

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

In the Matter of:

CLAIMANT

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Nos. 2021120573 and 2021120576

DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on March 24, 2022. Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or Service Agency). Claimant was represented by his parents. (The names of Claimant and his family members are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on March 24, 2022.

ISSUES

1. Should HRC be required to fund Claimant's compounded medications (Clonidine and N-Acetylcysteine) and his supplements (magnesium and Omega-3)? (No request for funding N-Acetylcysteine is contained in the Notice of Proposed Action or the Fair Hearing Request, but the parties stipulated this is one of the compounded medications for which Claimant seeks Service Agency funding.)
2. Should HRC be required to fund behavioral respite for Claimant?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 - 13, and Claimant's exhibits A - P. The testimonial evidence considered in this case was that of: HRC Client Services Manager, Jessica Eich; HRC Consulting Physician, Ahoo Sahba, M.D.; and Claimant's mother.

FACTUAL FINDINGS

Background

1. Claimant is a 14-year-old male client of HRC. He qualifies for regional center services under diagnoses of Severe Intellectual Disability (ID) and Autism Spectrum Disorder (ASD).
2. Claimant currently lives with his parents and siblings, ages six and four.

3. As of November 2021, Claimant was five feet, four inches tall, and he weighed 122 pounds.

4. Claimant has deficient speech ability and difficulty communicating with others. He lacks sufficient safety awareness at home and in the community, and he requires constant supervision. Claimant also has difficulty in falling and staying asleep at night. When he wakes up at night, he may engage in behavior posing a safety risk. Consequently, he requires supervision throughout the night.

5. Claimant engages in maladaptive behaviors including aggression. When he becomes aggressive toward his younger siblings, he will occasionally hit them. Claimant's parents must provide constant support and supervision to ensure the safety of Claimant's siblings.

6. Claimant's school district currently funds his behavioral intervention services, provided by Behavior and Education, Inc.

7. The Service Agency is currently funding 105 hours per quarter of respite services through Cambrian Home Care (Cambrian) and 10 hours per week of personal assistance services.

8. Claimant has private health insurance coverage as well as Medi-Cal insurance as secondary coverage.

9. Through Medi-Cal insurance coverage, Claimant receives 262 hours per month of In-Home Supportive Services (IHSS). Mother is currently the IHSS worker who provides support and supervision for Claimant, particularly at night, to ensure his safety.

//

10. Claimant's most recent Individual Program Plan (IPP) meeting took place in November 2021. During the IPP meeting Claimant's behavioral issues and supports were discussed and documented as follows:

During the IPP meeting, it was discussed that [Claimant] continues to engage in maladaptive behaviors. While no tantrum behaviors were displayed during the IPP meeting, it was discussed that [Claimant] often becomes upset and will engage in aggressive behaviors. Aggressive behaviors will consist of [Claimant] kicking and punching others; this behavior will often occur towards his siblings. Additionally, [Claimant] has a history of wandering behaviors. Wandering behaviors vary from escaping a task to leaving a specific setting. Per parent report, [Claimant] will engage in self-stimulatory behaviors. . . . Vocal tics are not necessarily considered as self-stimulatory behavior as he has no control over the vocal tics. When engaging in these behaviors, [Claimant] may also become non-compliant. Parents express concerns regarding these behaviors as it causes safety concerns regarding [Claimant] and those around him. [Claimant] has been approved to receive [Applied Behavioral Analysis (ABA)] services through Behavior and Education Inc. (BAE). Per ABA report, BAE has identified problem behaviors to include: vocal outbursts, vocal stereotypy, self-injurious behaviors, aggression, elopement and spitting. Per ABA report, aggressive behaviors are currently on maintenance. ABA report provides information

on antecedents and an intervention plan. BAE has recommended 15 hours per week of ABA direct support to make progress toward medically necessary goals. However, due to family's schedule and inconsistent availability, ABA services are currently on hold. Parents are aware that if they would like to access ABA services again, they would be placed on a wait list. BAE has approved parent training supports in the interim starting 12/1/2021 to address maladaptive and wandering behaviors.

(Exhibit 5, p. A23.)

11. At the November 2021 IPP meeting, Claimant's mother asked about Service Agency funding of behavioral respite services due to Claimant's maladaptive behaviors, particularly his aggression, and his growing size compared to his current service worker. Claimant's mother reported the current respite worker has worked with Claimant for a long time, but she is a smaller woman and has a hard time getting Claimant out of bed. She is concerned that if Claimant engages in aggressive behavior, the respite worker would not be able to redirect him. The November 2021 IPP noted the following:

Team also discussed respite services. Mother is aware that respite services are intended to provide parents with a break from the constant support and supervision that they provide for [Claimant]. Mother expressed satisfaction with the service, service provider and respite worker. However, Mother has expressed concerns regarding respite services meeting [Claimant's] behavioral needs. Mother has

requested for [Claimant] to access behavioral respite services instead of traditional respite services. Team gathered necessary information (including generic services and supports that are currently in place) and assessed for the service. Based on [Claimant's] current needs, behavioral respite services have not been determined to be necessary at this time.

(Exhibit 5, p. A18.)

12. At the November 2021 IPP meeting, Claimant's mother asked about Service Agency funding of medications to address his vocal-tic disorder and nutritional supplements. The November 2021 IPP noted the following:

As previously reported, [Claimant] began developing a vocal-tic disorder in 2020. His vocal-tic's frequency continues to increase. In 2021, [Claimant] was diagnosed with Tourette[s] Syndrome. The medication, clonidine, was prescribed due to Tourette[s] Syndrome. During the IPP meeting, [Claimant] was observed engaging in vocal-tics throughout the meeting. Mother requested for HRC to provide funding for [Claimant's] vitamins/supplements/medication. Due to vitamins/supplements/medication not being tied to [Claimant's] HRC eligible diagnosis, HRC denied funding. . . . Mother was also informed of the option to consult with HRC's Physician regarding this decision and to gather any other information that may be helpful for the family. HRC

also discussed the option of consulting with [Claimant's] doctor to discuss alternative, most cost-effective methods to obtain medication. [Claimant] is described to be a picky eater. He has preferred meals. Mother previously consulted with Nutritionist to begin expanding [Claimant's] diet.

(Exhibit 5, p. A21.)

13. On November 17, 2021, the Service Agency contacted Cambrian, Claimant's respite service agency, to inquire whether Claimant's respite worker had reported Claimant engaging in "behaviors that have been challenging for her to work with him." (Exhibit 6, p. A32.) Although respite workers are supposed to report behaviors of concern to Cambrian, Claimant's respite worker had not done so.

Notice of Proposed Action and Request for Hearing

14. On November 18, 2021, the Service Agency sent Claimant a letter serving as its Notice of Proposed Action (NOPA) denying the requests for funding of behavioral respite services and medications and supplements. Claimant's mother filed a Fair Hearing Request to contest the denials.

15. In its NOPA, the Service Agency reiterated its basis for denial of funding for medications and supplements, noting its purchase of service policies required the medications be tied to Claimant's regional center eligible diagnosis. The Service Agency also reiterated its basis for denial of funding behavioral respite, asserting the service was unnecessary based on Claimant's current needs. Instead, to address Claimant's maladaptive behaviors the Service Agency offered "to assist [Claimant] with re-accessing ABA services through [his] Private Health Insurance to assist with meeting [his] behavioral needs." (Exhibits 4 and A.)

Request for Funding of Medications and Supplements

16. Despite the denial of funding for medications/supplements due to their lack of relationship to Claimant's eligible diagnosis, the Service Agency sought to assist Claimant in obtaining generic funding for the medications/supplements. Service Agency personnel noted liquid compounded Clonidine was not covered by Claimant's medical insurance but explored whether different forms (either crushed pill or patch) would be covered.

17. In January 2022, Claimant's mother provided the Service Agency with a January 18, 2022 letter from Rishikesh Malla, M.D., Claimant's pediatric neurologist, supporting the funding of the requested medications under Claimant's ASD diagnosis. The letter stated:

This is to state that I have prescribed the following medications and supplement under [Claimant's] autism spectrum disorder.

1. N-Acetyl Cysteine
2. Oxcarbazepine (compound)
3. Clonidine (compound)

[Claimant] cannot swallow pills so these prescriptions must be completed in the form of a liquid. If given in pill format it could potentially pose a choking hazard. Ideally, [Claimant] could take pills that were crushed and mixed with food or chewed tablets. However, due to the symptoms of his Autism diagnosis (in particular a hyper-sensitivity for food

textures), [Claimant] has exhibited that he will spit such food out. Therefore, all medications and supplements should be administered in a compounded liquid form.

(Exhibit 8, p. A43.)

18. In a March 15, 2022 letter, Dr. Malla provided more detail regarding the basis for the prescriptions, including the diagnosis they are intended to address and why he initially indicated he prescribed them under the ASD diagnosis. Dr. Malla specified:

[Claimant] has been under my care since December 2020.

[Claimant] has multiple disorders and they include:

1. Mixed receptive-expressive language disorder (F80.2: Mixed receptive-expressive language disorder)
2. Neurodevelopmental disorder/Autism Spectrum Disorder (F89: Unspecified disorder of psychological development)
3. Developmental disorder of motor function (F82: Specific developmental disorder of motor function)
4. Dyspraxia (R27.8: Other lack of coordination)
5. Anxiety disorder (F41.9: Anxiety disorder, unspecified)
6. Nutritional disorder (E63.9: Nutritional deficiency, unspecified)

7. Attention deficit hyperactivity disorder (F90.9: Attention-deficit hyperactivity disorder, unspecified type)

8. Gilles de la Tourette's syndrome (F95.2: Tourette's disorder)

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), individuals with the Autism Spectrum Disorder (ASD) exhibit the following characteristics: Social Communication Impairments, Speech/Language Impairments, Restricted Repetitive and Stereotyped Patterns of Behaviors, Interests, and Activities, and Executive Function Impairments. While the causes for ASD are still unknown, it is apparent that ASD is often comorbid with other disorders. Furthermore, the recent study of "Tic Phenomenology and Tic Awareness in Adults with Autism" (U.Khal, 2015) discovered a similar pattern of . . . tic distribution in both Gilles de la Tourette's syndrome (GTS) and ASD. When a patient with ASD seeks my medical treatment, I evaluate all of the comorbidities of ASD that a patient may have and provide an individualized treatment plan accordingly.

Due to GTS, [Claimant] engages in highly frequent vocal tics (yelling-like sounds) throughout the day and it prevents [Claimant] from participating in any social events (others find it very disturbing), limiting his ability to work on various skills (when [Claimant] experiences moments of

severe tic reactions, he is not capable of paying attention to given tasks). In my professional opinion, [Claimant's] GTS has exacerbated [his] ASD symptoms, leading to more isolation from the community and significant regression in many aspects of his skill sets. [Claimant] needed immediate medical intervention to address his GTS in order for him to maximize the benefits of the ASD therapies.

I prescribed the compound Clonidine to reduce his GTS symptoms in February 2021. While [Claimant] demonstrated a reduction of GTS symptoms for the first few months, his GTS symptoms persisted. I recommended supplementing his treatment with N-Acetylcysteine, a safe and effective treatment for GTS in April 2021. The rationale of recommending N-Acetylcysteine is that other medications, which may be considered for GTS, were not the best treatment for [Claimant]. . . . The study of "Use of N-Acetylcysteine in Psychiatric Conditions among Children and Adolescents: A Scoping Review" (Naveed S, 2017) demonstrates the effectiveness of N-Acetylcysteine for individuals with GTS.

Currently, there are no standardized medications to treat ASD. One of the only FDA approved medications for ASD related behaviors is Aripiprazole but even Aripiprazole is approved to treat patients for irritability, one of the ASD's comorbid conditions and not ASD itself. For [Claimant],

Clonidine and N-Acetylcysteine have been very effective in reducing GTS symptoms. Due to these medications and supplements, [Claimant] is able to make progress in therapy and work through the challenges of his many neurological deficits, stemming from ASD. That is the main reason that I prescribed them under the ASD diagnosis in January 2022.

(Ex. I, pp. B31-B32.)

19. It is clear from Dr. Malla's March 2022 letter he prescribed the Clonidine and N-Acetylcysteine to address tics caused by Claimant's co-morbid GTS diagnosis. Dr. Malla specifically notes that there are no standardized medications to treat ASD. Although reduction of Claimant's GTS symptoms also helps him work through his ASD challenges, the medications prescribed by Dr. Malla are not medications prescribed to treat Claimant's regional center eligible diagnosis of ASD.

20. On March 16, 2022, Meaghan O'Dea Johnson, a Pediatric Nurse Practitioner and Dietitian submitted a letter explaining her recommendation of supplements for Claimant. Nurse Johnson specifically stated:

[I] have had the pleasure of meeting with [Claimant] and his mother to discuss his nutritional needs and provide a customized nutrition program specifically for [Claimant.]

Based on my assessment, [Claimant] has been facing extreme challenges with a balanced diet due to his disorders which include Autism Spectrum Disorder (F84.0), Anxiety Disorder (F41.9), Nutritional Disorder (E63.9), and Sensory Integration Disorder (R44.8). [Claimant's] limited

diet may be the cause of his irritability, anxiety, aggression, and de-regulation of his emotions.

To target some of his arousal and dietary needs, I am recommending the following supplements:

1. Omega-3: Nordic Naturals Pro Omega: Take 1 teaspoon once per day
2. Mary Ruth's Liquid Morning Multivitamin: Take 2 teaspoons once per day
3. Magnesium gummies: Nature's Vitality CALM: Take 2 gummies twice per day

(Exhibit L.)

21. Nurse Johnson's letter does not specify the recommended supplements were solely to address Claimant's ASD. Moreover, as Dr. Malla pointed out, there are no medications to treat ASD. Although Claimant's unbalanced diet may cause symptoms such as irritability, anxiety, and aggression that may magnify his ASD challenges, the supplements recommended by Nurse Johnson are not treatments for ASD, Claimant's regional center eligible diagnosis.

22. At the fair hearing, the Service Agency maintained its denial of funding was appropriate because the compounded medications and supplements do not directly address Claimant's regional center eligible diagnosis. To support its funding denial, the Service Agency pointed to HRC's published Service Policy, including its policies regarding the purchase of medical services and the purchase of non-durable equipment and supplies, which includes nutritional supplements.

23. The HRC Service Policy pertaining to medical services specifies:

[HRC] may purchase medical and dental services for either minor or adult clients if both of the following criteria are met:

[T]he needed treatment is directly associated with, or has resulted from, a developmental disability; and [t]he client has been denied or is not eligible for Medi-Cal, California Children's Services, private insurance or another third party payer coverage.

[T]he service is not experimental and has been clinically determined or scientifically proven to be effective and safe.

(Exhibit 11.)

24. The HRC Service Policy for the purchase of non-durable equipment and supplies specifies:

[HRC] may purchase durable or non-durable equipment or supplies for adult or minor clients only if all of the following criteria are met:

1. a [HRC] specialist has reviewed the request and has indicated that the specific supplies or equipment to be purchased would enable the client to live a more independent and productive life at home or in the community, and

2. the need for the specific supplies or equipment is associated with, or has resulted from, a developmental disability; and
3. the purchase of formula, nutritional supplements or diapers is for a client who is 3 years of age or older, unless the family can demonstrate a financial need and unless there is indication that the purchase is necessary to enable the client to remain in the family home; and
4. any equipment to be purchased is not intended to become a permanent fixture; and
5. the purchase is not for construction, modification or alteration of real or personal property to accommodate equipment; and
6. the supplies or equipment to be purchased have been denied by, or the client is not eligible for, California Children's Services, Medi-Cal, private insurance or any other third party payer.

(Exhibit 12.)

25. HRC consulting physician and board-certified pediatrician, Ahoo Sahba, M.D., testified at the fair hearing. Dr. Sahba previously spoke to HRC staff and to Dr. Malla, and she reviewed the evidence in this case. Dr. Sahba credibly opined the Service Agency should not provide funding for compounded Clonidine and N-Acetylcysteine, prescribed for Claimant's co-morbid GTS and not his ASD, nor should

the Service Agency provide funding for N-Omega-3 and magnesium supplements to address his dietary deficiencies. Dr. Sahba credibly noted none of these medications/supplements are evidence-based treatments for patients with ASD.

26. At the fair hearing, Claimant's parents insisted the medications and supplements are necessary for Claimant "to continue to improve his various skills and to benefit from other [ASD] related treatments and therapies, leading him into a more independent, purposeful, and integrated life." (Exhibit P.) Claimant's mother testified that, after regional center eligibility is established, clients "do not need a developmental disability diagnosis to apply for services and supports." In asserting that services should not be tied to a regional center diagnosis, Claimant's parents cited Welfare and Institutions Code section 4512, subdivision (b). That statute defines "services and supports for persons with developmental disabilities" as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives." (*Ibid.*) Claimant's parents argued that a regional center client should "seek service[s] and support that would help his/her more independent, more productive, and normal life. Such service and support should be considered as long as they are proven to help individuals with [a] developmental disability to gain the greater sense of independence, but not need to be narrowly defined as products only for certain disability or disorders." (*Ibid.*) This argument is not persuasive. If services are not tailored to clients' needs arising from their regional center diagnoses, regional center funding would be limitless, which is not the intent of the Lanterman Act. (See Legal Conclusions, below.)

Request for Funding of Behavioral Respite

27. Claimant's behavioral issues are causing greater concern with his increasing size. On March 15, 2022, Claimant's respite worker signed and submitted a statement documenting her increasing struggles with Claimant's maladaptive behaviors. Her statement specified:

I have been working with Cambrian as a respite worker for 9 years. During this time, I know how important parents of my clients need [a] break so I always work with families even when my clients show difficult behaviors. I do not call in to report to Cambrian about my clients' behaviors or problems. Instead, I [would] rather openly talk to their parents about my concerns first.

I have been giving [Claimant] respite service for the past four years since [Claimant] was 10 years old. I provide an average 6-8 hours of respite service per week.

As [Claimant is] getting older, [he] is getting physically stronger. Currently, [Claimant] is 9 inches taller than me. In the past, I was able to physically direct [Claimant] when [he] showed maladaptive behaviors. However, I can't physically direct [Claimant] any longer since [he is] much stronger and bigger than me.

Recently, I find that [Claimant] does not respond to my verbal requests when his parents are not home. I raised

concerns that his maladaptive behaviors may impact his safety.

Examples are:

I can't efficiently direct [Claimant] when he's engaged with self-injurious behaviors such as hitting a wall or table with his elbow, and landing on his knees with a high impact jump.

I can't prevent [Claimant] from doing PICA (putting non-food items in his mouth). When [Claimant] engages in PICA, I ask [Claimant] to spit out non-food items but [Claimant] does not follow my request and continues to engage in PICA. Some non-food items are rubber hair bands (meant to be for his younger sister) and putty, which are items that can cause choking problems.

I can't take [Claimant] out of a bathtub even when he's been in the tub for several hours until his skin gets swollen due to being in the water too long.

I can't take [Claimant] to the kitchen when it's mealtime. [Claimant] may be left hungry and irritated unless I bring food and feed him in his room.

[Claimant] doesn't follow my verbal instructions on tasks that he finds undesirable.

If I attempt to physically guide [Claimant], he refuses my physical contact by pushing me away. I do not feel comfortable continuing to provide physical support at that point.

(Exhibit B.)

28. Claimant also demonstrates maladaptive behaviors in the community which require the response of trained staff. On March 1, 2022, Claimant's mother took him to the dentist for a dental appointment. Since Claimant cannot sit through dental procedures, he must be sedated. On March 1, 2022, the anesthesia was to be administered by Katsuko Matsui, D.D.S., a dental anesthesiologist specializing in dental care for individuals with disabilities including people with autism. Claimant's mother provided the following written account of the visit, signed by Dr. Matsui to confirm its accuracy:

[Claimant] was extremely anxious as soon as he walked into the dental office. His mother verbally reminded [Claimant] that he needed to sit on the dental chair. . . . [Claimant] resisted walking into the [office] further and tried to leave the room. Dr. Matsui, a male nurse, and his mother tried to physically restrain him from eloping but his physical resistance was too strong; if they continued to force [Claimant] physically, it would have hurt them. Even three adults could not physically bring [Claimant] to the dental chair.

As an alternative, [Claimant] was asked to go back to the car. He returned to the car and sat in the passenger seat. Dr. Matsui told his mother that she would give him a sedative shot (Ketamine Versed) on his shoulder while he was sitting in the passenger seat. In order to do so, she asked mother to restrain his hands from hitting Dr. Matsui. Mom was physically unable to do so because [Claimant] was too strong. A male nurse and an office staff helped mom to push his hands down and Dr. Matsui gave him a shot on his shoulder. A few minutes later, [Claimant] was sedated and three adults . . . took him to the dental [office to complete] the dental procedures.

After the procedure was completed, Dr. Matsui advised [Claimant's] mother to bring another adult for the next visit. She also advised the mother that [Claimant] needed intensive behavioral intervention at all times. She further explained that [Claimant] is physically very strong and will only grow stronger. [Claimant] needs to be behaviorally trained so that even under the stressful conditions, [he] can follow instructions. If he were well trained behaviorally, tranquilizing him could have been avoided, leading to a better and more safe outcome for [Claimant] and others around him.

(Exhibit G.)

//

29. On March 16, 2022, Sarah Aguirre, a board certified behavior analyst (BCBA) and the Program Director for BAE, submitted a letter to the Service Agency explaining the status of Claimant's in-home behavior intervention services and recommending behavioral intervention training for all of Claimant's service providers. The letter specified:

[Claimant's] mom requested a letter indicating the services that are currently being provided by BAE and the level of training and coordination needed to help [Claimant] to be safe and as independent as he is able. As the Program Director and a BCBA at BAE, I am responsible for designing and directly overseeing the customized treatment program for [Claimant] based on the principles of Applied Behavior Analysis. Current BAE services provided include: 30 hours per week of 1:1 (one therapist to one client ratio) at school and . . . authorization for an additional 30 hours per week of home treatment [and] 15 hours per month of supervision that includes at school and supervision that includes parent education at home.

Parents are receiving 6 hours per month of parent education/consultation services. Unfortunately, at this time, BAE is unable to provide home services due to a staffing crisis related to COVID19, and [Claimant] is on the waitlist. The recommended hours of 30 per week also would require Sat[urday] and Sunday services which BAE is unable to provide at this time.

The long-term outcome of behavioral treatment is for [Claimant] to generalize his skills regardless of which situation he is in and with whom he interacts. It is the hope that the ABA intervention that is recommended will be generalized across providers to both proactively and reactively respond to [Claimant] in all settings. It is important that a mediator analysis be conducted for all people working with [Claimant] to ensure they are able to safely provide both reactive and proactive intervention strategies that are being recommended. It is important that the people working with [Claimant] have the skills necessary to keep [Claimant] safe in the event of dangerous behavior. It is important that collaboration with all service providers regarding [Claimant's] needs are coordinated across caregivers and settings.

(Exhibit C.)

30. HRC Client Services Manager, Jessica Eich, testified at the fair hearing. She revealed that, in addition to speaking to Cambrian personnel on November 17, 2021, she also spoke to Cambrian Managing Director, Paul Quiroz, on March 22, 2022. He confirmed staff should report behavioral concerns to Cambrian, and Claimant's respite worker did not report any concerns. Ms. Eich learned that Cambrian employs staff who may have behavioral intervention training and that Cambrian could provide Claimant's current respite worker with extra training to address Claimant's needs. Ms. Eich acknowledged that behavioral respite agencies such as Behavior Respite in Action (BRIA) employ individuals specially trained in ABA behavioral intervention who work in

collaboration with a client's ABA program to ensure continuity with the in-home ABA and service provided during respite hours.

31. In asserting the need for Service Agency funding of behavioral respite services, Claimant's mother maintained he requires behavioral intervention at all times in order to generalize his skills and behaviors, and his current respite worker is incapable of redirecting his maladaptive behaviors in order to provide that continuity. She noted Claimant's support team (including the BCBA and Program Director for Claimant's school ABA program) agrees that anyone working closely with Claimant must be ABA trained, including his respite worker. When Claimant's mother spoke to Cambrian, they suggested that she train the current respite worker by showing her the ABA techniques Claimant's parents had learned. Claimant's mother insists Claimant needs staff who are trained and knowledgeable in behavioral intervention techniques, and that a respite agency such as BRIA will better meet Claimant's needs with a fully trained staff and ongoing supervision to ensure consistency in the implementation of Claimant's behavioral intervention plan. This becomes more urgent given that Claimant does not yet have in-home ABA services, and he is on a waiting list.

32. The evidence established that Claimant increasingly demonstrates maladaptive behaviors his current respite worker is unable to address. Although she did not report these concerns to her employing agency, this does not mean the behaviors are not occurring. The evidence also established that a behavioral respite agency with specifically trained staff would better meet Claimant's needs and ensure his safety and consistency in the implementation of Claimant's behavioral intervention plan.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

3. In seeking funding for compounded medications and dietary supplements as well as for behavioral respite, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Regarding the funding for compounded medications and supplements, Claimant has failed to meet his burden of proving he is entitled to the funding he seeks. Regarding the funding for behavioral respite, Claimant has met his burden of proving the behavioral respite is necessary to meet his needs.

Relevant Provisions of the Lanterman Act

4. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their individual program plan. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

5. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

6. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

7. Welfare and Institutions Code section 4512, subdivision (b), specifically provides:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The 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.

8. Welfare and Institutions Code section 4646.4 specifically provides, in pertinent part:

(a) 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.

9. Welfare and Institutions Code section 4648, subdivision (a)(8), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports. [¶] . . . [¶] (8)

Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

10. Compounded Medications and Supplements: Welfare and Institutions Code section 4646.4, subdivision (a)(1), requires the Service Agency to purchase services and supports in "conformance with the regional center's purchase of service policies. The HRC purchase of service policies require that medical treatments and dietary supplements be "directly associated with, or . . . resulted from, a developmental disability," and that the medical treatment is "not experimental." The evidence failed to establish the Service Agency is required to fund for compounded Clonidine and N-Acetylcysteine, prescribed for Claimant's co-morbid GTS not his ASD, or to fund for

Omega-3 and magnesium supplements to address his dietary deficiencies, because none of these medications/supplements are evidence-based treatments for patients with ASD. Given the foregoing, SGPRC's denial of funding for Claimant's compounded medications and dietary supplements is appropriate.

11. Behavioral Respite: The evidence established Claimant's current respite worker is unable to address Claimant's increasing maladaptive behaviors due to Claimant's growing size compared to the respite worker and due to the respite worker's lack of behavioral intervention training. The evidence also established that a behavioral respite agency with specifically trained staff would better meet Claimant's needs and ensure his safety and consistency in the implementation of his behavioral intervention plan. Given the foregoing, HRC shall be required to fund behavioral respite for Claimant until it is no longer necessary.

//

//

//

//

//

//

//

ORDER

1. Medications and Supplements: Claimant's appeal is denied. Harbor Regional Center's denial of funding for Claimant's compounded medications and dietary supplements is upheld.

2. Behavioral Respite: Claimant's appeal is granted. Harbor Regional Center shall fund Claimant's behavioral respite, at a level assessed to be necessary, until the service is no longer necessary.

DATE:

JULIE CABOS-OWEN

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.