

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

REY P.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2012010408

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Harbor Regional Center, in Torrance, California, on February 28, 2012.

Andy and Norma P. (Father and Mother, collectively Parents) represented Rey P. (Claimant)¹.

Gigi Thompson, Manager Rights Assurance, and Vincente Miles, Program Manager – Adult Services, represented Harbor Regional Center (HRC or the Service Agency.)

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on February 28, 2012.

¹Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

ISSUES

The parties stipulated that the following issues are to be decided by the ALJ:

1. Shall the service agency be ordered to fund a Functional Behavior Assessment (FBA) plan with Steve Kaufman and Associates (Kaufman) in order to determine Claimant's behavioral needs, prior to Claimant beginning an adult day-program (ADP)?
2. Shall the service agency be ordered to fund a behavior consultant to provide behavior therapy in accordance with Los Angeles Unified School District's (LAUSD) behavior intervention plan (BIP)?
3. Shall the service agency be ordered to fund a one-to-one assistant to support Claimant's potential BIP?

FACTUAL FINDINGS

1. Claimant is a 22 year-old male who is consumer of the service agency by reason of his diagnosis of mental retardation.
2. Claimant filed a fair hearing request on January 6, 2012.
3. Claimant is currently on a wait-list for an ADP, which HRC has agreed to fund. In addition, as of February 28, 2012, HRC had scheduled Claimant for a mobility assessment to address his potential need for door-to-door transportation related to his ADP. Claimant is also scheduled to have a psychological evaluation funded by HRC. Lastly, HRC funds 18 hours per month of respite for Claimant.
4. Claimant became "aged-out" of the Los Angeles Unified School District (LAUSD) as of February 3, 2012. That is, he is no longer eligible to receive services from LAUSD. As such, Claimant is now seeking to obtain funding from HRC for services to replace those previously provided by LAUSD. HRC has offered to fund an ADP for

Claimant. The parties do not agree on how the transition should be handled from LAUSD to an ADP. In sum, Parents contend that Claimant's behavioral services should remain uninterrupted when Claimant attends his ADP. HRC contends that it is appropriate to first assess Claimant in his new ADP environment before determining what behavioral services Claimant may need.

5. Claimant's last "behavior plan" was completed in 2004 by LAUSD. Kaufman has worked with, and provided behavioral services for, Claimant for the last 14 years.

6. An FBA is conducted to develop a BIP. HRC contended, and established, that Claimant should first attend his ADP for a short period of time in order to determine what, if any, behavioral issues arise. While Parents' contention that Claimant's needs are likely to be similar to those he had at his LAUSD program is understandable, it is also speculative. That is, Claimant's needs may increase, or decrease, at his new ADP as compared with his needs when he attended school at LAUSD.

7. In the "typical" situation, a consumer's needs are reviewed approximately six months before the consumer transitions from his/her school environment into an ADP. That did not occur in this case. It was established that HRC could have communicated more proactively with Claimant's family regarding this transition.

8. It was established that HRC has a legal obligation to fund an FBA for Claimant, and that Claimant's desired vendor is to be considered, but that HRC has the ultimate decision regarding who conducts the FBA.

9. Mark McSpadden (McSpadden), of Kaufman, has worked with Claimant since 1997. He trained LAUSD personnel and then Claimant's teachers and aides

implemented the BIP as instructed by McSpadden. At school, Claimant was provided with a one-to-one aide.

10 HRC has previously agreed to conduct an FBA to assess Claimant's needs at his ADP. HRC offered to utilize their in-house Behavior Services Team, comprised of three people, all of whom are Board Certified Behavior Analysts (BCBA). Claimant declined this offer, instead requesting that the FBA be performed by Kaufman. McSpadden is not a BCBA and it was not established that Kaufman is a BCBA.

11. It was established that the ADP's offered by HRC have experienced and knowledgeable personnel who can facilitate consumers' transitions from school to an ADP. Generally, if an issue arises, the ADP staff is instructed to immediately contact HRC to discuss and address the issue. While Parents' concerns are understandable, HRC and its ADP's are professionals in providing services to consumers with special needs. The ADP environment is also different than that of a school setting. In the ADP environment, all of the participants have special needs and the staff is trained to exclusively work with people who have special needs. In contrast, not all staff in an educational setting exclusively work with students with special needs on a day-to-day basis. McSpadden testified that Claimant does not have serious problems with transitions. Rather, McSpadden's concern was that the new ADP staff may not understand Claimant and/or Claimant's needs.

12. Claimant did not establish that HRC should be ordered to fund a FBA with Steve Kaufman, that HRC should be ordered to fund a behavioral consultant to provide behavior therapy in accordance with LAUSD's BIP, or that HRC should be ordered to fund a one-to-one assistant to support Claimant's potential BIP.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welfare and Institutions Code sections 4500 et seq.)² 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 properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, Claimant is seeking a new service, and thus the burden is his.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure

² All further statutory references are to the Welfare and Institutions Code.

“those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4502.)

4. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

5. Section 4646 states:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*

(b) The individualized program plan is developed through a process of individualized needs determination

6. Section 4648 of the Lanterman Act describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the

service agency may purchase services from any individual or agency the regional center and consumer determine will best accomplish all or any part of the IPP. Section 4648, subdivision (a)(8), prohibits the use of regional center funds "to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." These are commonly referred to as "generic resources." However, subdivision (g) provides that, where there are identified gaps in the system of services and supports, the Department of Developmental Services may provide the services directly.

Services provided must be cost effective (§ 4512, subdivision (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, §§ 4640.7(b), 4651(a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the parents of children with developmental disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

7. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. Claimant did not establish that HRC's BCBA three-person team should not be given an opportunity to evaluate Claimant's needs. On the contrary, HRC established that its panel members all are "board certified" and Claimant's present provider is not. Parents are, of course, allowed to obtain an FBA from Kaufman at any time, but at their own expense.

8. HRC is entitled to have an opportunity to assess Claimant's needs before it is ordered to fund an FBA with a particular person or entity, and before it is ordered to fund behavioral services for Claimant. Deference should be given to HRC's expertise. For example, with regard to the issue of eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.) In *Mason*, the court focused on whether the claimant's expert witnesses' opinions on eligibility "sufficiently refuted" those expressed by the regional center's experts that claimant was not eligible. (*Id.*, at p. 1137.)

9. Therefore, Claimant did not establish that HRC should be ordered to fund a FBA with Steve Kaufman, that HRC should be ordered to fund a behavioral consultant to provide behavior therapy in accordance with LAUSD's BIP, or that HRC should be ordered to fund a one-to-one assistant to support Claimant's potential BIP. (Factual Findings 3-12.)

ORDER

Claimant Rey P.'s appeal of the Harbor Regional Center's determination denying Claimant's request for funding for the services described in Issues 1-3 are denied.

IT IS SO ORDERED.

DATED: April __, 2012.

CHRIS RUIZ

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.