

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,
Service Agency.

OAH No. 2017120808

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 12, 2018, in Torrance, California. The record was closed, and the matter was submitted for decision at the conclusion of the hearing.

Cheri Weeks, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC).

Claimant's mother (Mother) represented Claimant¹, who was not present at the hearing. Mother had the assistance of a Spanish language interpreter during the hearing.

ISSUE

Should HRC be required to fund an assessment for speech therapy for Claimant?

¹ Titles are used to maintain privacy for Claimant and his family.

FACTUAL FINDINGS

JURISDICTION

1. Claimant is a 13-year-old male who qualifies for regional center services based on his diagnosis of autism spectrum disorder.
2. By Notice of Proposed Action and letter dated November 27, 2017 (NOPA letter), HRC informed Claimant that it was denying his request for a speech assessment because it lacked sufficient information "to determine [if] there is a need for an updated evaluation." On December 15, 2017, claimant timely filed a request for a fair hearing appealing HRC's decision. (Exhibit 2.) This hearing ensued.

BACKGROUND

3. Claimant lives at home with Mother, his father, two younger sisters, and his grandmother. Claimant receives health insurance through a Medi-Cal managed care plan (LA Care 1st Health Plan).
4. Claimant currently attends public school in the Bellflower School District (School District). Claimant is in a general education class with a full-time one-on-one instructional aide and receives resource specialist support. It is unclear from the school records provided whether Claimant is currently in the eighth or the ninth grade.
5. Claimant struggles with expressive language skills and pragmatic speech, and stutters. To address these difficulties, School District provides Claimant with 50 minutes of individual speech therapy and 50 minutes of group speech therapy each week.
6. Claimant's Individual Education Plan (IEP), dated February 3, 2017, and amended as of February 23, 2017, set forth six measurable goals in the following areas to evaluate Claimant's yearly progress in speech and language: social language skills; pragmatics; syntax / morphology; pragmatics / megacognition; receptive language and

fluency. (Exhibit 5, pp. 13-18.) The IEP also concluded that Claimant did not require extended school year services for his speech therapy because he did not show more than typical regression over school breaks and was able to recoup any information lost during the break. (Exhibit 5, p. 32.) Accordingly, the School District did not provide speech therapy to Claimant over the summer of 2017.

7. In the spring of 2017, based on a referral from Claimant's pediatrician, Claimant obtained a speech therapy evaluation from Let's Talk Speech & Language Therapy, Ltd. (Speech Center). Based on that evaluation, Speech Center recommended that claimant receive 30 minutes of individual speech therapy on a weekly basis to address expressive language, expressive vocabulary, and speech production. (Exhibit B.) Medi-Cal agreed to fund the recommended therapy at Speech Center for six weeks at a time until Claimant met certain goals. Speech Center is considerable distance from Claimant's home. The driving time to and from the facility exceeded the 30 minutes Claimant spent in therapy.

8. On June 29, 2017, Mother requested that HRC fund 100 minutes of speech therapy for Claimant with a local provider during the summer months to make up for the speech therapy he was missing when school was not in session. In connection with her request, Mother supplied HRC with all of the available records relating to the speech therapy Claimant received at the School District and at Speech Center as well as the necessary written consent for HRC personnel to speak with School District and with Speech Center staff. (Exhibits C and D.) Mother expressed her concern that the 30 minutes of speech therapy of week authorized by Medi-Cal was not equivalent to what Claimant received during the school year. Mother also noted that she did not drive long distances and that Speech Center was far from the family's home.

9. On July 6, 2017, HRC denied Mother's request, determining that the Speech Center therapy funded by Medi-Cal was comparable to the 50 minutes of

individual therapy that Claimant received from the School District during the school year, and that the other 50 minutes per week of group therapy claimant received from the School District could be achieved by having Claimant participate in social and recreational activities in the community. HRC also pointed out that it had no responsibility to fund any additional therapy because Medi-Cal, a publicly funded resource, was potentially available to meet Claimant's needs. (Exhibit F, p. 3.) However, HRC indicated that, if there was evidence that Claimant's speech and language skills were regressing, it would help Mother advocate for extended school year services from the School District.

10. The July 6, 2017 letter also indicated that HRC did not believe that Claimant's speech would regress over the summer months or that the supplemental Medi-Cal-funded speech therapy was needed. (Exhibit F, p. 4.) However, as a courtesy, HRC agreed to fund and arrange transportation for claimant and Mother to Speech Center (i.e. a taxi service) to ensure that Claimant would receive the Medi-Cal funded therapy. (*Id.* at pp. 4-5.) It was not made known at the hearing whether HRC had searched for a Medi-Cal funded speech therapy facility that was closer to Claimant's home to avoid the need for a taxi service.

11. On October 23, 2017, Mother met with HRC personnel as part of the Individual Person Centered Plan (IPP) process. (Exhibit 4.) The IPP based on that meeting noted that Claimant "continues to struggle with his speech although there has been some improvements. [Claimant] is unable to organize his speech and there is no sequence in his conversations and he stutters per mom report. [Claimant] needs help with individual syntax, vocabulary, verbs, nouns and to incorporate his social skills when he is speaking." (*Id.* at p. 3.) The IPP recognized that Claimant was receiving speech therapy from the School District. The IPP identified as a "Desired Outcome" that claimant "will increase his ability to communicate by attending Medi-Cal funded speech

services” and as a “Plan for HRC Supports” that HRC “will fund for weekend transportation to assist [claimant] in attending his Medi-Cal funded speech session.” (*Id.* at pp. 3, 11.)

12. In the fall of 2017, claimant missed two speech therapy appointments at Speech Center because of problems with the taxi service arranged by HRC. (Exhibit I.) Speech Center charged Mother a cancellation fee of \$50 for each missed session; Medi-Cal did not pay for the missed sessions or for the cancellation fees. Mother could not afford to pay the two \$50 cancellation fees and requested HRC assistance. HRC agreed to pay the cancellation fee for the first missed session, but refused to pay the second cancellation fee, and Speech Center refused to forgive payment. As a result, claimant was forced to stop treatment at Speech Center, and consequently HRC stopped providing transportation services for Mother and Claimant. No evidence was presented regarding whether HRC or Mother attempted to contact Medi-Cal directly about waiving the \$50 fee. As of the date of the hearing of this matter, Mother had not appealed HRC’s decision not to pay the \$50 fee.

13. Claimant has made progress in developing his speech and language skills according to the goals set forth in his IEP. As of January 12, 2018, the School District’s annual review reflects that Claimant met goals in two of five of the identified areas (i.e., pragmatics / megacognition and receptive language) and that he made progress in attaining, but noted he did not meet, goals in three areas (pragmatics, syntax / morphology, and fluency). (Exhibit G.)² It was not made known at the hearing whether Claimant’s progress in meeting these goals was attributed in any way to the supplemental speech therapy he had received at Speech Center.

² No evidence was presented regarding Claimant’s progress toward meeting the social language goal.

REQUEST FOR A SPEECH ASSESSMENT PAID BY HRC

14. On November 6, 2017, after Claimant was unable to continue his speech therapy sessions at Speech Center, Mother requested that HRC fund an independent speech assessment to evaluate Claimant's speech needs. Mother reiterated her request at a formal meeting with HRC Client Services Manager Pablo Ibañez on November 22, 2017. She declined, however, to provide HRC with any current information regarding Claimant's speech therapy, i.e., any notes or progress reports prepared after HRC's July 6, 2017 denial of her request for summer speech therapy services. Mother indicated that she was not aware of any new reports being created by either the School District or Speech Center since July 6, 2017. Mother also refused to provide the necessary consents to allow the HRC speech pathologist to speak with Medi-Cal, Speech Center or the School District regarding Claimant's current speech therapy and the need for an assessment. Mother also declined to meet with the HRC speech pathologist to discuss Claimant's needs and the assessment process. Mother indicated to HRC personnel that she would be open to giving the evaluator full access to any requested material and to providing the necessary consents to discuss Claimant's speech therapy only if HRC first agreed to fund the assessment. Mother reiterated her position in a telephone conference with Griselda Torres, HRC Service Coordinator, on November 29, 2017. (Exhibit 6, pp. 2, 3.)

15. HRC responded to Mother's request in the NOPA, which stated in relevant part as follows:

In regard to your request for a speech therapy evaluation, we had the opportunity to consult with the same HRC Speech Pathologist who reviewed [Claimant's] speech needs in July. Based on the current records on file, she continues to believe that the district provided speech services are appropriate in

meeting [Claimant's] speech needs. Nonetheless, she believes that your consent for us to speak directly with the speech pathologists providing services through [Claimant's] school and at [Speech Center], as well as to review any additional documentation such as current progress reports, would facilitate our ability to determine any need for an updated speech therapy evaluation. She is also available to meet with you directly to explain the clinical need in having access to this information. She will also be able to answer any questions you might have concerning the importance of access to current information and the value in being able to communicate with current treating therapists providing coordinated care.

[¶ . . . ¶]

[Claimant] is receiving speech therapy from both his school and LA CARE [³] which are typically the primary direct or indirect resources for this service for school aged children. At this time Harbor Regional Center needs more information to determine whether there is a need for an updated evaluation. As such, we need your consent to speak to the speech pathologist currently providing services and we also need access to any current progress reports or records. HRC

³ It was not made clear from the evidence whether Claimant was receiving any speech therapy funded by L.A. Care as of the date of the NOPA.

must deny your request for a speech evaluation for [Claimant] at this time. We hope you will decide to provide consent and to share information with us Please understand that if a need for additional speech services for [claimant] is established, our role will be to provide advocacy and support through the school district and L.A. Care.

(Exhibit 3, pp. 2-3.)

16. According to her testimony at the hearing, Mother believes a speech assessment conducted by an independent party would be a fair and transparent way to evaluate Claimant's speech needs. Mother does not believe that the HRC speech therapist is objective because of the therapist's decision that Claimant did not need supplemental speech therapy during the summer when claimant was out of school. Mother also indicated that the HRC speech therapist believed that the therapy provided by Speech Center was unnecessary and duplicative, and therefore HRC was likely to deny Mother's request for an assessment.

17. Mother believes the speech therapy claimant receives at school is inadequate to address all of claimant's speech and language needs. Mother would like Claimant to continue with the Medi-Cal-funded speech therapy services, although it was not clear from her testimony that, if the Medi-Cal-funded speech therapy was resumed, such therapy combined with the School District therapy would be sufficient to meet Claimant's needs and obviate the need for a new speech assessment. Mother refused to provide the requested consents because she does not trust HRC to make an objective assessment of Claimant's actual needs. Mother also indicated she would like HRC's assistance in locating a Medi-Cal-approved speech therapist whose office was closer to Claimant's home so Claimant could attend the therapy without travel difficulties.

18. Pablo Ibañez testified on behalf of HRC. According to Mr. Ibañez, HRC does not believe a new speech assessment for Claimant is warranted based on the information currently available to HRC. However, Mr. Ibañez stated that HRC needs Claimant's current information, i.e., recent, up-to-date reports and notes from Claimant's speech therapy providers as well as authorizations to speak to those providers, to determine whether anything has changed to warrant a new assessment. Mr. Ibañez stated that Mother had refused to provide such information either to HRC or to an independent evaluator.

19. Mr. Ibañez also stated that Mother had requested that HRC fund any speech assessment that was required. In response, Mr. Ibañez had explained to Mother that HRC was only responsible for funding an assessment if generic resources, such as the School District or Medi-Cal, refused to do so. Mr. Ibañez had offered to assist Mother during the IEP process at the School District to make sure Claimant received the therapy he needed, but Mother had declined his offer.

20. Mr. Ibañez confirmed Mother's account regarding the cessation of Speech Center therapy. He stated that HRC would not authorize payment of the \$50 cancellation fee. He also expressed doubt about Mother's expressed discomfort in driving long distances, and he claimed that arranging taxi transportation proved to be difficult for HRC to manage. Mr. Ibañez provided no explanation why HRC had not addressed waiver of the \$50 cancellation fee with Medi-Cal directly. He also did not discuss any efforts on HRC's part to locate Medi-Cal-funded speech therapy that was closer to claimant's home.

LEGAL CONCLUSIONS

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Developmental Disabilities Act (Lanterman Act) (Welf. &

Inst. Code,⁴ § 4500 et seq.) are decided under the fair hearing and appeal procedures set forth in the Lanterman Act. (§ 4706, subd. (a).) Under the Lanterman Act, regional centers are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” and with determining “the manner in which those services are to be rendered.” (§ 4620.)

2. Claimant has the burden of proving HRC should fund the disputed service (see *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161), and must do so by a preponderance of the evidence. (Evid. Code, § 115 [preponderance of evidence standard applies unless another law or statute provides otherwise].) A preponderance of the evidence means “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Under the Lanterman Act, the development and implementation of the IPP is a cornerstone of the regional center’s responsibilities to the consumer. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports the consumer needs in order to achieve the goals set forth in the Act. (§§ 4646, 4646.5, and 4648.) The Legislature’s intent is that an IPP should address the needs and preferences of the consumer and the family, through a collaborative process, in order to provide consumers with the opportunity to live independent and productive lives. (§§ 4646, 4646.5.) The services and supports are to be “flexible and individually tailored to the consumer and, where appropriate, his or her family.” (§4648, subd. (a) (2).)

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

4. When considering the purchase of services and supports, the IPP process “shall ensure . . . [u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a).) These supports include “governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare . . . [and] school districts.” (§ 4659, subd. (a)(1).)

5. Claimant has not met his burden of proving that HRC is required to fund a speech therapy assessment at this time. Nor has Claimant established that a new assessment is necessarily required based on the documentation HRC currently possesses, particularly in light of Claimant’s progress in his school-based therapy and Speech Center’s recent (spring 2017) evaluation of claimant’s speech therapy needs.

6. The IPP process, however, is a continuing one and must be responsive to the changing needs of a regional center consumer. Thus, the IPP process requires HRC to gather information and conduct assessments to determine the “life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.” (§ 4646.5, subd. (a)(1).) Information necessary to make such determinations 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. A regional center, such as HRC, however, cannot discharge its duty pursuant to section 4646.5 if it does not have the right and the power to obtain information necessary to determine whether a speech assessment is required. 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, parents can refuse to do anything that they feel works to the detriment of their children. 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.

8. Further, a consumer's request for services essentially waives objection to the regional center and its staff and consultants having access to otherwise private information when such access/information is needed to assess the need for services and/or the effectiveness of those services. That does not mean, however, the information can otherwise be disseminated for any other purpose. Thus, a consumer must cooperate with reasonable requests for information necessary to assist the regional center in discharging its responsibility. Concomitantly, the regional center must be responsible in its use of the information.

9. Claimant's inability to establish the need for an assessment does not mean that an assessment is not necessary to determine the kind and amount of speech therapy is appropriate for him. At the time of the hearing, Claimant was only receiving speech therapy from the School District, and there appeared to be no consideration of the impact, if any, of the supplemental therapy Claimant had received from Speech Center. HRC, however, cannot determine whether Claimant requires a new assessment to determine whether Claimant has any unmet speech therapy needs unless Mother provides the requested information and authorizes the appropriate individuals to discuss Claimant's speech-related needs and services with the School District, Speech Center, and any other relevant service provider. Moreover, if it is determined that an assessment is needed, HRC must first look to generic service providers, such as the School District and Medi-Cal to fund the assessment.

10. In light of Claimant's IPP goal of increased communication ability (see Factual Finding 11), a determination of the necessity of a further speech assessment is warranted. However, Claimant's request for a speech therapy assessment is denied at

this time based on Mother's refusal to provide the requested information to HRC.⁵ (Factual Finding 17.) Once Mother provides the requested information and authorizations to HRC, HRC shall retain an independent evaluator, not employed by HRC, to determine whether a new speech assessment is necessary. An independent evaluator is necessary to restore trust in the IPP process and to ensure the integrity and effectiveness of the IPP process going forward. The funding of any speech assessment, if required, must be consistent with the funding requirements set forth in the Lanterman Act. Until it is determined that a new speech assessment is required, however, it is premature to determine its funding source.

ORDER

Claimant's appeal of Harbor Regional Center's decision to not provide a speech therapy assessment at this time is denied. Once Mother provides the requested information and authorizations to HRC, HRC shall retain an independent evaluator, not employed by HRC, to determine whether a new speech assessment is necessary.

⁵ The regional centers are charged with coordination of services and supports identified in the IPP. (§ 4620, subd. (a).) Thus, the determination of whether Claimant requires a speech assessment in no way excuses HRC from assisting Claimant attend speech therapy funded by Medi-Cal as set forth in the IPP provided Mother supplies the appropriate consents. With such consents, HRC should be in a position to seek a waiver of the \$50 cancellation fee from Medi-Cal and to assist Claimant in locating a more geographically suitable Medi-Cal-funded speech therapy location.

DATE:

CINDY F. FORMAN

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.