BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of: AARON N., Claimant, vs. HARBOR REGIONAL CENTER, Service Agency.	OAH No. 2013110312

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on January 6, 2014, in Long Beach.

Claimant, who was not present, was represented by his parents.[1]

The Harbor Regional Center (Service Agency or HRC) was represented by Robin James, Esq., of Michelman & Robinson, LLP.

At the conclusion of the hearing, the parties agreed to leave the record open for briefing regarding the admissibility of Claimant's exhibits and closing argument.

The parties' briefs regarding Claimant's exhibits were timely submitted. In an order dated January 21, 2014, the ALJ ruled on the admissibility of Claimant's exhibits. Those briefs and the order are jointly marked as exhibit BBB. The parties' closing briefs were timely submitted on January 31, 2014; Claimant's was marked as exhibit CCC, and HRC's as exhibit 30.

[1] Initials and family titles are used to protect the privacy of Claimant and his family.

The record was closed and the matter submitted for Decision on January 31, 2014.

ISSUE

Did the Service Agency improperly find that Claimant's family did not qualify for financial hardship under the terms of a prior Final Mediation Agreement between the parties?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on Claimant's exhibits B, D-F, J-L, N-O, T, W, Z-DD, HH-JJ, NN, PP, RR, and UU; as well as HRC's exhibits 1-18, 25, and 28. In addition, the ALJ took official notice of HRC's exhibits 19-24. The closing briefs were read and considered, but they are not evidence. In addition, the ALJ relied on the testimony of HRC Executive Director Patricia Del Monico, HRC Manager of Rights Assurance Gigi Thompson, Alexander Tiquia, Esq., and Claimant's parents.

FACTUAL FINDINGS

THE PRIOR MEDIATION AGREEMENT

1. Claimant is a 10-year-old male who is a consumer of HRC based on his qualifying diagnosis of autism.

2. Claimant's parents were concerned for their son's social, safety and behavioral needs, so they requested applied behavior analysis (ABA) service funding from HRC. In June 2012, they obtained a functional behavior analysis (FBA) for their son through their private health insurance and requested HRC for co-insurance payment (or co-payment) assistance.

3. Based on the results of the FBA, Claimant began receiving in-home behavioral intervention through the service provider Behavioral Education for Children

with Autism (BECA) in July 2012. The program consists of six hours per week of direct services, and six hours per month of supervision. The service is funded through the family's private health insurance. The family's insurance plan requires co-payments from the family, which amount to approximately 30 percent of the service cost. Claimant's family requested HRC to fund their co-payments for those services.

4. HRC denied both co-payment assistance requests. Claimant sought administrative review of those denials in a fair hearing in OAH case number 2012051026, which commenced on October 23, 2013. On the second day of hearing, the parties adjourned to a mediation, which resulted in a Final Mediation Agreement (mediation agreement) executed on October 24, 2013.

5. Item 2 of the mediation agreement provided:

> If Claimant's parents qualify for financial hardship, HRC agrees to fund Claimant's co-pay amount ABA Parent Training Services through BECA in the amount of up to 6 hours per week, not to exceed the cap provided by HRC's Board of Directors. Such funding will commence on November 1, 2012. However, HRC also agrees to retroactively fund Claimant's co-pay for ABA services already provided by BECA for the 12 weeks prior to November 1, 2012 for up to 6 hours per week.

6. Other provisions of the mediation agreement included HRC's agreement to reimburse the family's FBA co-payment; advocate with BECA to waive the co-payments for the six hours per month of supervision services; and to conduct a meeting within 30 days to discuss the focus of Claimant's program with BECA. In exchange, Claimant's parents withdrew their fair hearing request and the case was dismissed.

7. Not long thereafter, a dispute between the parties arose over the mediation agreement, particularly the second provision.

8. On November 19, 2012, Claimant requested to reinstate the case and set-aside the mediation agreement. After briefing by the parties, on February 11, 2013, the Presiding Administrative Law Judge (PALJ) denied the request and held that the mediation agreement was "a final resolution of the case."

9. In OAH case number 2013050301, Claimant's family filed a new fair hearing request, arguing, in part, that changed circumstances required setting aside the mediation agreement. HRC moved to dismiss the case. After briefing by the parties, the PALJ dismissed part of the case, ruling that the applicable law "does not provide any mechanism for a review or enforcement of a settlement freely reached by the parties once ten days have passed from the date the Notice of Resolution is received by a regional center." However, the PALJ ruled that the finality of the settlement in OAH Case No. 2012051026 did not forever foreclose the parties from revisiting issues based on new evidence through a hearing request seeking relief on a prospective basis. Thus, the PALJ held that the hearing could go forward on requests for relief on a prospective basis based on changed circumstances.

10. Following the hearing in OAH case number 2013050301, during which no evidence was presented, ALJ Vincent Nafarrete issued an Order of Dismissal dated July 10, 2013, for reasons not necessary to discuss. Claimant thereafter sought a correction in the order, which was denied by ALJ Nafarrete.

11. Claimant failed to seek relief through a writ of mandate in response to any orders in OAH case numbers 2012051026 and 2013050301. Those orders became final.

THE FAIR HEARING REQUEST AND JURISDICTION IN THIS CASE

12. Based on the second provision of the mediation agreement, Claimant's family requested HRC to determine if the family qualified for a financial hardship, and

thus co-payment assistance. Between November 2012 and October 2013, there were numerous letters and e-mails exchanged between the parties. HRC staff told the family they needed the family's 2011 income tax return in order to make the decision, but the family refused to provide it.

13. By a letter dated October 2, 2013, an attorney representing Claimant submitted a written demand to HRC that it fund the family's co-payments for BECA's services, which the attorney estimated to be $10,000-$11,000. The attorney also submitted the family's 2011 income tax return "under protest."

14. By a letter dated October 8, 2013, HRC's Executive Director, Patricia Del Monico, denied the family's request for co-payment assistance. She specified that based on their 2011 income tax return, the family's adjusted gross income was 900 percent of the federal poverty level for a family of their size, and therefore they did not qualify for financial hardship.

15. On or about November 5, 2013, the Fair Hearing Request which is at issue in this case was submitted to HRC. Among other things, Claimant's parents requested that the mediation agreement be set-aside and a finding be made that HRC improperly denied their financial hardship request.

16. HRC filed a motion to dismiss and/or for an order limiting the issues to be decided in this case, arguing that the Fair Hearing Request contained demands for relief that exceeded the scope of Executive Director Del Monico's denial letter. HRC also argued that the mediation agreement precluded some of the other issues from being relitigated. The parties briefed the motion.

17. The PALJ granted the motion, in part, and denied the motion, in part. The PALJ ruled that based on the finality of the prior orders and the mediation agreement, as well as the jurisdictional limitations applicable to this matter:

> [T]he only issue to be decided (absent further agreement of the parties) is whether Service Agency improperly found that

Claimant's family did not qualify for financial hardship under the terms of Paragraph 2 of the mediation agreement. Contrary to Service Agency's contentions, the issue encompasses both whether Claimant's family qualifies for financial hardship under Welfare and Institutions Code section 4659.1 and whether that statutory provision was properly applied in determining the question of financial hardship. To the extent that this order proves to be unworkable during the hearing, the Administrative Law Judge assigned to the hearing of this matter retains the authority to clarify the scope of the issues, consistent with the prior orders issued in OAH Nos. 2012051026 and 2013050301 and the applicable jurisdictional limitations.

WHAT WAS HRC'S POLICY REGARDING A FINANCIAL HARDSHIP DETERMINATION?

18. Prior to July 1, 2012, regional centers in California funded behavior therapy services for many autistic children and their families. The Legislature passed SB 946 which obligated insurers to fund behavioral therapy for children with autism beginning July 1, 2012.[2] In complying with this mandate, insurers have generally imposed co-payment obligations on their insureds. Therefore, many families who had received full funding of behavioral therapy services through regional centers prior to July 1, 2012, became responsible for partially paying for these services. Families began requesting their regional centers to pay these insurance co-payments.

[2] Section 4 of SB 946 added Insurance Code section 10144.51, which requires health insurance policies to provide coverage for behavioral therapy for autistic children.

19. HRC's Board of Directors (Board) held a retreat in June 2012, just a few weeks before SB 946 took effect. The Board knew SB 946 was probably going to become law and discussed the fact that no statute addressed regional centers' funding of insurance co-payments, and that the Department of Developmental Services (DDS) had not promulgated any regulation or issued any directive concerning such funding. The Board members contemplated that some families might be unable to afford the co-payments and that, consequently, these families would either not obtain the behavioral therapy services they needed or would request HRC for co-payment assistance.

20. During the June 2012 retreat, the Board decided that HRC would evaluate requests for co-payment assistance on a case-by-case basis until further guidance was provided by DDS or the Legislature. Under this case-by-case analysis, HRC would fund insurance co-payments if the family's payment of the co-payments would cause the family a financial hardship. Ms. Del Monico testified that what came from the Board's retreat on this issue was not a policy per se, but rather "guidance." HRC did not advise DDS about the Board's guidance in this area. It is also apparent that the decision on financial hardship questions would be left up entirely to Ms. Del Monico.

A. There Was Nothing in Writing

21. Whatever guidance was provided by the Board was never reduced to writing, nor recorded in Board minutes. In fact, HRC failed to produce any written document in response to Claimant's subpoenas requesting the same because HRC employees, including Ms. Del Monico, testified that there was nothing in writing.

22. Due to a lack of documentation, it was simply not established whether the Board had a policy on how or when to deem a family qualified for financial hardship for purposes of co-payment assistance when the mediation agreement was executed, other than that such requests would be decided by the Executive Director on a case-by-case basis.

B. What HRC Told the Family Before and After Mediation

23. In or around May 2012, Claimant's family sought an exemption from the Family Cost Participation Program (Welf. & Inst. Code, § 4783[3]). Claimant's mother testified that, at that time, section 4783 did not include an exception for children eligible for Medi-Cal. To avoid paying the Family Cost Participation Program fee, the family was required to prove that their income was below 400 percent of the federal poverty level (400% FPL) for the year 2010. The family submitted their 2010 federal tax return for this purpose. During the hearing, the parties stipulated that the family's adjusted gross income for 2010 was less than the 400% FPL threshold for a family of four. As a result, the family was exempted from having to pay the Family Cost Participation Program fee.

24. Because Claimant was eligible for Medi-Cal, his family was exempted from having to pay the Annual Family Program Fee (§ 4785).

25. Before and after the mediation agreement was executed, HRC's Manager of Rights Assurance, Gigi Thompson, led Claimant's family to believe that, in all likelihood, they would qualify for financial hardship for purposes of co-payment assistance, because of their income reflected in their 2010 income tax return, and the fact that Claimant was eligible for Medi-Cal. Ms. Thompson essentially told the family that getting the Executive Director to make such a determination would be a mere formality. This finding is based on the persuasive testimony of Claimant's mother, amply corroborated by e-mails by and between herself and Ms. Thompson, as well as the testimony and e-mails of an attorney assisting the family, Alexander Tiquia. In light of that evidence, Ms. Thompson's testimony that she "did not remember" making such statements was not persuasive.

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[3] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

C. What HRC Told the Family After the Dispute Arose

26. HRC contends that the Board's guidance included that a family would be deemed to have a financial hardship only if the family's adjusted gross income reflected on a recent tax return was less than 400% FPL based on family size. However, it was not established that such was the case for various reasons discussed below in more detail.

27. Ms. Del Monico testified that 400% FPL was used as a threshold for determining financial hardship for insurance co-payment assistance because the Board had analogized the following two statutes governing family cost participation that used the same financial threshold.

A. Section 4783 (Family Cost Participation Program), described above, which requires families to make contributions for respite services, day care and camping. Families must contribute to these services if their incomes are at 400% FPL or higher. (§ 4783, subd. (b)(1).)

B. Section 4785 (Annual Family Program Fee), under which recipients of regional center services (or the recipients' families if the recipients are minors) are assessed a flat annual fee. However, families whose adjusted gross income are less than 400% FPL are not assessed the annual fee. (§ 4785, subd. (a).)

28. The fact that sections 4783 and 4785 used the 400% FPL threshold does not necessarily indicate that HRC did so with regard to determining funding for insurance co-payments. For example, there are other provisions of those two statutes that HRC concedes were not used for guidance in the co-payment question. Specifically, the Family Cost Participation Program is inapplicable if the disabled child is eligible for Medi-Cal (§ 4783, subd. (a)(1)(E)); the same is true for the Annual Family Program Fee (§ 4785, subd. (a)(1)(E)). Moreover, both of these statutes have sliding scales, so families over the threshold by varying amounts would still pay reduced fees depending on how far they exceeded the threshold. Ms. Del Monico testified that those parts of sections 4783 and 4785 were not included into the co-payment assistance analysis because

under certain circumstances a child can be deemed eligible for Medi-Cal regardless of the family's financial condition. That explanation was not persuasive. Insurance co-payments for behavioral services are significantly greater than the payments required by these two statutes. If a family is exempted from paying the nominal fees established by sections 4783 and 4785, one would expect them to be exempt from the greater costs of behavioral service co-payments.

29. Letters from HRC after Claimant's family first requested a financial hardship were vague on how the determination would be made. For example, a letter dated November 9, 2012 from Claimant's Service Coordinator, Jessica Carey, simply stated that a copy of the family's 2011 federal income tax return would be needed; no statement of the parameters of the determination was mentioned. In a letter dated January 22, 2013, which was sent well after the dispute began to escalate, Ms. Del Monico simply stated that the Board provided her with guidance on the issue, but she did not mention any particular parameters, and she did not mention the 400% FPL threshold. In a letter dated February 5, 2013, Ms. Del Monico for the first time mentioned that she would use "poverty guidelines issued by the federal government," but she did not mention the 400% FPL threshold. It was not until her letter dated March 14, 2013 that Ms. Del Monico mentioned the 400% FPL threshold. Thus, it appears the parameters used by Ms. Del Monico were evolving over time.

30. In her letter dated January 22, 2013, Ms. Del Monico advised Claimant's mother that HRC's Board was "awaiting clarification from Sacramento to finalize our policy." Ms. Del Monico also observed that the most recent news from Sacramento concerning insurance co-payment assistance was that Governor Brown had proposed to amend the law to expressly allow regional centers to "provide co-payment assistance in cases of financial hardship." The fact that news from Sacramento was evolving may partially explain the evolving nature of HRC's letters to the family as this dispute unfolded.

31. Ultimately, the Legislature enacted section 4659.1, which became effective June 27, 2013. This statute specifically addresses regional centers' co-payment obligations. Absent exceptional circumstances, a regional center may not fund insurance co-payments if the family's annual gross income exceeds the 400% FPL threshold. (§ 4659.1, subd. (a)(2).) Section 4659.1 does not include an exemption for a consumer who is eligible for Medi-Cal.

32. Since Ms. Del Monico made her determination denying financial hardship to Claimant's family well after section 4659.1 was enacted, but her letters leading up to the Legislature's passing of that statute were vague on the parameters she would use in making the determination, an inference exists that the 400% FPL threshold only became a factor used in her determination after she knew what section 4659.1 contained, or would contain, which was well after the mediation agreement was executed.

HRC'S FINANCIAL HARDSHIP DETERMINATION FOR CLAIMANT'S FAMILY

33. The family did not fully advise HRC about their financial situation. Claimant's father is the sole income provider for the family. Claimant's father's income is volatile and can change wildly from one year to another. For that reason, the family's income in 2011 was approximately three times more than their income in 2010.

34. Ms. Del Monico did not want to make a financial hardship determination for Claimant's co-payment assistance request until she received the family's 2011 income tax return. HRC staff first requested the family submit their 2011 tax return in a November 9, 2012 letter and repeated the request in an April 3, 2012 letter. HRC also requested "financial information" in February 5 and March 14, 2013 letters.

35. The family refused for several months to provide their 2011 income tax return for various reasons. It was not until October 2, 2013, almost one year after the mediation agreement was executed, that the attorney representing the family sent their 2011 income tax return to HRC "under protest" in his final demand letter. The 2011 tax

return showed the family's adjusted gross income substantially exceeded the 400% FPL threshold for a family of four. Ms. Del Monico determined that the family did not qualify for a financial hardship. By this time, section 4659.1 had become effective, which expressly contained the 400% FPL threshold as a requirement. Because the family did not submit their 2011 income tax return until after the effective date of section 4659.1, HRC contends that section 4659.1 also supports HRC's determination that the family does not qualify for financial hardship.

OTHER RELEVANT FACTS

36. Although HRC has agreed to reimburse Claimant's family for the $450 co-payment they incurred for the FBA, as of the hearing HRC still had not done so. HRC has maintained that the payment will be made.

37. It was established by a preponderance of the evidence that, pursuant to the mediation agreement, the parties had agreed that instead of HRC funding the family's co-payments assigned to the six hours per month of supervision, HRC would simply advocate with BECA to waive that co-payment. However, unbeknownst to the parties at the time, such an arrangement would violate relevant insurance laws. It is not clear whether HRC attempted to engage in that advocacy with BECA. But during the hearing the parties agreed that such efforts cannot be legally accomplished.

38. Claimant presented evidence establishing by a preponderance that they incurred co-payment costs for direct behavioral services provided by BECA from the inception of the program through June 2013 in the following amounts:

A. August 2012 $470.00
B. September 2012 $379.50
C. October 2012 $412.50
D. November 2012 $378.75
E. December 2012 $337.50

F.	January 2013	$341.25
G.	February 2013	$371.25
H.	March 2013	$326.25
I.	April 2013	$303.75
J.	May 2013	$251.25
K.	June 2013	$350.00[4]
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	Total	$3,922.00

39. The second provision of the mediation agreement provided that if HRC found Claimant's family qualified for a financial hardship, the co-payment funding would not exceed six hours per week of direct services, and would not exceed the cap provided by HRC's Board of Directors. It was not established that Claimant received more than six hours per week of direct services. No evidence was presented indicating the Board's cap or whether it had been exceeded by the above amounts.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.)

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[4] The invoice for this month did not differentiate between direct services and supervision. Based on the ratios of the prior bills, the direct service charges were approximately 70 percent of the total charges each month. Therefore, 70 percent of the June 2013 bill was determined to be for direct services.

Claimant timely requested a hearing to appeal the Service Agency's denial of his funding request. Jurisdiction in this case was thus established.

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

3. In this case, Claimant has the burden of proof, because he is requesting funding which the Service Agency has not agreed to provide. Stated another way, since Claimant contends the Service Agency improperly found the family did not qualify for financial hardship under the terms of the mediation agreement, he bears the burden of establishing the same by a preponderance of the evidence. (Factual Findings 1-17.)

THE PROPRIETY OF HRC'S FINANCIAL HARDSHIP DECISION

4. The ultimate issue to be resolved in this case is the propriety of HRC's determination that Claimant's family did not qualify for financial hardship for purposes of insurance co-payment assistance under the terms of the mediation agreement.

5. The second term of the mediation agreement simply provided that HRC would fund co-payment assistance, "[i]f Claimant's parents qualify for financial hardship." That term is not otherwise defined in the mediation agreement. At the time the mediation agreement was executed, HRC's Board had only provided "guidance" to its Executive Director in this area. HRC never reduced this guidance to writing. Over time, the criteria of this guidance seemed to evolve, as the legal landscape in Sacramento evolved. It was not established that the Board's guidance included the 400% FPL threshold, for various reasons. In sum, it was established that a financial hardship determination was simply made by HRC's Executive Director on a case-by-case basis. In this case, by the time the family submitted their most recent income tax return,

the Legislature had enacted section 4659.1. It is clear that Ms. Del Monico relied on that statute in making her determination that the family's income exceeded the 400% FPL and consequently they were not entitled to a financial hardship determination. (Factual Findings 18-35.)

6. When Claimant's family requested a financial hardship determination, section 4659.1 was not the law. A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.) The presumption against retroactive application is grounded in principles of due process and proscriptions against ex post facto laws. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841.) Thus, a statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application. (*Id.* at p. 844.) In this case, there is no indication in section 4659.1 that the Legislature intended it to operate retroactively. It would be unfair to retroactively apply section 4659.1 by allowing it to serve as HRC's financial hardship criteria when it did not exist at the time the mediation agreement was executed.

7. HRC did not establish the precise criteria Ms. Del Monico would have used had she made the financial hardship determination before section 4659.1 was enacted. Her decision to use section 4659.1 in making her determination was erroneous, as the statute could not have been retroactively applied, and it has not been established that the 400% FPL threshold was part of the criteria she would have used before section 4659.1 was enacted. However, Claimant established by a preponderance of the evidence that HRC's Manager of Rights Assurance, Ms. Thompson, essentially told the family that they had already qualified for a financial hardship and that the Executive Director's decision was a mere formality. (Factual Findings 18-35.)

8. Under these circumstances, Claimant established by a preponderance of the evidence that HRC's determination that the family did not qualify for a financial hardship was improper, at least for the time period covering the inception of BECA's services through June 2013 when section 4659.1 became effective. The remedy for the improper denial is for HRC to reimburse the family for the co-payments they incurred for Claimant's services from BECA during that time period (excluding the supervision hours), which totals $3,922.00. (Factual Findings 18-39.)

THE EFFECT OF THE CHANGE IN LAW

9. The next consideration is the effect of the change in law after the mediation agreement was executed by virtue of the enactment of section 4659.1. The mediation agreement was the final resolution of Claimant's fair hearing request filed in OAH case number 2012051026. In a sense, it has the same effect as if the matter went to hearing and a decision had been issued. The parties normally would be barred by the doctrines of res judicata and collateral estoppel from relitigating the same issues.

10. However, res judicata is binding solely as to acts and omissions which occurred prior to the former adjudication. Subsequent acts and omissions do not come within the bar. (*Lake Merced Golf and Country Club v. Ocean Shore Railroad Co.* (1962) 206 Cal.App.2d 421, 435.) For that reason, it was held that the doctrines of res judicata and estoppel by judgment did not preclude state officials from relitigating issues determined in a prior judicial case construing statutes purporting to adjust salaries of judges within the same class as to state constitutional issues after the California Constitution was amended, which constituted a change in state law. (*Olson v. Cory* (1982) 134 Cal.App.3d 85, 104.)

11. In this case, there was a change in law. When the mediation agreement was executed, there was no law directly on point concerning regional center funding of insurance co-payments. Months later, section 4659.1 became effective, which provides

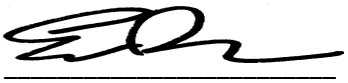
clear guidelines for when a regional center may make such funding, and when a regional center may not. As discussed above, section 4659.1 cannot be retroactively applied to this dispute, i.e., before it became effective on June 27, 2013. But it may be prospectively applied from the time it became effective. Pursuant to *Olson v. Cory*, a change in law subsequent to the final resolution of a judicial case prevents the application of res judicata or judicial estoppel, meaning the parties here are free to litigate the issue of co-payment funding by HRC after June 27, 2013. Such comports with the PALJ's prior order in OAH case number 2013050301, the predecessor case to this one, in which she held that the parties may litigate the co-payment funding issue on a prospective basis based on changed circumstances. The change in state law on co-payment funding is such a change of circumstance.

12. Therefore, the issue of the family's financial situation for purposes of co-payment assistance after June 27, 2013, must be determined by applying section 4659.1. Pursuant to subdivision (a)(2) of that statute, a regional center may provide such funding, absent unusual circumstances, so long as the family's "annual gross income does not exceed 400 percent of the federal poverty level." In this case, the family's gross income for 2012 would be relevant for that consideration, as well as whether any of the described unusual circumstances existed. However, no such evidence was presented at hearing. The ALJ therefore cannot make a determination on co-payment funding after the effective date of section 4659.1. Claimant's family should provide HRC with all relevant information pertaining to their eligibility for co-payment assistance pursuant to section 4659.1 for the time period after June 27, 2013, and HRC shall make a timely decision. If Claimant's family is dissatisfied with HRC's determination, they may file a fair hearing request appealing such an adverse decision.

ORDER

Claimant's appeal is granted, in part, and denied in part. The Harbor Regional Center shall forthwith, if they have not already done so, reimburse Claimant's family the amount of $450 as their co-payment for Claimant's FBA. The Harbor Regional Center shall also forthwith reimburse Claimant's family the amount of $3,922.00, representing the family's co-payments for direct BECA services from the inception of the program through June 2013.

DATED: February 21, 2014



ERIC SAWYER,

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.