

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HANSEL G.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2012110060

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on December 6, 2012.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Supervisor and Hearing Designee

Claimant was present at the hearing and represented by his mother.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is ACRC required to fund mental health treatment and medication management services for claimant?

FACTUAL FINDINGS

1. Claimant is a twenty-five-year-old man eligible for ACRC services based on a diagnosis of autism. Various reports indicate that he has also been diagnosed with depression and/or anxiety disorder which has led to aggression and property damage on various occasions.

Claimant lives with his mother and receives In Home Supportive Services funded by Yolo County. His mother is his IHSS provider. Claimant receives services from ACRC pursuant to the Lanterman Developmental Disabilities Act (Welfare and Institutions Code Section 4500 et. seq.)¹

2. Christine Goodwin-Archer is claimant's ACRC Service Coordinator. She testified that claimant was referred to YCMH for an "Adult Initial Assessment" in March, 2007. The assessment notes that claimant's "presenting problem" was a "reported hx [history] of anger outbursts including physically beating [mother] up on one occasion, hx of 'anxiety' and hx of 'depression'."

Claimant's mother was "seeking services from mental health at this time because current medication from PCP (Primary Care Physician) is 'not helping that much' and outbursts are worsening."

3. Ms. Goodwin-Archer explained that in January 2011, while claimant was still receiving services from YCMH, she made a referral for Psychiatric Vended Services because claimant was "in crisis." The Clinical Assessment Referral Form she completed stated:

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

[Claimant's] behaviors have spiked. Over the past few weeks he has had several "melt downs" where he shouts threats and throws furniture or AWOL's. The last one started when he was at the bowling alley with mom and a group of peers. He became angry, threw furniture and left to sit in the car and shout. The police saw him and asked if he was armed. He shouted yes, but this was not true. He was sent to Sutter ER and released after 1-2 hours. He is regularly seen at Yolo Mental Health and they have explained to mom they have limited experience with DD and wished her "good luck." Mom also has possible MH issues. She is not willing to let him go to a day program or out of home respite because "no one can handle him." She stated over and over that he has PTSD from attending elementary school and insists that no one understands and that he will never get better until someone can help him with that specific issue. He has a diagnosis of autism, but has some MH features as well. This SC has observed him making homicidal threats such as stating that he "will kill the president and rape his daughters." He appears to have triggers and he states that certain comics that appear in the newspaper or he looks up online speak to him and create anxiety and then act out with aggression. This behavior does cycle and there are various triggers that change. His mom reports that he has good days and bad and that this will turn into a good week or bad.

For medications he is currently taking Buspirone (Buspar) 30mg daily for anxiety; Citalopram (Celexa) 20 mg daily and 0.5 Klonopin for depression; Seroquel 400mg daily and Clonidine daily for anxiety. He has recently been prescribed Clonazepam .5-1mg as needed when he becomes more agitated.

4. Based on this information, ACRC chose to refer claimant to Telecare for services on February 11, 2011. Telecare services "include in-home direct counseling and services of a staff psychiatrist and LCSW who are available to step in during a crisis or 5150 situation. They offer medication management, and support services for family members." Telecare services were not available immediately, so he was waitlisted. ACRC also made a referral to CBEM (Center for Behavior Education and Management), as a "service request until Telecare is available." Claimant began receiving Telecare services in May, 2011.

CBEM "is a professional Critical Intervention Service, sometimes called a 'crisis service.' CBEM provides specially trained staff to assist individuals, families and other care providers of developmentally disabled individuals with critical situations that may be in crisis or entering into a crisis. This Critical Intervention Service allows individuals with developmental disabilities to safely traverse crisis [*sic*] or avoid crisis situations via on site consultation, collaboration with circles of support, behavioral observation and training. Key to CBEM's success is a commitment to serving the individual and their supports for as long as necessary."

5. Claimant continued to receive services from Telecare through September, 2012. Telecare provided psychiatric medication management and behavioral suggestions to keep making improvements in claimant's day to day behaviors.

6. In September, 2012, Telecare announced that it would be closing its program and withdrawing its vendorization. ACRC and consumers were notified of the need to transition services.

7. Telecare provided a Transition/Discharge Plan dated September 11, 2012 with a stated transition date of September 30, 2012. This plan noted claimant's initial reason for coming to this program was "Anger Management, Medication Management, decrease intense anxiety and gain effective coping skills to better manage symptoms." The "gains/progress in recovery: [claimant] has been able to articulate his needs in a much more appropriate manner, he has decreased negative behaviors significantly, has identified triggers and made choices to minimize those triggers. He has been stable on his medications for some time now and continues to participate in the community."

8. Ms. Goodwin-Archer made an ACRC Mental Health Services Committee (MHSC) Referral/ Staffing request. The MHSC met on September 6, 2012 and made the following recommendation:

1. Refer to YCMH for psychiatric services.
2. Refer to CBEM to assist with transition.
3. If denied by YCMH, obtain denial and share with MHSC.

9. Referral to YCMH was made September 11, 2012. YCMH requested a current release of information signed by the parent to allow communication with ACRC. Claimant's mother chose not to sign the release and stated that she was not interested in a referral to YCMH. She explained to Ms. Goodwin-Archer that she felt that "past YCMH services were ineffective, not helpful, and [claimant] was often in crisis when receiving services."

10. On October 19, 2012, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that the agency proposed to "deny claimant's request to fund ongoing mental health treatment and medication management services." The reason for this action was "[claimant] previously received mental health treatment and medication management

services funded by ACRC through Telecare Corporation, which unfortunately went out of business on 9/28/12. Prior to Telecare's closure, you were advised at that time to seek ongoing mental health treatment and medication management services from Yolo County Mental Health (YCMH), and ACRC submitted a referral to YCMH prior to Telecare Corporation's closure. However you refused to sign an authorization for ACRC and YCMH to communicate about your care, and have declined to receive services from YCMH. ACRC is prohibited from funding services for consumers when those services are available to a consumer from a generic resource such as YCMH (through MediCal) but a consumer chooses not to pursue those services. ACRC is prohibited from supplanting the budget of such a generic agency."

11. On October 23, 2012, claimant filed a Fair Hearing Request, appealing ACRC's determination and requesting that "ACRC provide [claimant] with a psychiatrist 4X a year to manage his medications."

12. Mechelle Johnson is an ACRC Supervising Counselor. She testified that the intent of the Telecare program design was to assist consumers who are dually diagnosed, with a developmental disability as well as mental health concerns, and have the most intensive needs. The program works to stabilize the individual and then transition services to county mental health or private insurance.

When Telecare informed consumers and the regional center of its intent to terminate vendorization, Ms. Johnson was a participant on claimant's MHSC. She testified that claimant cannot be referred to an ACRC funded psychiatrist if claimant, or his mother, declines to first access the available generic resource, YCMH. She also testified that CBEM will be a part of claimant's transition plan and is available to assist the family. She explained that once a consumer has been a CBEM participant, he or she may always access future services if it becomes necessary.

Ms. Johnson testified persuasively that there is no evidence at this time, that the services of YCMH in conjunction with CBEM could not meet claimant's needs. He must first access the generic resource before a request for psychiatric funding may be considered.

13. Claimant's mother testified that claimant did not have a positive experience with YCMH in the past. She contends that he was prescribed medications that did not work and that the medications were only corrected when claimant had access to Telecare. She states that he has lowered his medication regime to primarily Clonidine and Lithium, with Ativan and Vistaril as needed. She believes he is stable on the current medication.

Claimant's mother contends that YCMH is capable of refilling prescriptions but not changing medications as that becomes necessary. Claimant's primary care physician is currently filling prescriptions as needed. She believes that YCMH does not have any providers experienced in working with consumers with autism and that claimant's problems are all related to autism.

14. Ms. Goodwin-Archer stated her willingness to assist claimant and his mother in coordinating and obtaining the necessary service and support from YCMH.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

The Lanterman Act mandates that a consumer's Individual Program Plan (IPP) be based on his or her individual needs. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources, avoid duplication of services, and ensure the cost-effective use of public funds.

2. Section 4646, subdivision (a), provides:

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 with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. 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 plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Section 4648, subdivision (a)(8), specifies:

In order to achieve the stated objectives of the 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 any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

4. Section 4646.4, subdivisions (a)(1), (2) and (3), provide:

Effective September 1, 2008, 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, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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.

5. Section 4644, subdivision (b), defines "generic agency" to mean:

Any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

6. Section 4659, provides in part:

- (a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving

regional center services. These sources shall include, but not be limited to, both of the following:

- (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplemental program.
- (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] . . . [¶]

- (c) Effective July 1, 2009 notwithstanding any provision of the law to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria for this coverage but chooses not to pursue that coverage...

7. YCMH is presently the agency responsible for providing claimant's mental health services and medication management. There was no evidence presented to demonstrate that YCMH is unable to meet claimant's current needs. Claimant must first access this available resource before ACRC may consider referral to an ACRC funded psychiatrist.

8. Claimant's Service Coordinator, Ms. Goodwin-Archer, is available to assist claimant and his mother in obtaining and coordinating these services.

ORDER

The appeal of claimant Hansel G. is denied

DATED: December 10, 2012

//s//
SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)