

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2019011106

DECISION

On March 12, 2019, Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Torrance, California. Mother represented Claimant,¹ who was not present at the hearing. Latrina Fannin, Manager of Rights and Quality Assurance, represented the Harbor Regional Center (HRC or service agency).

The matter was submitted for decision on March 12, 2019. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

The issue for determination is whether the service agency should fund personal assistant services for Claimant at a rate of 32 hours per week to facilitate Claimant's socialization and integration into the community.

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

FACTUAL FINDINGS

1. Claimant is a 17-year old consumer of HRC due to her qualifying diagnoses of Intellectual Disability and Autism Spectrum Disorder. Claimant additionally presents with Atlantoaxial Instability and Down Syndrome. Claimant has two siblings, one of whom is also a consumer of HRC due to a qualifying diagnosis of Intellectual Disability. Claimant's parents are separated. Claimant resides with Mother, her primary caretaker, and with her developmentally disabled sibling.

2. According to Claimant's most recent Individualized Program Plan, dated December 12, 2018, Claimant's speech is limited; she communicates using single words and gestures. Her limited speech has contributed to the under-development of her social skills and her inability to maintain friendships. Claimant requires assistance with her toileting to avoid accidents. She has demonstrated limited independence attending to her self-care needs, including bathing, grooming, dressing, and meal preparation. Claimant's maladaptive behaviors include self-injury, tantrums, non-compliance, aggression, and elopement. She lacks appropriate safety awareness at home and in the community.

3. Claimant's social and recreational activities in the community include her attendance at the library where she receives after-school tutoring, outings to restaurants, the movies, the mall, and amusement parks, and participation in dance classes offered through Down for Dance, swimming offered through the Special Olympics, and Karaoke. Mother reports that Claimant's social and recreational activities consume approximately 32 hours each week. Mother is unable to assist Claimant in these activities when Mother is transporting and accompanying Claimant's sibling to occupational therapy, physical therapy, and applied behavioral analysis (ABA) sessions. Without Mother's assistance, Claimant foregoes participation in her social and

recreational activities and she remains at home isolated from her peers and the community.

4. Under the category "Social/Recreational/Community," Claimant's IPP states the following desired outcomes and plans for Claimant:

Desired Outcome

[Claimant] will continue to develop her social skills and make friends.

[Claimant] will continue to participate in activities she enjoys such as gymnastics, going to museums, and going out to dinner. [¶]

Plans

PLAN FOR CLIENT/FAMILY

Family will continue to provide opportunities for recreation and social interaction during the week.

PLAN FOR COMMUNITY SUPPORTS

Social and recreational opportunities, such as the city Parks & Recreation department and the Friendship Foundation remain available to [Claimant] in the community.

(Exh. 4 at p. 11.)

5. In 2017, Mother requested service agency funding for an assistant to facilitate Claimant's participation in social and recreational activities in the community. In response to Mother's request, HRC determined to fund short-term personal care

services for Claimant at a rate of eight hours per month while one of its contracted nurses conducted a personal care assessment.

6. On January 11, 2018, the nurse completed the personal care assessment. At the time of the assessment, Claimant was receiving in-home supportive services (IHSS) at a rate of 219 hours per month. Based on information and data obtained during the course of that assessment, the nurse determined that 219 IHSS hours per month were insufficient and should be increased to adequately meet Claimant's needs, including protective supervision. The nurse documented, among other things, the following impressions and recommendations in the assessment report she prepared:

It is a tremendous stress and strain on [Claimant's] mother (a single mother) to care for her and her brother, also an HRC client, both of whom require constant supervision for their safety. [¶ . . . ¶]

Suggest an increase in this family's greatly needed IHSS hours, specifically Protective Supervision, to allow this wonderful, totally dependent child to stay at home with her family. It is a great stress and strain on [Claimant's] mother to care for her and her brother (also with Down Syndrome), both totally dependent children in her home. Constant supervision is required at all times for [Claimant's] safety due to having no sense of safety or danger. She is not street safe, frequently hides in the community, elopes whenever possible, threatens to run away, has no stranger awareness, engages in self-injurious behaviors, is aggressive towards others, frequently and quickly grabs other people's drinks,

turns on the stove, puts inappropriate things into the microwave, takes food out of the refrigerator and leaves it on the counter, eats unthawed frozen food, opens the door for strangers, and has a high pain tolerance. If lost, she would be unable to give her name, address, or phone number. For safety, the family home has an alarm on all doors and windows. Mother needs assistance taking [Claimant] and her brother into the community together due to their behavioral and safety needs

(Exh. 6.)

7. Based on the nurse's assessment and report, HRC granted continuing funding for short-term personal care services for Claimant while a reevaluation of Claimant's IHSS hours was occurring, and HRC increased the frequency of that service from eight hours per month to 18 hours per month through May 31, 2019.

8. Ultimately, Claimant's IHSS hours were increased to the maximum allowable hours—237 hours per month. Claimant's IHSS hours are intended to help Claimant with activities of daily living, including bathing, grooming, meal preparation, and to provide Claimant with protective supervision to ensure her safety at home. Judy Samana Taimi, who supervises the service coordinator for Claimant, confirmed that Claimant's IHSS hours are not for community integration.

9. On December 12, 2018, during an IPP meeting, Mother renewed her request for an assistant to facilitate Claimant's participation in activities in the community. HRC denied Mother's request and memorialized that determination in a January 8, 2019 letter stating, "While we understand you believe personal care hours are now needed to foster [Claimant's] community integration while participating in social recreational activities and fall outside the support traditionally provided through IHSS,

as discussed personal care services are not intended to be used for recreational or enrichment purposes. [¶ . . . ¶] HRC does not believe any of the recreational activities [Claimant] is involved in are the primary or critical means for ameliorating her disability. Since these are activities that HRC is prohibited from funding and there does not appear to be circumstances that warrant an exception, we would not fund for personal care services to support her during these activities.” (Exh. 3 at p. 3.) HRC cited to Welfare and Institution Code section 4648.5 of the Lanterman Developmental Disabilities Services Act (Lanterman Act)² in support of its determination.

10. On January 16, 2019, Mother acting on behalf of Claimant filed a Fair Hearing Request, and this proceeding ensued.

11. At the hearing, Mother questioned HRC’s treatment of her request for an assistant to facilitate Claimant’s participation in social and recreational activities in the community as a request for personal care services. Mother noted that HRC’s internal documentation of her request makes inconsistent references to “Personal Assistant (PA)” and “assistance of PA services” on one hand, and to “personal care” and “personal care assistance” on the other hand. (See Exh. I.) Mother emphasized that she is not asking HRC to fund in-home personal care services for Claimant, and that it is the substance of her request, rather than the label attached to her request, that matters.

12. Ms. Taimi explained that HRC is guided by the *Harbor Regional Center Service Policy-General Standards (Service Policy)*, and she opined that the *Service Policy* does not authorize funding for services occurring in connection with specialized programs, such as Down for Dance or Special Olympics, which are geared to individuals in the developmentally disabled community.

² Welf. & Inst. Code, §§ 4500-4846.

13. The copy of the *Service Policy* offered at the hearing identifies 10 standards HRC should strive to achieve, including the following:

1. To ensure that services and supports are available to enable persons with a developmental disability to live a more independent and productive life in the community;
2. to ensure that services and supports provided will enable persons with a developmental disability to approximate the pattern of everyday living available to non-disabled people of the same age; [¶ . . . ¶]
5. to promote service and support options that are designed to assure physical health and safety, development of skills for independent living and productivity, independence, support networks, and integration into general community life, with access to the full range of assistive technology

(Exh. 8.)

14. The *Service Policy* additionally provides for the purchase of services and supports for a client when, among other things, “[a]fter 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[.]” (Exh. 8.)

15. Ms. Taimi further explained that personal care services “can be interpreted in many ways.” According to Ms. Taimi, personal care services “for community integration” involves accompanying a client and other individuals with developmental disabilities out into the community to assist them and to ensure their safety. Ms. Taimi testified, “The personal care service helps them integrate into the community.” Ms. Taimi offered the example of Claimant going to her favorite store at the mall to purchase a pair of pants and the personal care services assistant helping Claimant to interact with

the cashier. Ms. Taimi opined that in that situation, Claimant is afforded “an opportunity to interact with people without disabilities.”

16. Ms. Taimi’s testimony distinguished personal care services from personal assistant services by explaining that “personal assistant service is an additional person provided to assist a client in day-to-day life. . . . It varies in different circumstances.” If, for example, additional support is required for a parent who is unable to provide the supervision necessary to address aggressive behaviors or who is unable to manage a client’s demanding needs, and the parent needs an extra person, a personal assistant is provided for the family while there is an on-going search for generic supports.

17. In response to Mother’s query whether she is able to identify a service available to help Claimant’s socialization and integration into the community, Ms. Taimi identified ABA services. Mother correctly pointed out, however, that ABA services require the presence of an adult at the time that services are being delivered and that she is unable to be present during delivery of any such services for Claimant because she has to attend to Claimant’s developmentally disabled sibling. At the time of the hearing, an assessment of Claimant’s need for ABA services was ongoing.

LEGAL CONCLUSIONS

1. Adolescents without developmental disabilities commonly socialize in and are integrated into their communities through participation in a myriad of leisure and social activities. The Lanterman Act recognizes that adolescents with developmental disabilities, including Claimant, should engage in leisure and social activities for socialization and to achieve community integration just like their peers without developmental disabilities. (See *Association for Retarded Citizens—California v. Department of Developmental Services*, *supra*, 38 Cal.3d at 388.) The Lanterman Act gives adolescents with developmental disabilities, including Claimant, a right to make choices in leisure and social activities and a right to an “array of services and supports”

to meet their needs and choices and to support their integration into the mainstream of life in the community. (Welf. & Inst. Code, §§ 4501, 4502, 4502.1, 4503.)

2. The Lanterman Act defines services and supports 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, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) Under the the Lanterman Act, “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. Services and supports listed in the individual program plan may include, but are not limited to, . . . community integration services” (*Id.*)

3. 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 are responsible for developing and implementing IPPs for the individual with developmental disabilities, for taking into account the needs and preferences of the individual and the family, and for promoting community integration, independent, productive, and normal lives, and stable and healthy environments. Regional centers are additionally responsible for ensuring that the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting the goals stated in the IPP, reflect the

preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

4. Claimant's IPP lists Claimant's development of social skills and participation in activities, including gymnastics, swimming, museum attendance, and dining out, as desired outcomes. (Factual Finding 4.) Claimant has been participating in those leisure and social activities to integrate her into her community, but only to the extent that Mother has been available to provide Claimant with assistance. Mother is unavailable to assist Claimant when Mother is required to attend to Claimant's developmentally disabled sibling and to assist him with several therapeutic services. It is undisputed that Claimant cannot engage in leisure and social activities in the community without assistance. (Factual Finding 2, 3, and 6.)

5. Mother requests no funding from HRC for Claimant's participation in her leisure and social activities in contravention of Welfare and Institutions Code section 4648.5, subdivision (a)(1), which suspends regional centers' authority to fund social recreational services. Rather, Mother's request is for a personal assistant to facilitate Claimant's participation in her leisure and social activities of choice to achieve Claimant's integration into the community just like Claimant's peers without developmental disabilities. Mother's request is consistent with the Lanterman Act's mandate for community integration of developmentally disabled individuals and HRC *Service Policy* standards requiring HRC to ensure the availability of supports "to approximate the pattern of everyday living available to non-disabled people of the same age." (Factual Finding 13.) Claimant's IHSS service hours are not for community integration. Without the requested HRC- funded personal assistant, Claimant is isolated from her peers and excluded from participation in activities to foster community integration.

6. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of proving by a preponderance of evidence

her entitlement to the services and supports. (Evid. Code, §§ 115 and 500.) Claimant has met her burden.

7. Cause exists for HRC to fund a personal assistant to facilitate Claimant's participation in her leisure and social activities by reason of Factual Findings 1 through 17 and Legal Conclusions 1 through 6.

ORDER

1. Claimant's appeal is granted.
2. Harbor Regional Center shall fund a personal assistant at a rate of 32 hours per week to facilitate Claimant's participation in her leisure and social activities until it has been determined through the individualized program planning process that such services are neither necessary, appropriate, or effective to meet Claimant's needs.

Dated:

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 90 days.