

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2020120527

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 22 and 23, 2021.¹

Claimant was represented by his mother (Mother).²

¹ The above-entitled matter was heard simultaneously with claimant's two other matters designated as OAH Nos. 2020120529 (assistive technology) and 2020120531 (additional ABA hours). Separate decisions are being issued for those two matters.

² Claimant and his family members are identified by titles to protect their privacy.

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on February 24, 2021.

During her subsequent review of the documentary evidence, the ALJ noted Service Agency's exhibits included an incomplete copy of claimant's individual program plan (IPP), which was admitted as Exhibit 21. On March 4, 2021, the ALJ issued an order reopening the record for Service Agency to file and serve a complete copy of the IPP by March 9, 2021, and for Mother to file a written response, if any, by March 11, 2021. Service Agency filed a complete copy of the IPP, which was marked and admitted as Exhibit 26. The ALJ's order reopening the record was marked and admitted as Exhibit 27.

The record closed and the matter was re-submitted on March 11, 2021.

ISSUE

Should Service Agency be required to fund homemaker and house cleaning services for claimant?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-27; claimant's exhibits A-I, K-P, R.

Testimonial: Rosa Chavez, SGPRC Associate Director of Family and Transition Services; Hortencia Tafoya, SGPRC Federal Program Specialist; Monica Romero, SGPRC Manager of Family Services; Nancy Ojeda, SGPRC Service Coordinator; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a three-year-old boy who is eligible for regional center services based on his diagnosis of Autism Spectrum Disorder.

2. By a letter dated November 18, 2020, and a Notice of Proposed Action (NOPA) dated November 17, 2020, Service Agency notified Mother of its decision to deny her request for homemaker and house cleaning services. Service Agency denied the request because the care and supervision of minor children is a parental responsibility and an obligation that all parents retain, regardless of whether or not their child has a developmental disability. The letter and NOPA cited Welfare and Institutions Code section 4646.4, subdivision (a), as legal authority for the denial.

3. On December 3, 2020, Mother filed a fair hearing request to appeal Service Agency's denial of her request for homemaker and house cleaning services. Mother claims she is unable to manage the family home due to the parental assistance required for claimant to attend his 40 hours per week of services. Mother also claims homemaker services are available to claimant under the Home and Community-Based Services (HCBS) Waiver program (discussed below).

Claimant's Background

4. Claimant lives at home with Mother, his father, two brothers (ages 14 and 15), and his sister (age 5.) Claimant's father works outside the home. Mother is the primary care giver for claimant and his siblings.

5. Prior to age three, claimant received early intervention services from Service Agency under the Early Start program. Claimant turned three years old on June 24, 2020. A planning team meeting to develop claimant's initial IPP under the Lanterman Act was held on September 28, 2020. Mother signed the IPP in February 2021.

6. Pursuant to claimant's IPP, Service Agency provides 64 hours per month of LVN respite, plus a one-time set of 20 hours per a fair hearing decision. Claimant qualifies for LVN respite because he has a prescribed Epi-Pen. The IPP states Mother "has not been able to access respite due to the pandemic." (Exh. 26, p. 16.) The IPP states: "[Claimant] is participating in over 40 hours per week of therapies that require parent participation which impacts parental daily obligations. [Claimant] needs constant supervision daily to ensure his safety and wellbeing. [Mother] is the primary caretaker and parent who ensures participation and access to therapies." (*Id.*, p. 17.)

7. Mother testified claimant has been approved for In-Home Supportive Services (IHSS) of 109 hours per month for protective supervision. Mother is claimant's IHSS provider.

HCBS Waiver

8. The HCBS Waiver is provided under Medicaid. Medicaid (known in California as Medi-Cal) is a jointly-funded, federal-state health insurance program for

eligible persons with limited income and resources. The HCBS Waiver Primer and Policy Manual (Manual) issued by the California Department of Developmental Services explains the HCBS Waiver administered in California for persons with developmental disabilities.

9. Through the HCBS Waiver, certain federal Medicaid rules are “waived.” (Exh. 3, p. 013.) The Manual explains: “States have great flexibility in the way they implement their HCBS Waivers. . . . In California, the HCBS Waiver provides funding for services and supports provided through regional centers.” (Exh. 3, p. 013-014.) The HCBS Waiver program may reimburse regional centers up to 50 percent of eligible services. Services that are billable to the HCBS Waiver program include homemaker (service code 858), homemaker service (service code 860), and “chore service.” (Exh. D; Exh. 3, p. 083.) Since the HCBS Waiver only “waives” federal Medicaid requirements, regional center consumers who qualify for the HCBS Waiver must still meet the Lanterman Act requirements for the particular service.

Mother’s Service Request

10. In November 2020, Mother requested Service Agency add homemaker (service code 858) and homemaker service (service code 860) to claimant’s IPP. Mother claims the services are necessary to meet claimant’s need for a home environment that is maintained in a clean and safe condition. Mother claims claimant’s 40 hours per week of therapy services, and the level of supervision he requires, “highly impacts” her ability to maintain the family home. Mother feels claimant, due to his disability, requires a greater level of supervision than a typical child. Mother is unable to keep up with household chores. Mother claims her health has been negatively impacted. She suffers from high blood pressure, migraine headaches, and chronic depression, and has no time or energy to care for herself.

11. Mother also contends Service Agency should provide homemaker and house cleaning services pursuant to the HCBS Waiver program. Claimant was approved for a HCBS Waiver as of October 1, 2020. (Exh. C.) Mother points out homemaker (service code 858), homemaker service (service code 860), and chore service are billable services under the HCBS Waiver program. (Exh. D; Exh. 3, p. 083.) Although certain services are designated for persons who are adults, Mother notes there is no age requirement for homemaker services under the HCBS Waiver program. (See Exh. D.)

SGPRC's Denial of Service Request

12. Service Agency's Purchase of Service (POS) Policy does not authorize the purchase of homemaker or house cleaning services for claimant. Service Agency is required to purchase services in conformance with its POS Policy, which sets forth the requirements for 21 categories of services. The POS Policy does not include a specific policy for homemaker or house cleaning services. However, the POS Policy authorizes homemaker and cleaning services as components of supported living services and independent living services. Claimant does not meet the age requirements for supported living services or independent living services.

13. Supported living services are designed to assist consumers who are at least age 18 to live independently in their own homes. (Cal. Code Regs., tit. 17, §§ 58613, 58614.) The POS Policy states: "The intent of supported living services is to provide opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed." (Exh. 25, p. 33.) The range of supported living services include "maintaining a home for the individual," and instruction and training in skills such as "cleaning." (*Id.*)

14. Independent living services are defined in the POS Policy as “a curriculum-based training service designed to provide instruction to develop and/or maintain functional skills necessary to increase independence within the family home and/or in the community. . . . All service participants must be at least 18 years of age.” (Exh. 25, p. 14.) Independent living services may include training in various areas, including “Cleaning.” (Exh. 25, p. 14; Cal. Code Regs., tit. 17, § 56742, subd. (b)(3)(A).)

15. When determining a child’s services and support needs, Service Agency must take into consideration “the family’s responsibility for providing similar services and supports for a minor child without disabilities.” (Welf. & Inst. Code, § 4646.4, subd. (a)(4).) Service Agency contends homemaker and house cleaning services are the family’s responsibility even for children without disabilities. As such, Service Agency is not authorized to purchase homemaker and house cleaning services for claimant.

16. Service Agency contends the HCBS Waiver Program does not authorize the purchase of homemaker and house cleaning services for claimant. The testimonies of Service Agency’s witnesses established that for all consumers, regardless of whether they qualify for a HCBS Waiver, Service Agency follows the Lanterman Act and its POS Policy when making decisions on whether or not to authorize the purchase of services. In claimant’s case, the Lanterman Act and the POS Policy do not authorize the purchase of homemaker or house cleaning services.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant, through Mother, timely requested a fair hearing and, therefore, jurisdiction for this case was established. (Factual Findings 1-3.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, claimant requests homemaker and house cleaning services that Service Agency has not previously agreed to provide. Therefore, claimant has the burden of proving by a preponderance of the evidence that he is entitled to the requested services and funding. (See Evid. Code, § 500.)

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of the needs and preferences of the

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The services and supports that may be listed in an IPP include "homemaker services." (*Ibid.*)

4. Pursuant to section 4646.4, subdivision (a), when purchasing services and supports for a consumer, a regional center shall ensure 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.

5. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

6. Pursuant to section 4659, regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, including Medi-Cal. (§ 4659, subd. (a)(1).)

Analysis

7. Service Agency properly denied Mother's request for homemaker and house cleaning services pursuant to section 4646.4, based on Factual Findings 4-9 and 12-16. The requested services are considered a parental responsibility and are also not authorized under SGPRC's POS Policy. Mother requested the homemaker and house cleaning services because she is feeling overwhelmed and exhausted from her responsibilities assisting claimant with his 40 hours per week of therapy services, and she is unable to keep up with maintaining the home. Service Agency has authorized respite for claimant, which is the appropriate service to address Mother's need for rest. The primary goal of respite is to provide care to a consumer that is ordinarily provided by the consumer's family, thereby relieving the family from that duty so the family may absent themselves and be free to rest or do other things. (See § 4690.2, subd. (a).) Additionally, claimant has IHSS hours that, when used to pay for another care provider, can relieve Mother from the constant responsibility of providing care for claimant. Mother has chosen to serve as claimant's IHSS provider.

8. Claimant's qualification for a HCBS Waiver does not provide authorization for Service Agency to fund homemaker and house cleaning services for him. The HCBS Waiver provides a source of funding (reimbursement) for eligible services. The HCBS Waiver is not a waiver of the requirements of Lanterman Act and regulations. Homemaker and house cleaning services must be authorized for a consumer under Lanterman Act and regulations, which they are not for claimant.

ORDER

Claimant's appeal is denied. Service Agency is not required to fund homemaker and house cleaning services for claimant.

DATE:

ERLINDA G. SHRENGER
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.