

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2018110825

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 19, 2019, in Los Angeles.

Latrina Fannin, Fair Hearing Representative, represented Harbor Regional Center (HRC or Service Agency). Claimant's mother represented claimant, who was not present for the hearing.¹ Claimant's father was present at hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on February 19, 2019.

ISSUE

Whether the Service Agency is required under the Lanterman Developmental Disabilities Act (Lanterman Act) to fund claimant's speech therapy services.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 16; Claimant's Exhibit A.

Testimony: Bjoern Petersen, Client Services Manager; Melissa Greener, Speech Pathologist; Miguel Flores, HRC Behaviorist; Bernadette Rivera, Claimant's speech

¹ Family titles are used to protect the privacy of claimant and his family.

therapy pathologist; Kendra Oliver, Director of Supported Living Services, Institute for Applied Behavior Analysis; and claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 23-year-old young man who is a consumer of HRC based on his qualifying diagnosis of Autism Spectrum Disorder (ASD) and Intellectual Disability (ID). Claimant's parents are his conservators. Claimant resides with a roommate and fellow HRC-client, in their shared apartment in the city of Torrance.

2. From January 2018 through the present, HRC has funded individualized communication and language therapy two times per week for 60-minutes from Hello World Speech Therapy Inc. (Hello World) with speech language pathologist, Bernadette Rivera, M.A., CCC-SLP. In a letter dated October 17, 2018, claimant's Service Coordinator, Ed Swan, notified claimant's parents that it was denying the request to continue funding for Hello World speech therapy services after November 2018. (Ex. 3.) The bases for HRC's decision to stop funding for Hello World was that: "[B]ecause it appears that Hello World is duplicating goals that are being addressed through [claimant's] SLS [Supported Living Services] support with IABA [Institute for Applied Behavior Analysis], HRC believes it is an appropriate time to discontinue services through Hello World." (Ex. 3, p. 3.)

3. As authority for the funding denial, Mr. Swan cited HRC's service policy on therapy services, "Therapy services include occupational, sensory-motor, physical, speech, nutritional, psychotherapeutic services and other therapies that are provided by a licensed therapist and are required to prevent deterioration of a specific dysfunction or to improve a person's adaptive functioning. HRC may purchase therapy services for a client only if the client requires therapy to prevent a specific deterioration in his/her condition, or to assist the client to achieve a specific desired outcome set forth in his/her Individual/Family Service Plan." (Ex. 3, p. 2.) In further support of the funding denial, Mr. Swan cited the portion of HRC General Standards Policy which states, "[I]f the request is for a continuation

or renewal of a purchased service, such continuation or renewal shall be contingent upon client/family satisfaction and upon reasonable progress in having achieved the desired outcomes as identified in the Individual/Family Service Plan (Individual Person-centered Plan)." (*Ibid.*)

4. On November 15, 2018, claimant's mother and conservator submitted a Fair Hearing Request (FHR) to HRC, requesting that the regional center continue to fund the speech therapy services currently provided by Hello World.

CLAIMANT'S SERVICES AND SUPPORTS

5. Claimant currently receives the following HRC supports and services: 1) Creative Steps day program, 5 days per week, 2) IABA SLS, 347 hours per month (over 11 hours per day), and 3) Hello World communication training/therapy, 10 hours per month. Claimant also receives Supplemental Security Income (SSI) benefits, 267 hours of monthly In Home Support Services (IHSS), and is covered through Medi-Cal managed care plan, LA Care.

6. Per claimant's most recent Individual Person-centered Plan (IPP), dated January 15, 2018, one of claimant's desired outcomes is for him to use new words/phrases when verbally communicating. (Ex. 4, p. 3.) Additional goals include claimant's participating fully in his community, improving self-advocacy, and functioning safely in the community, workplace, and home.

7. According to Hello World's December 29, 2018 Progress Report and Update, claimant has demonstrated gradual progress towards his communication and language goals. (Ex. 6.) The time frame to attain the specific goals described in Hello World's report was from January through December 2018. The communication and language goals assessed were divided into three areas: 1) social pragmatic language (inclusion in the community), 2) expressive language (vocational skills), and 3) functional communication (safety skills). As Ms. Rivera testified at hearing, while the goals for the 2018 time-period were met by claimant, , meeting the goals did not indicate that claimant no longer needed ongoing speech therapy services from Hello World. In fact, based on claimant's significant

areas of need in language and communication and that claimant had recently entered a period of crisis, involving atypical and increased aggressive behavior, frustration when communicating, and repeated attempts to self-isolate, claimant requires continued speech therapy services. Ms. Rivera has worked with claimant for the past four years and explained that, while it was her ultimate goal to have claimant attain a level of communication and language that would no longer require her services, that moment had yet to be attained by claimant. She testified that she was in an integral position, based on her familiarity with claimant's communication style and in-depth knowledge of claimant's verbal skills, to establish additional communication skills in her sessions with claimant. Those skills can then be practiced by claimant with his IABA SLS staff at Creative Steps and with his family.

8. In Hello World's 2018 progress report, Ms. Rivera identified additional goals for the 2019 time period in the areas of social programmatic language, language processing, and functional communication, that will facilitate claimant's IPP goals of improving his verbal communication to support his adulthood program, achieving greater independence, and integrating within his community. Ms. Rivera acknowledged that she was not the only speech pathologist that could provide services to claimant. However, she credibly testified that based on claimant's current crisis and her long-term relationship with claimant, she was currently in a unique position to assist claimant in reaching his communication goals.

9. Ms. Rivera's critical role in assisting claimant in reaching his communication skills was corroborated by the hearing testimony of Kendra Oliver, IABA's SLS Director. Contrary to HRC's argument that Hello World and IABA staff provided duplicative communication services to claimant, Ms. Oliver testified that IABA's SLS staff provided an entirely different function than Ms. Rivera in attaining claimant's communication goals. Specifically, Ms. Oliver testified that IABA SLS staff are trained to follow strict functional roles and do not play a role in establishing communication goals or skills for claimant, which is Ms. Rivera's function. In contrast, IABA's SLS staff's function is to practice the language skills that were established in sessions with Ms. Rivera. Accordingly, Ms. Oliver testified that Hello World and IABA SLS staff do not have the same goals.

10. Ms. Oliver compellingly described the necessary and valued role that Ms. Rivera has in ensuring claimant's ongoing verbal progress. She further testified that it would be a detriment to claimant to cease his speech therapy sessions with Ms. Rivera at a time that claimant was in crisis. According to Ms. Rivera, IABA's most recent January 2019 progress report described that claimant was at a "point of crisis," presenting with behavioral challenges such as being physically aggressive, pinching, kicking, cornering staff, swiping items that can be dangerous to him and others, and showing a decreased ability to manage stress and a decreased desire to participate in the community.

11. IABA's most recent January 2019 report was not included in HRC's evidentiary hearing packet and was considered by HRC when making the decision to stop funding Hello World speech therapy services for claimant. In fact, none of HRC's hearing witnesses addressed the fact that claimant was in crisis and how ceasing speech therapy sessions with Ms. Rivera, a long-standing provider, would, most likely, negatively affect claimant. At the conclusion of the hearing, HRC conceded that the evidence did not establish, as indicated in HRC's NOPA, that Hello World, IABA, and Creative Steps provided duplicative communication services or had identical goals. Notwithstanding the concession that the basis of HRC's NOPA to deny speech therapy services was erroneous, HRC argued that, because HRC's speech pathologist is available to provide consultation services, rather than speech therapy sessions, to claimant, further speech therapy funding with Hello World was not warranted. HRC's argument was not convincing based on the weight of the credible evidence that claimant required continued speech therapy to prevent a likely deterioration in his condition and to assist the claimant to achieve the specific communication desired outcomes set forth in claimant's IPP.

12. Accordingly, claimant established through a preponderance of the evidence that continued Hello World's speech therapy services should be funded by HRC through the end of 2019.

DISCUSSION

1. The Lanterman Act governs this case. (§ 4500 et seq.) Under the Lanterman Act, all issues concerning the rights of persons with developmental disabilities to receive services must be decided under the appeal and “fair hearing” procedures set forth in section 4700 et seq. (§ 4706, subd. (a).)

2. Claimant’s mother requested a fair hearing to appeal the denial of funding for claimant’s speech therapy services with Hello World after 2018. Jurisdiction in this case was established. (Factual Findings 1-4.) As the party seeking services not agreed to by the Service Agency, claimant must prove that he is entitled to funding for speech therapy with Hello World (See § 4712, subd. (j); *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), and he must do so by a preponderance of the evidence. (Evid. Code, § 115.)

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, based on a determination of which services and supports are necessary for each consumer. (§ 4512, subd. (b).) The IPP must include goals and objectives for the client; the regional center must fund services and supports designed to “be effective in meeting the goals” articulated in the IPP. (§§ 4646, subd. (a), 4646.5, subd. (a), 4512, subd. (b), and 4648.) “Services and supports for persons with developmental disabilities” means specialized 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, normal lives.” (§ 4512, subd. (b).)

5. In this case, claimant established a legal basis requiring the Service Agency to fund claimant's Hello World speech therapy services for 2019. (Factual Findings 8-11.) A clear connection exists between claimant's IPP goals related to expanding his verbal communication skills and the proposed service. Further, based on the fact that claimant is in crisis as of the date of the hearing, funding continued speech therapy services with Hello World is consistent with HRC's service and general standards policy. (Factual Finding 3.)

LEGAL CONCLUSION

Cause was established under the Lanterman Act to require the Service Agency to fund claimant's Hello World speech therapy services, 10 hours per month, through the end of 2019. (Factual Findings 1-11, and Discussion.)

ORDER

Claimant's appeal is granted.

DATE:

IRINA TENTSER

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.