

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

U.P.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013040848

DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on June 12, 2013, in Torrance, California.

Pablo Ibanez, Program Manager, represented the Harbor Regional Center (HRC or regional center or Service Agency).

Juliana M. represented her son, U.P.¹

The matter was submitted on June 12, 2013.

ISSUE

The question in this matter is whether the Service Agency may decrease Claimant's Applied Behavior Analysis (ABA) services from four hours per week to two hours per week.

¹ Initials have been used to protect the family's privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-15; Claimants' exhibits A-C.

Testimonial: Barbara Maeser, HRC Program Manager; Jenna Mattingly, HRC Behaviorist; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a six-year-old male who qualifies for regional center services based on a diagnosis of autism.

2. Claimant has been receiving ABA services from ACES since August 2012, at a current rate of four hours per week. By letter dated April 2, 2013, HRC proposed to decrease Claimant's ABA services to two hours per week. The stated reasons for the decision were based on ACES's recommendation that Claimant has continued to show improvement in decreasing his maladaptive behaviors and has continued to increase his functional skills in the home and community. In addition, HRC agreed to continue to provide parent training to assist Claimant's parents in learning how to respond to Claimant's behaviors.

3. Claimant's mother disagreed with HRC's decision and timely filed the instant fair hearing request.

4. Barbara Maeser (Maeser), HRC Program Manager for Early Childhood Services, testified at the hearing. Maeser participated in the decision to reduce Claimant's ABA hours. She explained that the goals of ABA are to improve the child's behavior, as well as to give the parent skills to manage the child's behavior. In Claimant's case, his behaviors have shown improvement. For example, in an assessment by a school psychologist, Claimant was able to follow directions, complete his classwork in a timely manner, and follow school and classroom rules. While HRC noted that Claimant is still experiencing maladaptive behaviors at home, such as screaming, throwing objects,

difficulty with change and non-compliance in his community, HRC thinks that more parent training is needed to teach Claimant's parents how to manage his behaviors.

5. Significantly, his ABA provider, ACES, recommended that Claimant continue with a gradual fade from ABA services. ACES most recent progress report, dated April 1, 2013, noted that most of Claimant's goals have been obtained: "[Claimant] has shown improvement in lowering his maladaptive behaviors as well as in increasing his functional skills both in home and the community." The remaining goals in progress deal primarily with Claimant's behaviors at home or in the community when ACES is not present. That indicates that additional parent training is necessary. To that end, ACES recommended that it continue to provide consistent support for Claimant's mother in managing his behaviors in the form of parent training.

6. Claimant's mother expressed concern to HRC that she thought the ACES report was inaccurate and incomplete. HRC responded by sending HRC behaviorist, Jenna Mattingly (Mattingly), to observe Claimant at home and in the community while ACES was present. Mattingly testified at the hearing. She explained that during her observations of Claimant, she did not see Claimant display any maladaptive behaviors, which supported ACES report that Claimant behaves during his ABA sessions. Mattingly noted that Claimant behaves in school, and with his ABA provider. This demonstrated that the ABA techniques are working on Claimant. The fact that Claimant has maladaptive behaviors at home when ACES is not present indicates that an assessment of how Claimant's parents are implementing the strategies is needed. For example, an assessment of what strategies Claimant's parents are using, and whether they are implementing them consistently, will help Claimant's parents better manage Claimant's behaviors. This can be accomplished through consultation sessions with an ABA provider during Claimant's two weekly hours. In addition, Claimant's sibling receives 8 hours per week of ABA services from ACES. HRC is considering increasing that amount to 10 hours per week. HRC has confirmed with ACES that ACES can provide assistance for either child during that time period. If Claimant has

an issue during the hours that are assigned to his sister, Claimant's mother can ask ACES for assistance on how to handle the issue.

7. Claimant's mother submitted two DVDs (Exs. B & C) which depicted Claimant during various scenarios at home. The DVDs were viewed at the hearing by all parties and Mattingly. After reviewing the footage, Mattingly opined that her recommendation to fade Claimant's ABA services remained the same. Mattingly noted that although Claimant had tantrums at home, she did not observe any self-injurious or aggressive behaviors. In addition, Mattingly observed that during Claimant's tantrum, he was not properly re-directed or given instruction on what he should be doing. This again demonstrated that Claimant's parents need additional training on how to manage Claimant's behaviors. Mattingly opined that Claimant's issues are best dealt with in a consultation-type model. She stated that if Claimant's behavioral plan works for the majority of people, then the focus needs to be on the person who it's not working for, and address those issues.

8. Claimants' mother testified at the hearing. She has taken two behavior classes through HRC and is enrolled to take a third. There is no dispute that Claimant's mother is willing to learn the ABA techniques. She admittedly needs to learn more, and believes that having the assistance of an ABA provider will accomplish that goal. Claimant's mother has kept regular data on Claimant's behaviors and submitted them as evidence. They show that Claimant continues to have meltdowns, elope, put objects in his mouth, and at times is non-compliant when his ABA provider is not present. Claimant's mother also submitted an assessment from the Stramski Children's Development Center (Ex. 7), that is apparently still in progress. The report, dated April 2013, recommends ABA for Claimant, but does not specify the amount of hours needed. Claimant's mother also submitted articles and other documents regarding Claimant. All evidence has been considered.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimants' appeal and uphold HRC's reduction of Claimant's ABA services from four hours per week to two hours per week, as set forth in Factual Findings 1 through 8, and Legal Conclusions 2 through 5.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[t]he 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." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Services provided must be cost effective, 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. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

5. Given the foregoing, Claimant's appeal must be denied. The evidence showed that HRC's determination to reduce Claimant's ABA on services from four hours per week to two hours per week is well-supported. Claimant's outstanding goals can be achieved through his current level of programming, in addition to the parent training that his parents are scheduled to receive. HRC should re-evaluate Claimant's behaviors prior to

any further reduction in hours, and make any necessary adjustments according to Claimant's needs at that time.

ORDER

Claimant U.P.'s appeal is denied.

DATED: June 26, 2013

A handwritten signature in black ink, reading "Amy Yerkey". The signature is fluid and cursive, with the first name "Amy" and last name "Yerkey" clearly distinguishable.

AMY C. YERKEY

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.