

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2019061068

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Torrance, California on November 12, 2019.

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or service agency). Claimant's mother (Mother) represented Claimant, who was present at the hearing.¹

¹ To preserve confidentiality, Claimant and Mother are not identified by name. Spanish language interpretation services were provided at the administrative hearing.

Testimony and documentary evidence was received and the case was argued. The matter was submitted for decision on November 12, 2019. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

Whether the service agency may terminate its funding of 32 hours of personal assistant services granted to Claimant on a temporary basis while Claimant applies to the California Department of Social Services, Health and Human Services Agency, for in-home supportive services (IHSS) hours.

FACTUAL FINDINGS

1. Claimant is a 17-year-old male consumer of HRC due to his qualifying diagnoses of Autism and Intellectual Disability. Claimant resides with his parents and sibling. Claimant presents with maladaptive behaviors including, among other things, an inability to attend to his self-care needs without prompts or assistance, limitations with expressive language, a lack of danger perception and safety awareness, self-injurious behaviors, elopement, and a need for constant supervision.

2. As set forth in Claimant's April 2, 2019 Individual Program Plan (IPP), HRC authorized the following service-agency funded services for Claimant: an unspecified number of hours of homemaker services for the period October 1, 2018 to February 29, 2020; 30 hours per month of respite services for the period March 1, 2019 through February 29, 2020; and 32 hours of personal assistant services for the period May 1, 2019 through May 31, 2019.

3. The circumstances surrounding the HRC-funded 32 hours of personal assistant services for Claimant are as follows.

A. On November 7, 2018, Mother informed Claimant's service coordinator she wanted personal assistant services for Claimant. On December 4, 2018, an HRC-vendored nurse assessed Claimant's needs and prepared a report titled *Harbor Regional Center Nurse Evaluation of IHSS Care Needs (IHSS Care Needs report)*. The *IHSS Care Needs* report details the nurse's findings substantiating Claimant presents with maladaptive behaviors and conclusions Claimant requires "31.65 hrs/month of care above the hours of care that a person of the same age without a disability requires." (Exhibit 7 at p. 4.) The *IHSS Care Needs* report additionally documents Claimant "requires 24-hour supervision to prevent accident, hazard, or injury." (*Ibid.*)

[Claimant] has cognitive deficits which include severe impairment in memory, judgment, and orientation and requires 24-hour supervision indicated by inherent risk of self-injurious behavior or injury to others. He has no perception of safety or danger and displays many endangering behaviors to himself and others; therefore, he cannot safely be left alone/unsupervised at any time.

Current behaviors he is exhibiting include the following:

- No street safety
- No stranger awareness
- Elopes whenever possible; tries to leave his home 2 – 3 times a night and runs away immediately when upset

- Masturbates with his door open
- Turns water on in the sink and leaves it running
- Takes food out of the refrigerator and leaves food on counter
- Leaves the refrigerator open
- Unable to give his name, address, or phone number if lost
- Does not know what to do in an emergency and would endanger himself, because he would not know to leave his home and does not know how to call 911

(Exhibit 7 at p. 3.)

B. Based on the *IHSS Care Needs* report's findings, conclusion, and recommendation, Claimant's service coordinator advised Mother to apply to the California Department of Social Services, Health and Human Services Agency (CDSS/HHSA) for IHSS hours. With the service coordinator's assistance completing the application, Mother applied to CDSS/HHSA for IHSS hours on December 20, 2018. During Claimant's April 2, 2019 IPP meeting, HRC learned Mother did not attend a scheduled interview with CDSS/HHSA because the letter of notification of the interview was erroneously delivered to a neighbor's house, and as consequence, CDSS/HHSA denied the application for IHSS hours for Claimant.

C. On April 17, 2019, the service coordinator discussed the Claimant's application with a CDSS/HHSA benefits specialist who provided instructions for

pursuing the IHSS appeal process. On April 19, 2019, HRC determined to fund 32 hours of personal assistant services for Claimant on a temporary basis commencing May 1 and ending May 31, during which time Mother was expected to exhaust the IHSS process for obtaining IHSS hours. Mother confirmed with HRC her intent to appeal the CDSS/HHSA's denial of the application for IHSS hours.

D. On May 30, 2019, Mother informed the service coordinator about her multiple failed attempts making contact with a live person at CDSS/HHSA and her unreturned voice messages requesting status updates on her appeal. The service coordinator advised Mother to sign a consent form authorizing HRC to contact CDSS/HHSA for the purpose of assisting her with the IHSS appeal process.

E. After initial trepidation, Mother consented to HRC's assistance with the IHSS appeal process. The service coordinator directed Mother's completion of forms and made phone calls to CDSS/HHSA on behalf of Claimant. During the course of the appeal process, HRC extended the period within which it would temporarily fund 32 hours per month of personal assistant services for Claimant to July 7, 2019.

F. On August 20, 2019, CDSS/HHSA awarded Claimant 60.55 IHSS hours per month for domestic and non-medical personal services. The CDSS/HHSA award designated no IHSS hours for Claimant's protective supervision. (See Exhibit 8.)

G. On September 6, 2019, HRC confirmed Mother's intent to appeal the CDSS/HHSA award. At that time, Mother also requested HRC to continue funding personal assistant services for Claimant. Thereafter, HRC convened a September 25, 2019 IPP meeting, at which time it agreed to an additional extension of the period of time within which it would temporarily fund 32 hours per month of personal assistant services for Claimant to November 12, 2019.

4. At the administrative hearing HRC Client Services Manager Patricia Piceno explained because Claimant was “still potentially eligible” for a total of 227 IHSS hours, HRC recommended Mother to file an appeal with CDSS/HHSA. Piceno stated HRC currently “doesn’t know whether Mother has appealed the IHSS hours” and HRC “doesn’t have consent to contact IHSS” as reasons for terminating the HRC-funded 32 hours per month of personal assistant services granted to Claimant pending resolution of the appeal process to CDSS/HHSA for additional IHSS hours to provide Claimant with protective supervision. Piceno accurately maintained HRC purchase of services standards set forth in *Harbor Regional Center Service Policy-General Standards (Service Policy)* preclude HRC from funding personal assistant services for Claimant beyond an interim or temporary period, unless general resources are unavailable.

5. HRC's *Service Policy* provides, in pertinent part, the following:

Services and supports shall be purchased for a client only under the following circumstances: [¶. . . ¶] 4. After public resources which are available to implement and or coordinate the services identified by the Interdisciplinary Team, as well as other sources of funding available to the client, have been used to the fullest extent possible[.]

(Exhibit 10.)

6. At the administrative hearing Mother disclosed she has not commenced any appeal of the CDSS/HHSA award granting Claimant 60.55 IHSS hours per month for domestic and non-medical personal services without any IHSS hours for Claimant’s protective supervision. Mother testified she is not willing to give HRC consent to

contact CDSS/HHSA to request an increase of IHSS hours on behalf of Claimant. Mother offered no explanation for withholding her consent.

7. The preponderance of evidence offered at the administrative hearing establishes public resources to meet Claimant's need for protective supervision have not yet been exhausted.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) regional centers, including HRC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including HRC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including HRC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. To those ends, the Lanterman Act specifically obligates regional centers, including HRC, to purchase services and supports in conformity with purchase of service policies approved by the Department of Developmental Services. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) Regional centers, including HRC, must ensure "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646, subd. (a)(2).) Regional centers, including HRC, must identify and pursue all possible sources of funding for consumers receiving regional center services. Those sources include, but are not limited to, "Governmental or other entities or programs required to provide or

pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.” (Welf. & Inst. Code, § 4659, subd. (a)(1).)

3. It is undisputed Claimant presents with maladaptive behaviors requiring 24-hour supervision to protect him from harm. (See Factual Findings 1 and 3A.) HRC personnel coordinated with Mother to prepare Claimant’s initial application to CDSS/HHSA for IHSS hours, and Claimant was awarded 60.55 IHSS hours. (Factual Finding 3E.) However, CDSS/HHSA specifically designated those 60.55 IHSS hours for Claimant’s domestic and non-medical personal services. CDSS/HHSA designated no IHSS hours for Claimant’s protective supervision. (Factual Finding 3F.) Believing Claimant remains eligible for additional IHSS hours, HRC personnel advised Mother to appeal to CDSS/HHSA for an award of additional IHSS hours for Claimant’s protective supervision. (Factual Finding 4.) Mother expressed her intention to do so (Factual Finding 3G), but a preponderance of the evidence establishes Mother has not in actuality appealed CDSS/HHSA’s award of 60.55 IHSS hours. In addition, Mother has declined HRC’s efforts to play any further role securing delivery of the protective supervision service hours Claimant requires.

4. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatorex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has not met his burden.

5. In the absence of Claimant's cooperation with HRC to appeal the number and designated purposes of the IHSS hours CDSS/HHSA has awarded Claimant, cause does not exist for HRC to continue to fund 32 hours per month of temporary personal assistant services for Claimant by reason of Factual Findings 1 through 7 and Legal Conclusions 1 through 4.

ORDER

1. Claimant's appeal is denied.

2. Harbor Regional Center may cease funding 30 hours per month of personal assistant services for Claimant, unless Claimant commences and exhausts the IHSS appeal process with the California Department of Social Services, Health and Human Agency.

DATE:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.