also

³ IHSS is a government program which provides services to enable elderly or disabled Medi-Cal beneficiaries to remain in their own homes. IHSS provides personal care services such as dressing, eating, toileting, bathing, grooming and protective supervision.

initially requested funding for a computer printer and an adapted keyboard, a weighted vest and noise canceling headphones, personal care assistance of 6 hours per day, 4 days per month for 24 hours per month, and tutoring for Claimant.

6. On June 6, 2017, HRC sent Claimant's mother a NOPA⁴ informing her that:

- a. *Respite Hour Increase.* HRC reviewed the total support the family was receiving, including review of publicly funded resources accessed such as his school program and IHSS. In consideration of the 35 weekly hours (nine daily hours with transportation) that Claimant is in school, his overall care needs in comparison to a child of similar age who is typically developing, and the current level of both publically funded and natural resources, HRC increased respite from 24 hours per month to 30 hours per month (90 hours per quarter), effective June 1, 2017. HRC denied Claimant's request for 35 hours per week of respite services based on insufficient information to justify respite hours beyond that specified by statute or in policy. HRC indicated that it was available to assist Claimant's mother with seeking increased respite hours from IHSS, stating that if Claimant's personal care and protective supervision are extreme, HRC believed Claimant might qualify for the

⁴ The following issues are not discussed in this decision because they were not included in Claimant's FHR and therefore were not at issue in the hearing: funding for a computer printer and an adapted keyboard; a weighted vest and noise canceling headphones; and personal care assistance (of 6 hours per day, 4 days per month) for 24 hours per month.

maximum allowable amount of 283 respite hours per month. (Exh. 3, p. 2.)

- b. *Funding for an advocate/defender to take a course through COPAA.* In response to Claimant's mother's request that she be provided with \$1,800 in funding for training to advocate for and represent Claimant, HRC provided Claimant's mother with HRC's Service Policy on Family Member Support, Information, and Training; informed mother that HRC's service coordinator is available to support Claimant's mother with direct advocacy on Claimant's behalf; offered to arrange a consultation with HRC's many specialists if specialized knowledge is needed; offered to connect Claimant's mother with HRC's Family Resource Center (FRC); offered to coordinate Claimant's attendance at trainings and/or conferences when no other cost-effective means to access information is available; offered to refer Claimant's mother to outside entities such as Disability Rights California ; and informed Claimant's mother about a website where she could obtain information about advocacy and assistance.⁵ Based on the availability of alternative free or low-cost training and the availability of advocacy assistance through HRC and other advocacy agencies, HRC denied Claimant's mother's request for \$1,800 for advocacy training through COPAA.
- c. *Funding to lease a stable for Claimant's horse.* HRC noted mother's report that equestrian therapy addresses Claimant's sensory problems, balance, and focus, helps Claimant socially and emotionally, reduces his

⁵ The website address is: www.disabilityrightsca.org/pubs/PublicationsAdvocacy.htm.

anxiety level and reassures him. In evaluating mother's request, HRC informed her that it was required to explore all possible funding sources in accordance with Welfare and Institutions Code (WIC) section 4648, subdivision (a)(8). From a therapeutic perspective, HRC noted that Claimant appear to have support in place through the District with OT services to meet his sensory needs. HRC offered mother its assistance in ensuring Claimant's needs are appropriately met through the existing school program and/or Medi-Cal (LA CARE or Anthem Blue Cross. To that end, HRC asked for mother's permission to obtain and review all evaluations/assessments for OT, Claimant's 2016 Individualized Education Program (IEP) and any current IEP documents provided to mother. (Exh. 3, p. 3.)

HRC informed mother that some of her concerns could be addressed through an in-home behavioral program and that the current law requires health insurance plans to provide coverage for behavioral health treatment for clients with Pervasive Developmental Disorders (PDD) or ASD. Therefore, behavioral services are available through Claimant's insurance plan and HRC is prohibited by Welfare and Institutions section 4659, subdivision (c), of the Lanterman Developmental Disability Services Act (Lanterman Act)⁶ from purchasing this service on Claimant's behalf. HRC offered the assistance of Claimant's HRC service coordinator to assist Claimant's mother if she needed help in accessing services through her insurance plan. (Exh. 3, p. 4.)

Though equestrian therapy is valued by Claimant's family, HRC deems it to be social/recreational in nature. HRC's authority to purchase social/recreational

⁶ Welfare and Institutions Code section 4500 et seq.

services was suspended by section 4648.5 of the Lanterman Act. Given that the statute has not been amended, and equestrian therapy is not the primary or critical means for ameliorating Claimant's disability, HRC denied funding for equestrian therapy. HRC noted that if the law is amended and HRC revisits the issue of whether equestrian therapy is merely social enrichment, HRC would look at the most cost-effective means of supporting his participation, such as comparing the cost of leasing a stable versus the cost of funding equestrian therapy, citing sections 4620.3, subdivision (a), and 4648, subdivision (a)(6)(D), of the Lanterman Act. (Exh. 3, p. 4.)

- d. *Request for ST and OT evaluation and services.* HRC informed mother that HRC must first gain a better understanding of services and supports provided through the District and would assist mother in accessing additional support through Medi-Cal, if appropriate, prior to funding additional services through HRC, citing section 4659, subdivisions (a)(1) and (a)(2) of the Lanterman Act. (Exh. 3, p. 5.)

HRC cited its Service Policy on Therapy Services, which states:

"Harbor Regional may purchase therapy services for a client only if the following criteria are met:

- 1) The client requires therapy to prevent a specific deterioration in his/her condition, or to assist the client to achieve a specific desired outcome set forth in his/her Individual/Family Service plan; and
- 2) When the client is of public school age, the desired outcome is not related to their educational plan; and
- 3) An independent assessment by a professional with a specialty in the therapy, and/or the appropriate regional center specialist, has been

completed and indicates that the therapy will assist the client to achieve a specific desired outcome; and

- 4) The client has been denied or is not eligible for Medi-Cal, California Children's Services, private insurance or another third party payer coverage; and
- 5) When the client is a child, the therapy focuses on strengthening the parents' ability to promote their child's development or minimize their child's impairment through demonstration, observation, coaching and parent education."

(Exh. 3, p. 5.)

HRC noted that it had identified two possible sources of funding to meet any unmet needs that may be identified for Claimant. Per the 2016 IPP, Claimant is obtaining ST through the Special Education Local Plan Area (SELPA),⁷ three times per week for 25 minutes each (1:1) and twice per week for 25 minutes each (group). Claimant also receives OT twice weekly for 30 minutes each session. HRC asserted that the District is available to assess the need for additional ST and OT at no cost to mother. Claimant also has Medi-Cal (LA CARE-Anthem Blue Cross) and is receiving Speech services through CSULB 2 days per week (Tuesday and Thursday) for one hour each.

In order to allow HRC to ensure that Claimant is receiving the most appropriate services for him, HRC requested mother's permission to obtain all current IEP documents, evaluations/assessments, including assessments and

⁷ Under California law, school districts and county Offices of Education are required to join together in geographical regions to develop a regional special education service delivery system.

reports provided by her insurance. HRC also offered to assist mother with navigating the process, including attending an IEP meeting, and scheduling another meeting with HRC's Educational Attorney Consultant.

HRC informed mother that they were denying her request that HRC fund ST and OT evaluations and services at this time, but informed her that HRC remains willing to further explore this request pending receipt of the requested documents, evaluations and assessments.

7. After HRC sent the June 6, 2017 NOPA, additional services were requested by mother at Claimant's June 21 and June 30, 2017, Individual Person-Centered Plan (IPP) meetings. HRC also received clarification from mother regarding the services previously requested. The services included funding for an attorney to represent mother in a fair hearing should she not be in agreement with decisions that HRC makes related to Claimant's services; a voucher to trade in the horse currently owned by Claimant for a specially trained horse or funding for Claimant to participate in horseback riding through a local agency; two vouchers to fly mother and Claimant to Guadalajara, Mexico once per year to obtain homeopathic treatment; reimbursement for the alarm system mother previously installed in her home to prevent Claimant from eloping; personal assistance hours specifically allotted for Claimant's attendance at Disneyland or reimbursement for partial costs associated with his annual membership and related fees incurred while he attends; swimming lessons; tutoring; social skills training; and OT and PT assessments. (Exh. 4.)

8. As part of Claimant's IPP development, HRC and mother reviewed and discussed the June 6, 2017 NOPA. During their meeting, HRC reconsidered some of the requests and came to some agreements. As a result, HRC sent mother an updated NOPA on July 5, 2017. (Exh. 4.)

9. a. In the July 5, 2017 NOPA, HRC notified mother that it was authorizing several services and supports for Claimant and his family as follows: to assist mother through the process of appealing Claimant's IHSS hours in order for Claimant to receive protective supervision; to provide mother with IEP advocacy in the future should she desire assistance; coordination of a July 19, 2017 health meeting designed to provide mother with an opportunity to directly consult with HRC occupational therapists to address the need for an OT/PT evaluation and any related services and the need for a weighted vest and noise cancelling headphones. (Exh. 4.)

b. HRC further informed mother that an HRC behaviorist, psychologist, and physician would be present at the July 19, 2017 meeting to address Claimant's behavioral, mental, and physical health needs, including mother's desire to have Claimant participate in social skills training; to coordinate an Assistive Technology evaluation to determine the need for an assistive keyboard or other device/application; and provide an updated psychological evaluation for Claimant so that HRC would have a clearer picture of his cognitive and adaptive functioning; provide a Functional Behavior Assessment (FBA) of Claimant through ACES, while mother pursues behavioral and health treatment through Claimant's Medi-Cal managed care plan; schedule training for mother and other members of her support group (PUPA) in September and October 2017 covering topics such as the structure of HRC and related supports, HRC's diversity initiatives, and the Self-Determination Program; mother to meet with Claimant's HRC service coordinator and client services manager once Claimant's IPP is translated into Spanish to review and provide guidance for mother regarding the IPP document and the purpose of each section; increase respite services to 90 hours per quarter; and provide Claimant with additional care support from June 28 to September 5,

2017, when Claimant is not attending summer school. (Exh. 4.)

10. The July 5, 2017 NOPA further notified mother that HRC was denying the following requested services and stated the basis for the denial:⁸

- a. *Funding for an attorney to represent mother in a fair hearing if she does not agree with any decisions by HRC related to Claimant's services.* HRC denied mother's request. HRC informed mother that it does not typically provide such funding unless ordered to do so by a fair hearing officer. HRC referred mother to HRC's Manager of Quality and Rights Assurances to discuss what mother may expect during the hearing process and to provide mother with guidance on where she could obtain specific information on how to prepare for a hearing. HRC also provided mother with the Office of Administrative Hearings (OAH) website and link as a useful resource, as well as the Office of Clients' Rights Advocacy (OCRA) website and link, as a source of additional information and possible case representation. HRC stated that some families hire local advocates or attorneys at their own expense. HRC informed mother that the Service Agency does not typically retain an attorney to represent HRC during a fair hearing and that HRC staff are available to answer any questions mother may have about the process. (Exh. 4, p. 3.)

⁸ The July 5, 2017 NOPA denied funding for personal assistance hours for Claimant to visit Disneyland, tutoring, and social skills training. Since those issues were not included in Claimant's FHR and were not at issue at hearing, they are not discussed in this decision.

- b. *Funding to trade in the horse currently owned by Claimant for a specially trained horse or for Claimant to participate in equestrian therapy through a local agency.* HRC denied mother's request. In denying the request, HRC informed mother that, while it understood that mother valued Claimant's participation in horseback riding due to her observation that during this activity Claimant is calm, more focused, and relaxed, HRC would like the opportunity to further understand any needs Claimant may have that relate to anxiety by discussing the matter further at the July 2017 health meeting to determine whether there are any further medical or behavioral interventions more typically suited to the treatment of anxiety. HRC notified mother that once a need for treatment of anxiety is established, HRC will have to explore all possible funding sources in accordance with the requirements of section 4648, subdivision (a)(8) of the Lanterman Act. HRC reiterated that it believed that an activity like horseback riding, though valued by Claimant's family, is social recreational in nature and is, therefore, prohibited under section 4648.5 of the Lanterman Act. (Exh. 4., p. 4.)
- c. *Funding for two vouchers to fly mother and Claimant to Guadalajara, Mexico once a year to obtain homeopathic treatment.* HRC denied mother's request. As a basis for its denial, HRC referenced and included its Service Policy on Transportation and Mobility Services and section 4648.35 of the Lanterman Act. HRC notified mother that, while it understood that she was not seeking funding for treatment, it must first understand the need for homeopathic treatment and determine whether access to the homeopathic treatment is essential to

addressing Claimant's disability. HRC informed mother that homeopathic treatments are considered non-evidence based and regional centers are therefore prohibited from funding it, in accordance with section 4648.16 of the Lanterman Act, that this would include funding for transportation related to accessing these treatments, referencing the attached HRC General Standards Policy describing the prohibition of experimental services. However, HRC reiterated that it remained open to learning more about these treatments and how they may be prescribed by claimant's primary physician during their upcoming health meeting. (Exh. 4, p. 4.)

- d. *Reimbursement for the alarm system mother previously installed in her home to prevent claimant from eloping.* HRC denied funding for the request based on the fact that mother's decision to purchase an alarm system for the household was done outside of the IPP process. As a result, HRC notified mother that because her independent decision did not allow HRC the opportunity to assess the need and determine the most cost effective way to meet the need (per sections 4648, subdivision (a)(6), and (d), of the Lanterman Act), it was denying the request. HRC indicated, however, that it was looking forward to collaborating with mother through immediate and long-term supports to address Claimant's safety needs. (Exh. 4, p. 5.)
- e. *Funding for swimming lessons.* HRC denied mother's request, citing section 4646.4 of the Lanterman Act. According to HRC, swimming lessons is an expense that would be incurred by any family and is not specifically related to Claimant's disability. HRC also notified mother that it could not fund swimming lessons because it was considered

enrichment or social recreational in nature and was therefore prohibited under section 4648.5 of the Lanterman Act and not supported by HRC's General Standards Services Policy. (Exh. 4, p. 5.)

- f. *OT and PT assessments.* HRC denied mother's request for the same reasons outlined in the June 6, 2017 NOPA denying mother's request for OT and ST assessments and services. (Factual Finding 6d.) HRC notified mother that it would have an HRC OT/PT specialist available the day of the health meeting to discuss in more detail mother's concerns. To help prepare for the consultation, HRC requested that mother provide them with information to review, including Claimant's 2016/2017 IEP records and any amendments addressing ST and OT, as well as any denials for ST/OT from CCS/MediCal. (Exh. 4, p. 6.)
- g. *Respite Increase.* HRC denied an increase in respite hours from 24 hours per month to 6 hours per day based on HRC's plan for interim increased support during the summer and plan to fully exhaust publically-funded resources available to meet this specific need (Behavioral Health Treatment, IHSS, etc.)
- h. *\$1,800 funding for COPAA.* HRC denied funding, citing HRC's Service Policy on Family Member Support, Information, and Training.

11. a. On July 19, 2017, the parties met to conduct the health meeting. The purpose of the meeting was to review Claimant's additional medical records, which HRC previously requested from mother, in order to be able to make additional recommendations for Claimant. Present at the meeting were mother, Rick Travis, facilitator, Sri Moedjono, M.D., Lisa Marie Bellville, R.N., Ty Hyunh, pharmacist, Miguel Flores, behaviorist, Patricia Piceno, client services manager, Stephanie Pena, service coordinator, Juan Carlos Aguilar, psychologist,

Antoinette Perez, director of children's services, and Bjoern Petersen, client services manager. (Exh. 7.)

b. According to HRC's July 19, 2017 health meeting note, mother questioned each staff as to his or her role in the meeting, what staff titles and scope of work were, and then informed selected staff that they were not needed. Mr. Travis encouraged mother to allow staff to finish making their introductions so that HRC could explain the purpose of the health meeting and what each of the staff roles would be. Mr. Travis explained that the team had some regular members who are always available in case a client or family member had any concerns they could address. If there are no medical concerns, HRC offered to dismiss the physician, nurse and pharmacist. Mr. Travis informed mother that he would need to be present as the chairperson responsible for the meeting. (Exh. 7.)

c. Mother disagreed with Mr. Travis, expressed that she felt cut off and dismissed, and that HRC's approach was disrespectful to her culture, which HRC does not understand and it enough to make judgments and disrespect mother. According to HRC, mother began inquiring about staff compensation for attending the meeting, and when staff attempted to redirect her, mother threatened to report staff to the Department of Developmental Services (DDS). Mr. Travis and other team members again offered to reduce the staff at the meeting to fit mother's needs and also offered a consult with the psychologist and Behavior Specialist privately. Dr. Moedjono offered to excuse herself from the meeting, and mother agreed. (Exh. 7.) Mother informed HRC during the meeting that she was uncomfortable sharing any medical records because she felt staff lacked insight as to alternative homeopathic medicine treatment options. Mother communicated her belief that the service was best purchased when traveling to

Mexico, rather than in the United States, and was better suited to Claimant's needs than taking a regimen of traditional medications prescribed by a physician or psychiatrist. The meeting ended prematurely with HRC staff apologizing to mother about the direction the meeting had taken. Ms. Piceno offered to have mother meet with the behaviorist only, but mother declined. (Exh. 7.)

12. Subsequent to the unsuccessful health meeting, Claimant's mother filed a timely fair hearing request on July 20, 2017, asking that HRC fund for OT and ST, increase respite services, provide a voucher to purchase/change Claimant's horse, provide a voucher to purchase airline tickets to travel to Claimant's homeopathic appointments in Mexico, provide a voucher to purchase a membership for swimming classes, provide a voucher for the cost of law training through COPAA, reimburse home security equipment expenses, and that HRC pay for legal representation for Claimant during the fair hearing process.

13. Prior to the hearing, HRC increased mother's respite hours to 90 hours per quarter and agreed to fund for the cost of an OT evaluation for Claimant.

HEARING TESTIMONY AND EVIDENCE

14. At hearing, the parties agreed that the eight services described in the Issues portion of this decision, correctly stated the issues raised. The hearing took place over three days, spanning three months. By the time the matter was submitted on December 22, 2017, mother was receiving the maximum allowable 90 hours of respite per quarter;; HRC had assisted mother in obtaining protective supervision from IHSS for an unspecified amount of hours to address mother's elopement concerns; HRC was funding for personal assistance services at an unspecified amount; HRC had agreed to fund an Assisted Technology lab consultation, headphones, and Applied Behavior Analysis (ABA) services in the

home for Claimant. Mother refused to schedule the ABA evaluation with HRC pending the decision in this matter.

15. a. At hearing, mother testified that she has been seeking low-income services for Claimant for years. She was not previously aware of Claimant's rights under the Lanterman Act. According to her, HRC is aware of its responsibilities to consumers and has been informed of Claimant's needs since 2006. (Exhs. A-M.) Mother testified that she reported in every IPP that Claimant requires services in addition to the services he is receiving in school. Mother described the family economic level as "very difficult," and noted that the severity of Claimant's disability is affecting the family financially. Mother expressed frustration at her feeling that HRC only develops goals for consumers to meet, but does not commit to providing services that would help Claimant lead an independent and safe life in the community.

b. Mother testified that she had a heart attack in 2006 and currently has health issues that affect her ability to care for Claimant and require an increase in respite hours, which she had communicated to HRC. Mother provided a copy of a labeled CD cover that she attested described her health issues (Exh. N), but did not submit her medical records into evidence or any details as to her current medical condition. She asserted that she did not provide her health records because she did not have the \$285 per CD it would cost to make copies of the CD containing her medical records and therefore she could not submit her medical documents into evidence. However, mother did not bring the CD she had to hearing so it could be viewed by HRC and the administrative law judge on either her or HRC's laptop computers. She argued that HRC should provide her with the funds to pay for her medical records so that she could submit copies of the CD into evidence at hearing.

c. Mother believes that HRC is not helping its consumers and has not provided services that Claimant has needed for years to help him with his intellectual disability. She testified that she has borne the responsibility for addressing Claimant's issues since he was diagnosed by, among other things, providing Claimant with swimming lessons and retaining legal representation when advocating with the District regarding Claimant's education.

d. Mother described that since 2008 she has requested several services for parents of consumers, (Exh. D) including special training for parents, assistance at school meetings, respite services for parents, training how to understand an IPP and how the HRC system works. She attested that all services were denied by HRC and continue to be denied by HRC nine years later. She argued HRC has not fulfilled its responsibility to its families to provide advocacy training for their consumers and that HRC should provide that training since it does not represent its consumers at the school district or hearing level.

e. Mother is worried about Claimant's health since he suffers from chronic diarrhea and sleeps very little. She stated that Claimant is developing sexually, which includes the desire to frequently masturbate, making it essential for him to have extra supervision and assistance. Mother testified that she needed to install an alarm system and cameras at home for Claimant's safety and that she had previously reported to HRC that she was behind in paying for the alarm system and needs reimbursement for monthly expenses. She maintained that the extra expense of an alarm system and camera are necessary to maintain Claimant safely in his home. Mother argued that HRC would be responsible for any potential tragedy that occurred as a result of Claimant's eloping since HRC was previously notified of the issue. She asserted that she was being proactive by installing an alarm and camera system.

f. Mother further argued that HRC has not provided the necessary support, despite its awareness of Claimant's needs, forcing Claimant to resort to the fair hearing process. Mother asserted the fair hearing process was not equitable since it required her to be responsible for turning in reports and placed her at a disadvantage since she does not have the same financial resources as HRC. She asserted that she was entitled to representation at hearing since the Office of Clients' Rights Advocacy (OCRA), part of Disability Rights California, to which HRC had directed her, declined to represent Claimant at hearing. (Exhs. HH, II, JJ.) Mother intends to go to Sacramento to contact government representatives to express her frustration that the state was giving extra money and funds to regional centers (Exhs. PP and TT), but that the money was not reaching consumers.

g. According to mother, HRC does not take responsibility for Claimant because it does not provide him with an attorney to represent him during the fair hearing, forcing consumers to look for resources and assessments. (Exhs I, K, M, N.). Mother testified that HRC is aware of her health issues and that she found the hearing wearing, stressful, and time-consuming. Mother asserted that HRC's witnesses' testimony at hearing was unpersuasive because they were "people who did not work with the consumer," and only gave opinions, not evidence.

h. Mother testified that, despite the fact that her caregiver responsibilities for Claimant leave her with no extra time, she has sought training from various sources in her community in order to advocate for Claimant. (Exhs. NN and QQ.) Training courses completed by mother included those designed to manage Claimant's behavior related to Claimant exploring his body. Mother was dissatisfied that the training provided by HRC has been focused on emotional support and health subjects, rather than advocacy, despite the fact that she has

informed HRC for years that she has been paying for advocates to represent Claimant against the District. Mother left one of the support groups that HRC referred her to, Unity and Strength, because of her feeling that the group facilitators were insensitive to her family in that she felt they did not maintain family confidentiality. She attested that she needed additional training because Claimant requires advocacy in many areas.

i. Mother asserted that since Claimant first became an HRC consumer in January 2007, HRC has been aware of the necessity to evaluate consumer in the area of language, OT, and assisted technology. Yet HRC failed to evaluate Claimant in those areas. She reiterated that she asked HRC to support her with additional respite hours to enable her to rest and have the energy to care for Claimant in light of her documented medical condition. Mother expressed her feeling that HRC was ignoring the necessities the family has at home and was relying on general opinions to deny prior psychological evaluations of Claimant.

j. With regard to mother's request for a new horse or horse therapy for Claimant, mother testified that HRC was denying Claimant an activity that he prefers and enjoys, thereby restricting Claimant. In mother's opinion, Claimant's horseback riding is the most economically feasible therapy available to address his behavior. Mother testified that Claimant has had his horse for three years and that she has been responsible for the horse's feeding, training, and medical expenses.

k. To support her request for a voucher for herself and claimant to fly once a year to seek homeopathic treatment in Guadalajara, Mexico, mother submitted a general statement regarding the value of homeopathic medicine for treating autism from Claimant's homeopathic provider, Federico Ramirez Munoz. (Exh. BB.) The letter made no mention of what type of treatment was specifically

being provided by Munoz to Claimant. Mother also submitted a copy of the medications being prescribed by Munoz to Claimant. (Exh. CC.) One of the medications prescribed by Munoz to Claimant to treat his autism, "nux vomica," is a dangerous drug that is used in the United States as rat poison. (Testimony of Dr. Sahba.)

l. While mother previously requested that HRC fund swimming lessons for Claimant, at hearing she testified that she was seeking to have HRC fund swim therapy for Claimant as part of PT. (Exh. EE.) Mother asserted that due to its bureaucracy, HRC was not providing Claimant with the support necessary to prepare for adult life, was limiting his preferences, and was not providing him with the support necessary to ensure his safety. Mother requested that HRC not share any medical or behavioral information related to Claimant.

m. Mother accused HRC of providing insufficient support to the Hispanic community and expressed her belief that HRC should use moneys from its operational, rather than service budget, to pay for the expenses associated with the hearing.

n. Mother acknowledged that Claimant is receiving ST and OT from the District; that Claimant's service coordinator attended Claimant's IEP meeting to assist mother in advocating on his behalf; and that HRC provided the family with personal assistance to help mother while she was dealing with death threats from a neighbor. The threats have now ceased.

o. Mother has not provided HRC with consent to speak to the District and has provided no direct access to HRC to the District other than allowing his service coordinator to attend Claimant's IEP meetings. Mother provided HRC with Claimant's older reports and evaluations dating from 2006 through 2016. (Exhs. S, T, U, V, W, X, Y, OO.) However, mother refused to provide HRC with the most

current requested information. For example, no recent OT evaluations, ST evaluations, or IEPs have been provided by mother, as requested by HRC. Mother also did not provide HRC with either her or Claimant's medical records. Mother cited privacy concerns as a basis for her failure to provide HRC with the requested information.

16. a. At the fair hearing, the Service Agency pointed out that, per its policy, only HRC staff that deal directly with issues related to Claimant are authorized to access his information. HRC explained that since mother has not provided Claimant's updated information, it is currently impossible for HRC to be able to evaluate Claimant's need for services. As noted, mother has refused to provide school district, medical, insurance, and educational records. She has acknowledged that she refuses to authorize HRC access to the foregoing. Under the Lanterman Act, HRC is a payor of last resort and is required to explore all options, including generic resources, prior to considering using public funds to pay for services. As it stands, HRC cannot assess Claimant's needs because of the lack of access to Claimant's records.

b. *HRC basis for denial of request for swimming lessons.* Swimming lessons were not medically indicated for claimant based on available medical records. (Testimony of Dr. Moedjono.) The recommendation that all children be supervised at all times even if they are good swimmers is not specific to children with disabilities. There is no pool at Claimant's home. Accordingly, swimming lessons for Claimant are recreational in nature. (Testimony of Piceno.) At hearing, mother indicated that she is also requesting aquatic therapy, which is a component of PT. No recommendation for aquatic therapy was contained in Claimant's medical records. Based on the current information provided by mother, HRC is unable to determine the suitability of aquatic therapy.

c. *HRC's basis for denial of request for voucher for mother and claimant to travel to seek homeopathic treatment.* At the time mother requested HRC funding for her and Claimant to travel to obtain homeopathic services in Mexico, she provided no documentation regarding what type of homeopathic services Claimant was receiving. At hearing, mother submitted the previously described letter from Claimant's homeopathic provider. (Factual Finding 15k.) After considering the submitted evidence at hearing, HRC reiterated its position that homeopathic services are not clinically recommended to address Claimant's disability. (Testimony of Dr. Sahba and Dr. Moedjono.) In fact, based on the evidence, there is a potential that the homeopathic services provided to Claimant may be harmful. (Factual Finding 15k.) In response to mother's allegations that HRC's determination did not consider Claimant's culture, HRC noted that it applies the same considerations in evaluating homeopathic services irrespective of a consumer's cultural background.

d. *HRC's basis to grant request to fund OT evaluation.* At hearing, HRC confirmed that it has agreed to fund an OT evaluation for Claimant. However, as noted (Factual Findings 6d and 10f), no OT services can be funded until mother provides more current information about the OT services Claimant is receiving from other sources. Currently, while mother acknowledges that Claimant is receiving OT services through the District and evidence indicates he receives OT services from other providers, the 2013 evaluation provided by mother to HRC is almost five years old.

e. *HRC basis for denial of request to fund ST evaluation.* The purpose of a ST evaluation is to 1) determine if there is a delay, 2) assess whether progress has been made to address the delay, and 3) create a treatment plan. (Testimony of Melissa Greener.) Accordingly, in order to fund a speech evaluation for

Claimant, HRC needs to be able to review Claimant's current IEP and speech evaluation. (Testimony of Antoinette Perez and Melissa Greener.) Mother has provided a 2016 Progress Report from California State University, Long Beach (CSLB) indicating that Claimant has already been evaluated and is receiving ST services. (Exh. S.) However, no current information about ST evaluations and/or services has been provided to HRC. As a result, HRC is unable to fund a ST evaluation at this time because HRC must first gain a better understanding of services and supports provided through the school and assist the family with accessing additional support through Medi-Cal, if appropriate.

f. *HRC's basis for denial of request for an increase in respite services.*
HRC is currently providing the family with the maximum of 30 hours per month/90 hours per quarter. HRC is unable to increase respite services to five hours per day based on the current information at this time. Mother has not provided information evidencing exceptional circumstances or health needs that would justify an exception to the maximum respite hours already provided. While mother has provided general information asserting that she has a health condition stemming from her 2006 heart attack, she has refused to provide current medical records for either herself or Claimant that would justify an exception to the limit prescribed by the Lanterman Act. Further, mother has not provided any information as to how she utilizes generic sources such as IHSS or the household's schedule, as requested by HRC, thereby precluding HRC from obtaining a comprehensive understanding of potential generic sources of respite support for mother. (Testimony of Patricia Piceno.) In addition, HRC has provided the family with personal care assistance hours to attend to Claimant's needs during the summer months when Claimant is on break.

g. *HRC's basis of denial for request to fund new horse or equine*

therapy. Equestrian therapy is an OT, using a horse as a treatment modality. It is done by professional licensed therapists who attempt to accomplish treatment goals with the modality of a horse. (Testimony of Pam Hellman.) Hellman was aware of no research indicating the benefits of owning a horse for a person with ASD. Further, the only information addressing Claimant's OT issues, provided by mother to HRC, was from approximately 2013. HRC therefore does not have current information establishing an assessed need for services to address Claimant's reported symptoms, such as anxiety, poor balance, and sensory issues, that mother asserts are the focus of equine therapy for Claimant. (Testimony of Patricia Piceno and Pam Hellman.) Claimant's horseback riding is not provided by a licensed therapist and is therefore considered social/recreational in nature, which is currently a service that cannot be funded under the Lanterman Act. Based on the information provided to HRC by mother, HRC cannot fund a voucher to purchase another horse or equine therapy for Claimant. (Exh. 17.)

h. *HRC's basis for denial of request for reimbursement of security equipment.* The request was denied because mother purchased the alarm system to address Claimant's elopement issues without providing HRC the opportunity to assess the needs for the service request. (Testimony of Patricia Piceno.) Mother installed the service prior to the IPP meeting and brought up the service request at the meeting. Accordingly, the purchase of the alarm system was done outside of the IPP process and did not allow HRC the opportunity to assess the need and determine the most cost effective way to meet the need. Subsequently, HRC assisted mother in identifying and obtaining a generic resource, protective services through IHSS, to address Claimant's eloping. Before HRC can consider funding for the cost of the family's alarm system going forward, mother must be willing to provide HRC additional information to be able to assess Claimant's

concerning behaviors, including, but not limited to eloping, to be gathered through an adaptive behavioral assessment (ABA) of claimant. (Testimony of Miguel Flores.) As of the conclusion of this hearing, HRC has been unsuccessful in scheduling an ABA assessment with Claimant based on mother's unwillingness to schedule the assessment prior to the issuance of the decision in this matter.

i. *HRC's basis for denial of request to fund COPAA.* HRC's service coordination team is able to advocate on Claimant's behalf with outside entities. (Testimony of Patricia Piceno, Kelly Carmichael, and Antoinette Perez.) HRC can connect mother with HRC's specialists and can direct mother to a special education attorney consultant who are available to assist mother free of charge in preparing for school advocacy. (Testimony of Kelly Carmichael and Patricia Piceno.) HRC's policy provides family support and training to allow families to become effective advocates for their children. (Exhibit 18.) Finally, HRC has a Family Resource Center that can assist mother with advocacy. No specific basis was demonstrated by mother to require HRC to use public funds to fund for COPAA when other more cost-effective resources are available to address mother's request for assistance and training in advocating for Claimant.

f. *HRC's basis for denial of the request to pay for legal representation at hearing.* HRC lacks any statutory authority to fund an attorney for Claimant in the fair hearing appeal process. (Testimony of Antoinette Perez.) However, HRC directs families to OAH and Disability Rights California (OCRA), publications, and publications prepared by other agencies regarding self-representation. OCRA reserves the right to decline to represent consumers based on their evaluation of the merits of the case. Here, OCRA declined to represent mother at hearing. However, mother was referred to Disability Rights California, met with OCRA, and received information and advice that assisted her in preparing for the fair hearing

of this matter. (Exhs. HH, II, and JJ.)

ULTIMATE FINDINGS

17. Mother has requested that HRC use public funds to provide multiple services for Claimant. HRC, as the payor of last resort, is statutorily required to perform due diligence and comprehensively assess what services Claimant is already receiving from other sources prior to considering its consumers' service requests. To do so, HRC requested current information from mother. To date, mother has refused to provide the requested information to HRC. While it is within mother's prerogative to refuse to provide the requested information, her refusal to provide material has resulted in a current lack of information to support HRC's provision of requested services. HRC is required to provide services based on the current record. Based on the evidence presented at hearing, HRC's staff and evaluators don't have the requisite information to enable HRC to approve funding for requested services. Accordingly, HRC properly denied Claimant's requests to fund swimming lessons, increase respite services to five hours per day, fund an ST evaluation, to provide funding for a new horse or equine therapy, to provide reimbursement for alarm system expenses, to provide vouchers for travel to Mexico for homeopathic services, or to fund legal representation at hearings and for COPAA funding.

LEGAL CONCLUSIONS

1a. Claimant's appeal is denied as to HRC's denial of funding for: swimming lessons;; increase in respite hours to five hours per day;; an ST evaluation;; a new horse or equine therapy;; reimbursement for alarm systems expenses;; vouchers to travel to Mexico for homeopathic services;; funding for legal representation at hearings; and funding for COPAA training.

1b. Claimant's appeal is granted as to HRC's denial of funding for an OT evaluation, based on HRC's agreement to fund the requested service. (Factual Findings 1 through 17; Legal Conclusions 2 through 23.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code , §§ 4700-4716.) Claimant timely requested a hearing following the HRC's denial of requested services, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for swimming lessons, increased respite services to five hours per day, an ST evaluation, a new horse or equine therapy, reimbursement for alarm system expenses, vouchers to travel to receive homeopathic services, funding for legal representation at hearing and funding for COPAA training, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary. Claimant has failed to meet his burden, as more fully described below. Based on HRC's agreement to fund an OT evaluation, Claimant has met his burden as to that service request.

4. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan 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. . . .

5. Welfare and Institutions Code section 4646.4 provides:
 - (a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:
 - (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
 - (2) Utilization of generic services and supports when appropriate.
 - (3) Utilization of other services and sources of funding as contained in Section 4659.

- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

SPEECH THERAPY EVALUATION

6. Claimant has not met his burden of proving that HRC should fund a ST evaluation at this time. The IPP process requires HRC to conduct assessments to determine the "life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code § 4646.5, subd. (a)(1).) Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. (*Ibid.*)

7. HRC cannot satisfy its obligations pursuant to Welfare and Institutions Code section 4646.5, if it does not have the right to obtain information, and the power to obtain that information. A person who seeks benefits from a regional center must bear the burden of providing information, submitting to reasonable examinations and assessments, and cooperating in the planning process. (See Civ. Code § 3521 ["He who takes the benefit must bear the burden."].) Claimant's mother can refuse to do anything that she feels does not benefit her child. 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, since the failure to cooperate may negate the authority to compel the regional center to fund services and supports.

8. In addition, when a consumer requests services, they are essentially waiving objection to the regional center and its staff and consultants having access to otherwise private information when such access/information is necessary to assess the need for services and/or the effectiveness of those services. As noted during the hearing, however, the request for service does not mean the information can be or is disseminated for any other purpose. Accordingly, a consumer must cooperate with reasonable requests for assessments and evaluations, to assist the regional center in discharging its responsibility. At the same time, the regional center must be responsible in its use of the information.

9. HRC must first gain a better understanding of services and supports provided through Claimant's school and other sources, and assist the family with accessing additional support through Medi-Cal, if appropriate. (Welf. & Inst. Code § 4659, subdivision (a)(1)(2).) To determine whether Claimant requires a ST evaluation, HRC has to consult with and review reports by Claimant's other service providers, including Claimant's physicians, school district, SELPA, and CSULB. Mother has precluded HRC from obtaining information to determine Claimant's need for this service. As of the date of the hearing, mother has refused to provide HRC with the necessary information. Until mother provides the requested information and authorizes HRC staff to discuss Claimant's needs and services with the District, Claimant's insurance, SELPA, CSULB, and Claimant's doctors, HRC cannot grant mother's request for a ST evaluation. (Factual Findings 6, 7, 9, 10, 15-17.) If Claimant provides the requested information and authorizations, the parties can meet to discuss whether an ST evaluation funded

by HRC is required.

SWIMMING LESSONS⁹

10. Claimant has not met his burden of proving that HRC is required to fund for swimming lessons. Claimant has not demonstrated that swimming lessons are needed by Claimant because of his developmental disabilities or the lessons are required to alleviate the effects of his disabilities. (Factual Findings 6, 7, 9, 10, 15-17.)

11. Swimming lessons are considered social/recreational in nature and specifically excluded from funding by regional centers. (Welf. & Inst. Code § 4648.5, subd. (a)(2). Mother has not demonstrated that Claimant qualifies for an exemption. (Welf. & Inst. Code § 4648.5, subd. (c).) There is no evidence of any extraordinary circumstances indicating that swimming lessons will ameliorate the physical, cognitive or psychosocial effects of claimant's disability, or that such lessons are necessary to enable him to remain in his home. (Factual Findings 6, 7, 9, 10, 15-17.)

12. Further, HRC must consider "the family's responsibility for providing similar services and supports for a minor child without disabilities." (§ 4646.4, subd. (a)(4).) Mother's request for funding for swimming lessons is to ensure Claimant's safety around water, a common goal of families with a minor child

⁹ Mother did not indicate that she was requesting aquatic therapy until the third date of hearing. Based on the lack of notice provided to HRC and potential prejudice that would result by considering a service request that was not part of mother's original FHR, the request for aquatic therapy is not considered in this decision. However, should mother choose to do so, she can file a subsequent FHR on Claimant's behalf to request that HRC fund for aquatic therapy.

without disabilities. (Factual Findings 15 and 16.) In this case, swimming lessons are the type of activity that would typically be provided by parents for children without disabilities and are therefore the fiscal responsibility of Claimant's caregiver. Claimant is not entitled to funding from HRC for swimming lessons. (Legal Conclusions 1-5; 10-12.)

LAW TRAINING (COPAA)

13. Claimant has not met his burden of proving that HRC is required to fund \$1,800 for law training (COPAA) for mother. Pursuant to section 4648, subdivision (b)(1), the regional center is charged with "[a]dvocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities." (See also § 4902, subd. (a)(2).) When such advocacy proves "ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division." (Welf. & Inst. Code § 4648, subd. (b)(2).)

14. While advocacy is not defined in the Lanterman Act, the regulations enacted pursuant to the Act provide clarification. In a subchapter addressing client's rights, California Code of Regulations, title 17 (Regulation), section 50510, subdivision (a), states, as an "access right," that every person with a developmental disability has "(10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled." Under Regulation 54505, regional center operations include various activities, including case management "and consumer advocacy and protection."

15. Mother expresses dissatisfaction with HRC's advocacy while simultaneously admitting that she provides HRC no authorization to act on

Claimant's behalf when dealing with the District. As a result, mother has not demonstrated that HRC has been ineffective in advocating for Claimant or has impeded her access to advocacy resources. Further, mother has not demonstrated that the resources for advocacy assistance suggested by HRC are insufficient or inadequate. (Factual Finding 15-17.) Accordingly, Mother is not entitled to \$1,800 in funding for advocacy training. (Legal Conclusions 1 through 5; 13 through 15.)

FUNDING AN ATTORNEY FOR FAIR HEARING APPEAL PROCESS

16. Claimant has not met his burden of proving that HRC is required to pay for an attorney to represent him during the fair hearing appeal process. The Lanterman Act does not require the appointment of an attorney to represent Claimant or the regional center at a fair hearing. HRC is only responsible for notifying Claimant of "[i]nformation on availability of advocacy assistance, including referral to the developmental center or regional center clients' rights advocate, the State Council on Developmental Disabilities, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602, the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. Sec. 6000 et seq.)." (Welf. & Inst. Code § 4701, subd. (g).)

17. In fact, the fair hearing process contemplates that a Claimant need not be represented by an attorney in the appeal procedure. As an example, the State Council on Development Disabilities can appoint a person who is not a lawyer to represent a Claimant who has not authorized a representative and whose rights and interests have not been properly protected. (Welf. & Inst. Code § 4705, subd. (e).) Moreover, fair hearings are conducted in a manner conducive to self-representation or non-legal representation, i.e., technical rules of evidence

and those related to witnesses do not apply, all relevant evidence is admissible and no formal authentication of any document is required. (Welf. & Inst. Code § 4712, subd. (i).) HRC is not, therefore, required to fund an attorney for Claimant during the fair hearing appeal process. (Factual Findings 15-17; Legal Conclusions 1 through 3; 16-17.)

RESPIRE INCREASE TO FIVE HOURS PER DAY

18. Welfare and Institutions Code section 4686.5 provides, in relevant part:

- (a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:
- (1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.
 - (2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.
 - (3) (A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

[¶] . . . [¶]

- (5)(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

19. HRC is currently providing Claimant's family with 30 hours per

month/90 hours per quarter of respite care. (Factual Finding 16.) HRC properly denied additional respite hours at the requested rate of five hours per day, including weekends. Service Agency cannot grant an exemption and fund the requested increase in respite hours because Claimant has failed to establish through a preponderance of the evidence that the intensity of the Claimant's care and supervision needs are such that additional respite is necessary to maintain Claimant in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the Claimant, as required by section 4686.5 of the Lanterman Act. (Factual Findings 14-17; Legal Conclusions 18-19.)

REQUEST TO FUND TRAVEL TO MEXICO FOR HOMEOPATHIC TREATMENT

20. Claimant has not met his burden to establish that HRC is required to fund for vouchers for Claimant and mother to travel to Guadalajara, Mexico to obtain homeopathic treatment for his disability. The evidence does not support a finding that the type of homeopathic treatment Claimant seeks is clinically recommended to treat his disability. In fact, disturbing evidence was presented at hearing that the medication prescribed by Claimant's homeopathic provider may be harmful. (Factual Findings 15-16.) Regional centers are prohibited from funding non-evidence based treatments, or treatments for which the risks and complications are unknown, including travel to obtain these treatments. (Welf. & Inst. Code § 4648, subd. (a)(16); HRC's General Standards Policy; Exhs. 13 and 20.) Accordingly, Claimant's request was properly denied by HRC.

REQUEST TO FUND FOR NEW HORSE OR EQUINE THERAPY

21. Claimant has not met his burden of establishing that HRC is required to fund the purchase of a new specially trained horse for Claimant or

equine therapy. Based on current information, Claimant's horseback riding and equine therapy are social/recreational in nature. Therefore, HRC is prohibited from funding the services. (Welf. & Inst. Code § 4648.5, subd. (a)(2).) (Factual Findings 15-17.) An exemption may be granted on an individual basis in "extraordinary circumstances . . . when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." (*Ibid.*)

22. However, mother has not provided HRC with information of an assessed need for any service needed to address the list of reported symptoms (such as anxiety, balance, focus, social emotional, and sensory problems), that mother asserts are the focus of equine therapy. In addition, if a need for treatment of Claimant's symptoms is established, HRC would need to explore all possible funding sources. (Welf. & Inst. Code § 4648, subd. (a)(8).) Accordingly, based on the current information provided, Claimant's request was properly denied by HRC. (Factual Findings 15-17; Legal Conclusions 21-22.)

REQUEST FOR REIMBURSEMENT OF HOME SECURITY EQUIPMENT

23. Claimant has not met his burden of establishing that HRC is required to reimburse mother for the \$39.99 monthly cost of the family's alarm system from 2012 to the present. Mother did not provide HRC with the opportunity to address Claimant's elopement issues in the most cost effective way, as required under the Lanterman Act. (Welf. & Inst. Code § 4648, subd. (a)(6).) Instead, mother unilaterally made the decision to install an alarm system outside the IPP process. (Factual Findings 15-17.) Based on the information currently available to HRC, Claimant's request was properly denied by HRC. It is

premature to determine whether HRC is required to fund for Claimant's alarm system without first providing HRC with the opportunity to assess the situation through an ABA evaluation.

ORDER

1. HRC's denial of funding for an increase in respite hours from the current 30 hours per month to five hours per day, including weekends, for Claimant is upheld.

2. HRC's denial of funding for an \$1,800 voucher to pay for the cost for advocate/defender training through COPAA for Claimant's mother/representative is upheld.

3. HRC's denial of funding for legal representation for Claimant to be paid for by the Service Agency during the fair hearing process is upheld.

4. HRC's denial of funding for a Speech Therapy evaluation for Claimant is upheld.

5. HRC's denial of funding for a voucher to purchase a specially trained horse for Claimant or fund Claimant's participation in equestrian therapy is upheld.

6. HRC's denial for of funding for a voucher to buy a membership for swimming lessons for Claimant is upheld.

7. HRC's denial of funding for two vouchers to fly Claimant and Claimant's mother to Guadalajara, Mexico, once per year to obtain homeopathic treatment is upheld.

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8. HRC's denial of retroactive reimbursement from 2012 to the present and for future payments for Claimant's home security expenses/equipment in the amount of \$39.99 per month is upheld.

9. HRC's denial of funding for an Occupational Therapy evaluation for Claimant is reversed.

DATED:

IRINA TENTSER

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.