

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013120324

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on July 15, 2014, in Torrance, California.

Gigi Thompson represented the Harbor Regional Center (HRC or regional center or Service Agency).

Claimant's parents represented Claimant.¹

The matter was submitted on the documents without testimony or oral argument. The record was held open for the receipt of additional written statements, which were marked for identification as Claimant's Exhibits J and K and received as evidence. The matter was deemed submitted on August 1, 2014.

ISSUE

The question in this matter is whether the Service Agency should continue to fund for 16 hours per day of shift licensed vocational nurse (LVN) for Claimant in his home.

¹ Names have been omitted to protect the family's privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-10; Claimant's exhibits A-K.

FACTUAL FINDINGS

1. Claimant is a 25-year-old male who qualifies for regional center services based on a diagnosis of mild intellectual disability. He also has Adrenoleukodystrophy, a degenerative and fatal disease which has caused him to become mentally disabled, quadriplegic, blind and bedridden.

2. HRC had been providing 16 hours per day of LVN shift nursing to Claimant. In a letter dated November 26, 2013, HRC informed Claimant's family that it would only fund 12 hours per day of LVN shift nursing. The stated reason for the decision was that "Medi-Cal is funding approximately 4.87 hours per day . . . and thus regional center funding for shift nursing will be decreased from 16 hours a day to 12 hours per day." (Ex. 3.)

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

4. Claimant's most recent Individual Program Plan (IPP), dated July 10, 2013, states that he requires 24-hour care. His condition has continued to regress, and he no longer moves without assistance and is blind. His parents have relentlessly provided the best quality of life possible and extended Claimant's life well beyond his life expectancy of 12-years-old. Claimant's mother has back issues from lifting Claimant over the years. The IPP also noted:

HRC is also funding 16 hours per day of shift LVN nursing.

Parents appealed to Medi-Cal for additional hours and were incredibly denied any increase. Medi-Cal is funding 4.37 hours per day of LVN care This amount is woefully low

compared to the 22.5 hours per day that Medi-Cal was funding. . . . 8 nurses are used for [Claimant]'s care. Most of the shifts are being staffed. Changing the nurses from 12 hour shifts to 8 hour shifts has been challenging for parents as overtime has been eliminated due to state budget cuts. However, father has made a schedule to ensure that HRC's and Medi-Cal's hours are used. . . . Parents are paying \$1500 per month to staff open nursing shifts.

Claimant's IPP also discusses his extensive health and medical issues. It notes that his health continues to deteriorate, especially when he becomes ill. (Ex. 4.)

5. Claimant's parents submitted a detailed description of Claimant's ailments including that he is mentally retarded, quadriplegic, bedridden, blind, non-verbal, fed through a J-tube, diabetic, with respiratory distress and spasmodic seizures. Claimant's disease causes the demyelination of his brain, which in turn deteriorates his body. Claimant's parents also submitted detailed information about Claimant's capacity, care plan, nursing notes, medications and schedule. (Exs. A – H.) They do not expect Claimant to live much longer and explained that he has been close to death three times. Claimant's parents wish to provide comfort and the best quality of life for him until he passes. They have seriously considered and reject the option of transferring Claimant to a skilled nursing facility because they feel it would result in unnecessary suffering and endangerment of Claimant's life. Claimant requires frequent attention from nurses which would not be available in a facility. In addition, Claimant's immune system is compromised, and a simple illness can cause him to be hospitalized, which can lead to further regression.

6. Claimant's parents also introduced written statements in support of their position from Joetta Wallace (Wallace), Supportive/Palliative Care Program Manager at

Miller Children's Hospital in Long Beach; Claimant's HRC counselor, Ed Swan (Swan); and Patricia Zalenski (Zalenski), a registered nurse and HRC nurse consultant. Wallace is familiar with Claimant's family and emphasized that because of his parent's attentive care, they have helped Claimant extend his life expectancy and quality of life. She noted that Claimant would likely develop complications if placed in a facility, and that his health care costs may increase as a result. (Ex. I.) Swan agreed with everything in Claimant's position paper. He noted that HRC has funded 16 hours per day of LVN care for almost 4 years, and this has greatly aided both Claimant and his parents. (Ex. J.) Zalenski noted that Claimant's needs are "incredibly complex, extensive and intense." (Ex. K.) She opined that Claimant's needs require 24-hour nursing care, and that Claimant's parents "cannot be expected to provide his 24 hour a day skilled care needs alone." (Id.) Zalenski's professional opinion is that HRC should continue to fund 16 hours per day of skilled nursing for Claimant. (Id.)

7. HRC agrees that Claimant needs skilled nursing care. HRC does not dispute that Claimant's condition has declined in recent months, including that his respiratory issues have increased, his gastrointestinal issues have increased, and his diabetes has resulted in such a lack of circulation that his feet are turning black. Regional Center's position is that because Medi-Cal is funding approximately four hours per day, HRC can reduce its obligation that amount.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal and reverse HRC's decision to reduce Claimant's LVN hours, as set forth in Factual Findings 1 through 6, and Legal Conclusions 2 through 4.

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. Given the foregoing, Claimant’s appeal must be granted. The evidence showed that Claimant needs 16 hours per day of skilled nursing care funded by HRC, as HRC has done for the past four years. As HRC acknowledged, Claimant’s condition has worsened and his care needs have increased. Decreasing his skilled nursing hours would cause unnecessary harm to Claimant. The fact that Medi-Cal provides four hours per day does not justify HRC’s reduction in hours because Claimant’s condition requires more skilled nursing care than HRC and Medi-Cal combined provide. Moreover, HRC was providing 16 hours per day even when Medi-Cal provided 4 hours per day. There has been no significant change which justifies reduction of LVN hours provided by HRC. Claimant’s parents are doing everything within their power to care for Claimant, and additional help is necessary.

ORDER

Claimant T.C.’s appeal is granted. Harbor Regional Center shall continue to provide Claimant with 16 hours per day of LVN shift nursing services.

DATED: August 8, 2014

AMY 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.