

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

In the Matter of the Fair Hearing Requests of:

CLAIMANT

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2019121015

OAH No. 2020040920

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard these consolidated matters on August 5, 2020, by videoconference.

Latrina Fannin, Manager of Rights and Quality Assurance, appeared for Harbor Regional Center (HRC or Service Agency). Claimant's mother represented claimant,

who was present briefly.^{1, 2} A qualified Spanish language interpreter, Mariana Rudy, interpreted and translated documents for claimant's mother.

The parties agreed that a single decision should issue to address both consolidated matters. Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 5, 2020.

ISSUES

Must the Service Agency increase claimant's individual budget as a participant in the Self-Determination Program (SDP) in order to allow claimant's mother to coordinate the following increased supports and services:

- a. Personal assistance for 60 hours per week (20 hours for daily living, 20 hours for community integration, 20 hours for vocational support).
- b. Community living support services two times per week for money management and social skills.
- d.³ Adaptive Skills Training (AST) for 20 hours per month for self-management and boundary setting.

¹ Claimant's and family members' names are omitted to protect their privacy.

² Armida Y. Ochoa, Ochoa's Consulting LLC, was designated claimant's authorized representative before the hearing but did not appear.

³ Claimant's mother raised additional issues in her two Fair Hearing Requests. At this hearing, she withdrew and dismissed those issues, including Issue no. 1, sub-issues

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-3, 6-9, 11-13, 15, 16, 18, 23-29; claimant's exhibits A, E, I, and K.

Testimony: Antoinette Perez and Katy Granados; claimant's mother and claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 16-year-old boy, is an eligible consumer of HRC based on his diagnosis of Autism Spectrum Disorder (ASD), according to claimant's most recent Individual Program Plan (IPP),⁴ May 20, 2020.

2. In 2019, claimant's mother requested that HRC increase claimant's overall SDP individual budget in order to increase funding for various specific services.

(c) and (e) through (h), in OAH no. 2019121015; and Issue no. 2, the only issue raised in OAH no. 2020040920 (funding for speech and language services).

⁴ The Lanterman Developmental Disabilities Act (Lanterman Act) requires regional centers to develop a person-centered "individual program plan," or "IPP," for each client. (Welf. & Inst. Code, § 4646; further statutory references are to the Welfare and Institutions Code.) HRC calls its IPP's "Individualized Person-centered Plans."

3. By a decision letter dated December 9, 2019, Katy Granados, HRC Service Coordinator, and Maria Fitzsimons, HRC Client Services Manager, notified claimant's mother that HRC declined to increase the SDP budget.⁵ HRC cited as authority for its decision Lanterman Act sections requiring the utilization of generic services and supports when appropriate. (§§ 4659, subd. (a), 4646.4, subd. (a), 4648.55, subd. (a).)

4. Claimant's mother filed a Fair Hearing Request dated December 23, 2019, in OAH no. 2019121015, and another Fair Hearing Request dated April 30, 2020, in OAH no. 2020040920. The matters were consolidated and this hearing ensued.

Claimant's Services

5. According to claimant's most recent IPP, claimant lives at home with his mother and two younger sisters. He communicates appropriately when given sufficient time to respond to specific questions. He has mastered most daily activities skills, though he requires prompting for chores and schedule management.

6. Through claimant's SDP, HRC funds respite services for claimant through Cambrian Homecare at a rate of 30 hours per month; child care services through Cambrian Homecare at a rate of five hours per month to allow claimant's mother to attend trainings and committee meetings; personal care services through Cambrian Homecare at a rate of 15 hours per week to provide support during the pandemic; and certain translation services.

⁵ By letter dated April 15, 2020, HRC denied claimant's mother's request for increased speech and language services. Claimant's mother withdrew her request at hearing.

7. The approved annual budget for claimant's SDP is \$12,460.05. HRC based that budget on the prior 12 months of regional center expenditures used to purchase services for claimant as set forth in claimant's IPP.

8. Claimant's mother requested that HRC increase claimant's SDP individual budget to \$63,275.

9. Antoinette Perez, Director of Children's Services, oversees HRC's SDP program. She testified that the SDP is an alternative service delivery model that gives participants increased flexibility, choice of service providers, and control. Services must be funded from the individual budget, they must be the type of services funded under the traditional services funding model, and they must be determined in the IPP process. The budget is based on claimant's prior year's services costs. Ms. Perez reviewed the decision letters issued to claimant; she testified she reviews every decision letter her department issues.

10. HRC denied increased funding for claimant's individual budget for personal assistant services, community living support for money management and budgeting, and an AST assessment, based on the existence of potential generic sources of funding for those services, including claimant's school district, insurance-covered ABA services, and claimant's family. Since the pandemic, the school district offers very limited services, but AST can be taught through claimant's ABA program and by claimant's family; these sources must be exhausted before HRC, as payer of last resort, is responsible. The denial letter also asserts that claimant's current budget authorizes social skills training.

11. Katy Granados worked in 2019 as claimant's SDP service coordinator, and is now the client services manager on this case. She wrote the decision letter dated

December 9, 2019, responding to claimant's mother's requests for an increased SDP budget. A planning team determined the individual budget, based on last year's services costs and claimant's needs.

12. Ms. Granados believes the desired services can be provided through ABA and parent support. Teaching household tasks and chores should be provided by claimant's mother, as with any child without a developmental disability. If claimant has personal care needs, IHSS would be an appropriate generic source of funding. Claimant's doctor will not complete the IHSS application, as he does not believe claimant needs the service. But claimant's ABA program and school district are available funding sources for the requested services.

13. Although a February 2020 Nursing Assessment (ex. 11) reflects mother's report that claimant cannot be left alone because he places himself in danger, claimant's mother has never told Ms. Granados of an instance of claimant harming himself. An IHSS care needs assessment conducted to determine claimant's personal care needs in the home concluded that claimant does not need more care than does a peer without a developmental disability. (Ex. 12.)

14. Ms. Granados testified that claimant can learn independence skills at home and in the community. Claimant's ABA provider recommended an increase in hours to address claimant's community integration and money management skills, and his social skills. HRC approved an amount for social skills in claimant's individual budget that is equivalent to the cost of a traditional social skills program. AST is usually offered as part of an ABA program, and is not funded independently. The skills necessary for claimant to achieve his Adaptive and Community Skills goals can be taught through claimant's current ABA program.

15. Although schools are closed due to the pandemic, school districts are still responsible for providing services reflected in the Individualized Education Plan (IEP). Claimant's service coordinator, and HRC's consulting attorney, will support claimant's family in navigating and accessing services through the school district. Ms. Granados testified that HRC's role is to assist the family in navigating these supports "and knocking on all doors." Though HRC has repeatedly offered these advocacy and consulting services, claimant's mother has only once asked Ms. Granados to participate in claimant's IEP process.

16. Claimant's mother testified that adaptive skills and community integration skills require a much higher budget than HRC is willing to provide, especially since schools are not facilitating a lot of these services so they must be obtained elsewhere at greater cost. She cited a budget from an independent evaluator that supports her own budget request of over \$60,000. (Ex. 9.) The record lacks sufficient evidence concerning the evaluator and the basis for the estimates in the budget to adequately support claimant's request.

17. Claimant's mother conceded that claimant's school district has not denied any services for claimant, but argued that he cannot access the one-to-one assistant the district provides to help him with social skills, except online. Despite her concerns, claimant's mother agreed at hearing to consent to a service coordination team to advocate on behalf of claimant to obtain the school services that claimant needs.

18. Claimant testified that it is very important to him to have friends and to have a girlfriend, but he has been struggling with his social abilities. He does not socialize a lot at school. He would like to live on his own when he goes to college.

DISCUSSION

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of his request for increases to claimant’s SDP individual budget. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, he bears the burden of proving he is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

The Lanterman Act

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client’s developmental needs and the effectiveness of the services selected to assist the

consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or other "generic resource." Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a client's IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

6. The Lanterman Act provides for an alternative model for funding services and supports, the SDP model. Participants in the SDP model "shall utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available." (§ 4685.8, subd. (d)(3)(B).) "[T]he IPP team shall determine the initial and any revised individual budget," which "shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant." (§ 4685.8, subd. (n)(A)(i).) "An adjustment may be made to the amount if . . . [t]he IPP team determines that an adjustment to this amount is necessary

due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures." (§ 4685.8, subd. (n)(A)(ii)(I).)

Services for Claimant

7. The Lanterman Act defines "services and supports" to include AST, personal assistance, and community integration services. (§ 4512, subd. (b).)

8. The Service Agency denied funding based on portions of the Lanterman Act requiring the utilization of generic services and supports when appropriate (§§ 4659, subd. (a), 4646.4, subd. (a), 4648.55, subd. (a).) (Factual Finding 3.)

9. Claimant did not establish that HRC must increase his SDP individual budget. The Service Agency based its decision on the cost of services for claimant last year and on the fact that claimant's mother has not yet fully pursued generic sources of funding. HRC's position is consistent with the Lanterman Act, at least until such time as generic sources of funding are exhausted or circumstances change, as reflected in a new IPP.

LEGAL CONCLUSION

The evidence did not establish that the Service Agency is required under the Lanterman Act to increase claimant's SDP individual budget.

ORDER

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN

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.