

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

v.

HARBOR

REGIONAL CENTER,
Service Agency.

OAH Case No. 2016051249

DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 28 and August 29, 2016, in Torrance, California.

Claimant,¹ who was not present, was represented by his mother (mother).

Gigi Thompson, Fair Hearing Coordinator (FHC Thompson), represented Harbor Regional Center (HRC, or the service agency).

Evidence was presented and argument was heard. The matter was submitted for decision on August 29, 2016.

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¹ Claimant's and his mother's identities are not disclosed to preserve their confidentiality.

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ISSUES²

Should HRC be required to fund occupational therapy services in addition to the occupational therapy services claimant's school is currently providing?

Should HRC be required to fund speech/language services in addition to the speech/language services claimant's school is currently providing?

Should HRC be required to fund behavior therapy services instead of claimant seeking those services from Medi-Cal or mother's private medical insurance?

Should HRC conduct a new psychological evaluation on claimant?

² In the Fair Hearing Request she submitted, mother raised six issues in addition to those identified above, including: whether HRC should identify a new respite provider for claimant; whether HRC should provide 30 hours of respite services per month during the summer of 2016; whether HRC should provide day care services for claimant on Saturdays in addition to respite services; whether HRC should assign a new services coordinator to claimant's case; whether HRC should clarify claimant's enrollment status in Medi-Cal; and whether HRC should provide mother with its latest Individualized Program Plan (IPP). However, at the beginning of the hearing mother stipulated that these six subjects had been addressed by HRC and were no longer issues mother disputed. As a result, these issues were not litigated.

Should HRC be required to fund more than 24 hours per month of respite services?

Should HRC be required to provide social-skills-intervention direct services to claimant?

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. Claimant is a 13-year-old male and HRC consumer based on his diagnosis of autism spectrum disorder in 2007 at age 3. Claimant, who has no siblings and lives at home with his mother, is limited in his use of meaningful speech but has no health issues, no history of seizure disorder, and does not suffer from medical problems. Mother says he requires constant supervision and exhibits difficult behaviors, including not wanting to get out of bed in the morning, spending too much time primping in the bathroom, pouring water onto various objects around the house, and turning on faucets for no reason. He also can be totally non-compliant, requiring mother to physically move him. Outdoors, he picks up twigs and sticks he finds, using them as digging tools and to tap other objects. When mother takes him out shopping, he is difficult to control, and he recently startled a patron in a department store by touching her. He attends Dodson Middle School, which is in the Los Angeles County Unified School District (LAUSD). He is currently receiving special education services for "Autistic Like" behaviors. He spends part of his school day in special day classes, and the other part in mainstream classes.

2(a). In 2014 the service agency obtained a psychological evaluation for claimant, who was 11 years old at the time. The evaluation was performed by Krystal Edmonds-Biglow, Psy.D., who, over the course of three days, met with mother to obtain background information, observed claimant twice in her office and once at school, and

administered multiple tests. Dr. Edmonds-Biglow also reviewed the reports generated by three previous evaluators: Elaine Ito, Ph.D., who evaluated claimant in January 2007; Robert Rome, Ph.D., who evaluated claimant in February 2013; and an LAUSD evaluation from April 2011. Dr. Edmonds-Biglow noted the three previous evaluators had difficulty measuring claimant's cognitive functioning because claimant was not cooperative during the evaluation process. Dr. Edmonds-Bigelow had a very similar experience. For cognitive testing, she administered the Wechsler Intelligence Scale for Children- Fourth Edition (WISC-IV) and the KABC-2 nonverbal subtests, but claimant was not cooperative and he did not complete enough of the tests to receive a score.

2(b). Dr. Edmonds-Biglow administered the Vineland Adaptive Behavior Scales- Second Edition (VABS-II) to evaluate claimant's adaptive functioning, and found his general functioning to fall in the low range (moderate deficit). The VABS-II measures adaptive ability in communication, daily living, and socialization, and claimant's scores in these domains were as follows: communication – low range (moderate deficit); daily living skills – low range (mild deficit); and socialization – low range (moderate deficit).

(i). His communication strengths were that he understood the difference between yes and no, could listen to a story five minutes or longer, could write his name from memory and identify letter from memory. He can use single words to communicate his needs, say his name when asked, and answer greetings. His weaknesses include an inability to follow complex instructions, describe his experiences in detail, or give directions. He does not participate in conversations and speaks only when prompted.

(ii). His daily living skills include his ability to bathe and dress himself, assist with household chores, put away his clothes, and use the computer for games and other tasks. He likes being in the kitchen and preparing meals. However, he needs assistance

with his shoes, buttons, and zippers, cannot tell time, cannot count money, cannot answer the telephone, and cannot cross the street safely unassisted.

(iii). Regarding socialization skills, claimant responds to prompts from others and will occasionally smile when approached by familiar people. He prefers certain people and makes eye contact with his mother and some adults familiar to him. He does not engage in reciprocal conversations and social interactions with others, including peers, and he is unaware of the needs and interests of others. He has difficulty coping with frustration and anger.

2(c). Dr. Edmonds-Biglow administered the Autism Diagnostic Observation Schedule-2 (ADOS-2) Module 2 and found claimant's score to be consistent with autism spectrum disorder with "high" related-symptoms. Claimant had difficulty with communication and reciprocal social interaction. Dr. Edmonds-Biglow administered the Gilliam Autism Rating Scale- Second Edition (GARS-2) to measure abnormalities in stereotyped behaviors, communication and social interaction. The GARS-2 resulted in an autism index of "likely."

2(d). Dr. Edmonds-Biglow's diagnostic impressions were: autism spectrum disorder, with accompanying language disorder; and a diagnosis deferred for intellectual disability. Her recommendations for intervention were as follows:

1. Follow up with claimant's HRC counselor regarding support and services.
2. Follow up with claimant's school district regarding an evaluation for educational supports that may be beneficial.
3. Claimant should be placed in an academic setting that will provide a lot of individual attention. Claimant is not stimulated in large group settings.

4. The family should be provided resources that include support groups and other community resources designed to reduce some of the distress associated with parenting a child with autism spectrum disorder.
5. Claimant should continue to benefit from speech therapy.
6. Mother should continue to receive respite services.
7. Claimant would benefit from behavioral interventions designed to reinforce social interaction and safety.

OCCUPATIONAL THERAPY SERVICES

3(a). Mother disagrees with the way LAUSD is providing occupational therapy to claimant but had difficulty articulating the services he was receiving and its deficiencies. To establish claimant's needs in this area, Mother had claimant assessed for occupational therapy support by Roxana Fernandez, an occupational therapist at Greco's World, in approximately April of 2016. Ms. Fernandez found claimant to exhibit decreased processing of sensory input which is impacting his body awareness and safety awareness, attention, safety, bilateral coordination, and praxis (i.e., action; practice of a skill). He has difficulty with visual motor and visual perception skills. Claimant's self-regulation is impeded due to his lack of registration with his sensory system, leading to biting, pinching, and exhibiting a low arousal level and slow response system when following directions. Ms. Fernandez's assessments did not include an assessment of current occupational therapy services LAUSD was providing for claimant or any recommendations for additional services.

3(b). The service agency does not dispute claimant's need for occupational therapy services. Mother contends LAUSD is not fulfilling its responsibility to provide

these services in a meaningful manner, but she did not describe what was being provided and how it was deficient. LAUSD currently has claimant in its Autism Program at Dodson Middle School and has recommended that he receive occupational therapy services for 30 minutes per month, in order to suggest strategies for improving his motor planning and visual motor skills. Mother disagreed with LAUSD's plan and has sought informal dispute resolution. The service agency has recommended mother go back to LAUSD to discuss her concerns. HRC has also offered to have its service coordinator attend a meeting with mother and LAUSD, and for the service agency's special-education attorney consultant to meet with mother and discuss her concerns. Mother has not accepted HRC's offer for these supports. The service agency learned from mother that LAUSD has evaluated claimant to determine his needs in the area of occupational therapy and speech/language services in 2016, and that a report was generated showing the results. To date, mother has chosen not to share the report with the service agency.

3(c). Mother has attempted to obtain additional occupational therapy services through Medi-Cal, but she has been unsuccessful to date. Her private insurance plan, Seaside Health Plan, denied her request for an evaluation of claimant for occupational therapy and speech/language services because Medi-Cal covers those services through Anthem Blue Cross. Claimant is currently on a waiting list with Miller Children's Specialty Group for occupational therapy and speech/language evaluations. Mother is displeased with Anthem Blue Cross's slow response time and has filed a grievance with them.

SPEECH/LANGUAGE SERVICES

4(a). Mother has requested an increase in speech/language services, which are currently provided by LAUSD. Claimant has difficulty initiating and performing the movements needed to make speech. This condition is known as verbal apraxia, and it is not a result of claimant's diagnosis of autism spectrum disorder. On June 22, 2016,

mother had claimant evaluated by Julie Kristie Carrillo, M.A., a speech and language pathologist with Speech Therapy Partners, Incorporated. Ms. Carrillo recommended one to two hours per week of speech and language therapy, with the goals being for claimant to increase his mean length utterances to include present progressive word forms, pronouns, and regular past-tense words.

4(b). As stated above, mother has attempted to obtain additional speech/language services through Medi-Cal and Anthem Blue Cross, and claimant is on a waiting list for evaluation for such services.

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BEHAVIOR THERAPY

5(a). The Department of Health Care Services (DHCS) submitted State Plan Amendment 14-026 to the Centers for Medicare & Medicaid Services on September 30, 2014 to seek the necessary approval to include Behavioral Health Treatment as a covered Medi-Cal service for individuals under 21 years of age, pursuant to Section 14132.56 of the Welfare and Institutions Code.

5(b). On January 21, 2016, legislation was enacted to enable Medi-Cal to provide benefits for behavior health services for children with autism spectrum disorder who are under 21 years of age. Beginning on February 1, 2016, the authorization and payment of behavior health services to Medi-Cal beneficiaries transitioned from regional centers to Medi-Cal over an estimated six-month period.

5(c). The service agency does not dispute mother's position that claimant needs behavior therapy services, which they previously funded until 2015, when the law changed as referenced above. They have instructed mother to request these services through Medi-Cal or her private health insurer. Mother attempted to have her insurer, Seaside Health Plan, provide coverage for claimant's behavior services, but they informed her they do not pay for such services for autistic children. Anthem Blue Cross

has given mother a list of other providers to contact. Mother has had no success as yet finding a suitable provider. Mother has informed the service agency of her inability to secure these services to date.

NEW PSYCHOLOGICAL EVALUATION

6(a). Mother contends that a new psychological evaluation should be performed on claimant because his needs and behaviors have changed since Dr. Edmonds-Biglow evaluated him approximately two years ago. Mother also contends the 2014 evaluation was incomplete because claimant did not receive a score for cognitive testing, so a new evaluation should follow.

6(b). Antoinette Perez, the service agency's Director of Children's Services, holds a Bachelor of Arts degree in psychology and a Master's degree in clinical psychology. She is on the service agency's case management team assigned to claimant's case, and they considered mother's request for a new psychological evaluation and presented the matter to two staff clinicians, who reviewed claimant's file. The case management team also considered that mother had informed the service agency that LAUSD staff had performed a psychological evaluation in 2016. The clinicians advised the team that it would not be helpful, and could even be harmful, to subject claimant to yet another psychological evaluation pursuant to mother's request, as it would be his third evaluation in two years, and it could actually be a damaging experience for claimant by over-exposing him to lengthy test processes for minimal expected returns.

6(c). Mother's contention that claimant should be evaluated again for cognitive testing is not compelling. Dr. Edmonds-Biglow noted that in each of claimant's previous three evaluations, claimant did not cooperate with testing enough for his evaluators to measure his cognitive abilities. In similar fashion, claimant also failed to cooperate with Dr. Edmonds-Biglow such that she could not compile enough data to evaluate any cognitive-testing results. No evidence was presented to suggest claimant's condition

has changed substantially enough to warrant a new evaluation, or that he would now be more cooperative with testing to determine his cognitive abilities.

ADDITIONAL HOURS OF RESPITE SERVICES

7. During the summer of 2016 the service agency increased respite hours for mother from 24 hours per month to 30 hours per month, to account for the additional hours claimant was not in school. At the time of the fair hearing, the service agency had not reduced the respite hours from 30 hours per month. Thus, no denial of services has occurred.

SOCIAL SKILLS INTERVENTION

8. Social skills intervention services have been offered by the service agency through two different services: The Shabani Institute, and Pediatric Therapy Network. These service-providers have not found claimant to be verbally interactive sufficient for claimant to benefit from their services. Mother contends the service agency has been inefficient by failing to provide effective referrals for social skills services. Recently mother attempted to enroll claimant in a program offered by Step-By-Step but the service agency indicated that it does not recognize Step-By-Step as a service provider it funds.³ HRC has enrolled claimant in the Learning About My Body class through its own behavioral services and will continue to provide mother with referrals to other social skills intervention providers. The service agency contends it has not denied services to claimant in this area, but only that mother has not yet found a suitable service-provider and program to suit claimant's needs and preferences.

³ In her testimony, Children's Services Director Perez surmised that Step-By-Step was not a vendored provider.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. and Inst. Code, § 4500 et seq.)⁴ An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established.

THE STANDARD AND BURDEN OF PROOF

2(a). The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.)

2(b). 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).) In this case, because Claimant seeks service-funding through HRC, she bears the burden of proof by a preponderance of the evidence that she is entitled to the funding. (Evid. Code, §§ 500, 115.) Claimant has not met his burden of proof.

APPLICABLE STATUTORY LAW AND ANALYSIS

3(a). Welfare and Institutions Code section 4646 states in part:

(a) 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

⁴ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

and preferences of the individual and the 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.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents . . . shall have the opportunity to actively participate in the development of the plan. [¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents . . . at the program plan meeting.

3(b). Welfare and Institutions Code section 4646.4 states in part:

(a) 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 . . . 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: [¶] . . . [¶]

(c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

3(c). Welfare and Institutions Code section 4646.5 states 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 supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. [¶] . . . [¶]

3(d). Welfare and Institutions Code section 4659 states 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 supplementary program. [¶] . . . [¶]

c) Effective July 1, 2009, notwithstanding any other provision of law or regulation 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 of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing

that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009. [¶]
... [¶]

4. Claimant did not meet his burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide prospective funding for claimant for occupational therapy services, as set forth in Factual Findings 1-3. Pursuant to Welfare and Institutions Code section 4659, subdivision (a)(1), HRC has identified LAUSD as a funding source for these services, and Claimant did not establish that LAUSD has denied these services.

5. Claimant did not meet his burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide prospective funding for claimant for speech/language services, as set forth in Factual Findings 1-4. Pursuant to Welfare and Institutions Code section 4659, subdivision (a)(1), the service agency has identified Medi-Cal and mother's private insurance as funding sources for these services, and Claimant did not establish that Medi-Cal, or claimant's mother's private insurance, have denied funding for these services.

6. Claimant did not meet his burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide prospective funding for claimant for behavior therapy services, as set forth in Factual Findings 1, 2 and 5. Pursuant to Welfare and Institutions Code section 4659, subdivision (a)(1), the service agency has identified Medi-Cal as a funding source for these services, and Claimant did not establish that Medi-Cal has denied funding for these services.

7. Claimant did not meet his burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide a new psychological evaluation for claimant, as set forth in Factual Findings 1, 2 and 6.

8. Claimant did not meet his burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide additional regular respite service hours in the home for claimant, as set forth in Factual Findings 1, 2, and 7. These services have not been denied.

9 Claimant did not meet his burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide social-skills-intervention direct services for claimant, as set forth in Factual Findings 1,2, and 8. These services have not been denied.

ORDER

Claimant's appeal is denied.

Dated: September 6, 2016

JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.