

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JEANETTE J.

Claimant,

vs.

HARBOR REGIONAL CENTER

Service Agency.

OAH Case No. 2012070940

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at Harbor Regional Center in Torrance, California, on September 4, 2012.

Jeanette J., Claimant was represented by Theresa M. (mother). Also present was Pam Broderick (Broderick), Executive Director of Star Homes, and Jennifer G., Claimant's older sister (sister).¹

Gigi Thompson, Manager of Rights Assurance, 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 September 4, 2012.

¹ Claimant and her family are referred to by their initials or family titles to protect their privacy.

ISSUE

The parties stipulated that the following issue is to be decided by the ALJ:

Shall the service agency be allowed to complete the mobility assessment on Claimant?

FACTUAL FINDINGS

1. Claimant is a 40 year-old woman who is a consumer of HRC by virtue of her diagnosis of mental retardation.
2. Claimant filed a request for fair hearing on July 16, 2012. HRC initially stated that it intended to eliminate funding for transportation based on Claimant's failure to participate in part two of the assessment. However, HRC presently only seeks an order mandating that Claimant participate in the evaluation and is not attempting to discontinue funding for transportation.
3. Claimant resides at "Star Home II," a level two facility for adult residential care. She is employed by "Social Vocational Services" (SVS). SVS provides transportation to and from her residence to her place of employment, which is approximately five to seven miles.
4. HRC determined that Claimant should be evaluated for the possibility of utilizing public transportation to and from her place of employment. The evaluation is called a mobility assessment (assessment). Claimant completed part one of the assessment. However, she became very anxious and upset when she learned the reason for the assessment. That is, she does not want to utilize public transportation. As a result, her mother canceled part two of the assessment which includes the evaluator taking the bus to or from work with Claimant to determine if she is a candidate.
5. Claimant was previously sexually assaulted and she also has food allergies. Based on these facts, combined with her severe anxiety over the assessment, mother,

sister, and Broderick all are of the opinion that Claimant will not ultimately be able to use public transportation and that putting her through part two of the assessment is unnecessary and unreasonable.

6. Heather Clark-Shepherd (HCS) performed part one of the evaluation. She did not witness the high level of anxiety described by Claimant's advocates. However, this is understandable as Claimant became upset after HCS had departed. HCS appeared to be a reasonable mobility evaluator. She acknowledged that she can not, and would not, force Claimant to complete part two of the evaluation if she (HCS) appeared at Claimant's residence and Claimant "shut-down" or refused to cooperate. However, she also testified that in her experience sometimes persons who appear to be excellent candidates after part one of the evaluation do not perform well on part two. Similarly, some persons who are initially unwilling or resistant to try the program ultimately do utilize public transportation.

7. HRC established that it will use common sense, sensitivity, and care in attempting to complete the assessment. HRC stated that it may not be possible to finish the assessment because Claimant simply can not tolerate it, but HRC established that it is required by law to attempt to finish the assessment.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 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 All further statutory references are to the Welfare and Institutions Code.

2. Where the service agency seeks to discontinue funding for a service previously agreed to by the service agency, or it seeks to change any services, the burden is on that service agency to demonstrate the service agency's decision is incorrect. In this case, HRC carried its burden to the extent that it established it should be allowed to perform a mobility assessment. However, HRC did not establish that Claimant's private transportation to-and-from work should be discontinued at this time. (Factual Findings 3-6.)

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 "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:

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.

6. The individualized program plan is developed through a process of individualized needs determination.

7. Section 4648 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 determines will best accomplish all or any part of the IPP.

8. Services provided must be cost-effective (§ 4512, subd. (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, subd. (b), 4651, subd. (a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on claimants 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 claimant's every possible need or desire, in part because it is obligated to meet the needs of many claimants.

9. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor or the right to refuse a service agency's reasonable request for additional information.

10. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner (§§ 4640.7, subd. (b), and 4646, subd. (a).) A regional center is not required to provide all of the services which a client may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP (§ 4651). They are specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as "supplanting generic resources." Where a service is available elsewhere, the regional center is required to "identify and pursue all possible sources of funding" (§ 4659, subd. (a).) However, if a service specified in a client's IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP (§ 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)).

11. HRC contended that it is compelled to perform the assessment in order to continue funding private transportation services for Claimant. That is, HRC is required by law to establish, through the assessment, that Claimant can, or can not, utilize public transportation. HRC is correct. The State of California has decided that before public funds are expended on private transportation, the use of public transportation must be evaluated. (§§ 4648.35 and 4646.5, subd. (6)(A)).

12. Claimant's contentions are not without merit. However, whether or not Claimant may ultimately be a candidate is not the issue at hand. If HRC's assessment

concludes that Claimant can utilize public transportation, and Claimant disagrees, Claimant can again request a fair hearing, obtain her own independent evaluation, and services would not be discontinued until after review by an administrative law judge. As to the issue at hand, the question becomes whether or not Claimant should be required to participate in what may be an uncomfortable process. The law requires that Claimant allow HRC to attempt to perform the evaluation. HRC acknowledged that it can not, and will not, force Claimant. However, HRC must be allowed to appear at a designated time and attempt the process. Nothing in the law describes exceptions. For example, the Legislature could have exempted certain persons or categories of disabilities from the process. However, the law does not provide an exemption in the instance where a consumer becomes anxious over the process. HRC established that it will use common sense, sensitivity, and care in attempting to complete the assessment. HRC noted that it may not be possible to finish the assessment because Claimant simply can not tolerate it, but HRC established that it is required by law to attempt to finish the assessment. Claimant's failure to cooperate with Harbor Regional Center on these matters may lead to termination of services.

ORDER

Claimant Jeanette J.'s appeal of the Harbor Regional Center determination that funding for Claimant's private transportation services is denied in part, and granted in part, as follows.

1. Harbor Regional Center shall not discontinue funding for private transportation services at this time.
2. However, Claimant shall immediately cooperate with Harbor Regional Center regarding the scheduling of part two of the mobility assessment.

IT IS SO ORDERED.

DATED: September 10, 2012.

/s/

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.