

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Due Process Request
of:

PETITIONER,

vs.

HARBOR REGIONAL CENTER,

Respondent.

OAH No. 2016100823

California Early Intervention Services
Act (Gov. Code, § 95000 et seq.)

DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 7, 2016, in Torrance. Petitioner was represented by his mother.¹ Gigi Thompson, Manager Rights Assurance, represented Harbor Regional Center (HRC). Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted for decision at the end of the hearing.

ISSUE

Should HRC be required to provide funding for petitioner to receive behavioral intervention (ABA) services provided by the Center for Autism and Related Disorders?

¹ The names of petitioner and his family are omitted to protect their privacy.

EVIDENCE RELIED UPON

Documentary. HRC's exhibits 1-10. Petitioner's exhibits C1-C18.

Testimonial. Cori Reifman, HRC benefits specialist consultant; Brenda Sanchez, HRC client services manager; and petitioner's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Petitioner is a 20-month-old boy who is eligible for Early Start² services due to global delays.
2. In September 2016, petitioner's mother (Mother) requested HRC to provide funding for petitioner to receive behavioral intervention (ABA) services from the Center for Autism and Related Disorders (CARD). By letter dated October 13, 2016, HRC notified Mother that it had denied the request because the family had healthcare insurance through Medi-Cal that could pay for the requested ABA services. Subsequently, Mother submitted a Due Process Hearing Request to appeal HRC's denial of her request. This hearing ensued.

PETITIONER'S BACKGROUND

3. Petitioner lives at home with Mother, his maternal grandmother, and his 25-year-old sister, who is also a regional center client on the basis of severe autism. Petitioner's mother is a widow and the primary caregiver for her two children.

² "Early Start" is another name for the California Early Intervention Services Act. (Gov. Code, § 95000 et seq.)

4. Petitioner's initial IFSP meeting was held on June 29, 2016. During that meeting, a pediatric physical therapist completed a developmental evaluation of petitioner. Based on that evaluation, HRC agreed to fund for a psychological evaluation of petitioner by clinical psychologist Stacey Cohen-Maitre, Ph.D. Petitioner's initial IFSP dated June 29, 2016, indicated that additional services would be determined pending the completion of Dr. Cohen-Maitre's evaluation.

5. On July 28 and August 4, 2016, Dr. Cohen-Maitre conducted a psychological evaluation of petitioner. The evaluation results are set forth in a Psychological Evaluation report dated August 6, 2016. Dr. Cohen-Maitre diagnosed petitioner, under the DSM-5 diagnostic criteria, with Autism Spectrum Disorder (299.00), Language Disorder (315.39), and Global Developmental Delay (315.8). Dr. Cohen-Maitre recommended that, due to petitioner's diagnosis of Autism Spectrum Disorder, "further behavior assessment is warranted at this time to determine the need and level of behavior intervention (ABA and other evidence-based interventions) recommended." (Exh. C-1.)

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6. Pursuant to petitioner's IFSP dated June 29, 2016, and revised October 4, 2016, HRC is currently funding self-directed respite for the family, and center-based services (including speech and occupational therapy) for petitioner provided by the Pediatric Therapy Network's Leaps and Bounds program.

REQUEST FOR ABA SERVICES

7. In or about September 2016, Mother requested HRC to provide funding for petitioner to receive ABA services from CARD.

8. Petitioner is enrolled in Medi-Cal. His health insurance is provided by Health Net, which is a Medi-Cal managed care health plan. MHN is the company that administers behavioral health treatment services for Health Net.

9. By letter dated September 19, 2016, MHN notified Mother and CARD that MHN was denying their request for approval for CARD to provide ABA services for petitioner. The letter stated in pertinent part:

[CARD] has asked MHN to approve Applied Behavioral Analysis. This request is denied because the requested . . . out of network services have been determined to be available within our network. Out of network services, unless emergent in nature or not available within the network, are not covered under the benefit plan. The provider of service [i.e., CARD] is not a contracting provider with our organization, therefore services cannot be authorized. . . . Please consider the list of 67 In-network ABA providers. (Exh. C-5.)

10. The MHN letter established that insurance coverage was not approved for CARD because of CARD's out-of-network status. However, the letter also makes clear that insurance coverage is available for ABA services for petitioner from one of Health Net's 67 in-network ABA providers. Thus, petitioner has Medi-Cal insurance coverage for ABA services through Health Net. That coverage, however, does not extend to services provided by CARD.

11. In September and October 2016, email and telephone communications ensued between Mother and HRC regarding the funding

request for ABA services with CARD. In addition, on October 19, 2016, HRC staff had a meeting with Mother to further discuss the request for ABA services with CARD.

12. In a telephone call with Mother on October 7, 2016, HRC staff explained that it would not be funding ABA services with the family's preferred provider CARD. The reason was that Health Net was not denying coverage for ABA services but, rather, was denying coverage for CARD services as an out-of-network provider. It was further explained to Mother that she had the option to change from Health Net to another Medi-Cal managed care health plan that contracted with CARD, or to consider the other companies within Health Net's ABA provider network. Mother indicated she was not interested in changing health plans because she had other pending issues with insurance and she was satisfied with petitioner's current doctors. Mother did not wish to explore other ABA providers and reiterated that she specifically wanted CARD as petitioner's ABA service provider. HRC sent Mother a letter dated October 13, 2016, which summarized the October 7, 2016 telephone call and the prior communications between the parties.

13. On October 19, 2016, Brenda Sanchez, HRC client services manager, and Cory Reifman, HRC benefits specialist consultant, met with Mother. The purpose of the meeting was to provide an opportunity for benefit specialist Reifman to provide Mother with guidance on how to appeal MHN's denial of coverage for ABA services with CARD, and to offer support, information, and choices to Mother about accessing ABA services for petitioner. Reifman and Sanchez also attempted to explain to Mother the difference between appealing HRC's decision to deny funding for ABA services and appealing MHN's denial of coverage for the specific provider, CARD. Mother reiterated that she was

appealing HRC's decision. Consequently, the process of appealing MHN's decision was not discussed at length at the meeting.

14. The discussion at the October 19, 2016 meeting focused on the options previously presented by HRC to Mother, namely, selecting another ABA provider within Health Net's provider network, or changing petitioner's Medi-Cal managed care health plan to one that includes CARD within its provider network. Mother reported that CARD was contracted with Anthem Blue Cross. LA Care is the Medi-Cal managed health care plan for Anthem Blue Cross. Reifman explained that one way to access CARD through petitioner's Medi-Cal coverage would be to change his managed care health plan to Anthem Blue Cross under LA Care. Mother expressed she was hesitant to change health plans because she had good relationships with petitioner's current doctors.

15. Mother testified that she wants CARD to provide petitioner's ABA services because it is a center-based program and close to the family home. According to Mother, CARD is only six minutes away from the family home. The close proximity would help Mother in managing the activity schedules and medical appointments for her two special needs children. According to Mother, most of MHN's ABA service providers are home-based, but there was no documentary evidence to corroborate this claim. Mother feels that an in-home ABA program would not be appropriate for petitioner. According to Mother, the family's apartment is small and not conducive to therapy. Petitioner's sister lives at home and, according to mother, engages in distracting behaviors. According to his mother, petitioner is easily distracted and would be unable to focus in the home environment. Mother prefers that petitioner receive ABA services in a center-based program with other children.

16. Mother testified that she thought HRC was going to appeal the MHN decision on her behalf because HRC had made the appeal relating to her daughter's In-Home Supportive Services (IHSS). Mother testified that HRC was very supportive and handled the IHSS appeal on her behalf. She believes HRC should do the same regarding the request for ABA services with CARD. Reifman and Sanchez testified that there appears to have been a misunderstanding. HRC's intention was never to make an appeal of the MHN decision on Mother's behalf. HRC only offered to assist and support Mother but she would handle the MHN appeal, if any, herself.

LEGAL CONCLUSIONS

1. The California Early Intervention Services Act (Gov. Code, §§ 95000 et seq.), commonly known as Early Start, implements the federal program created by Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1401 et seq.), which provides services to eligible infants and toddlers from the date of birth until the child's third birthday. (Gov. Code, § 95014.)

2. Under the Early Start program, direct services for eligible infants and toddlers shall be provided pursuant to the existing regional center system under the Lanterman Developmental Disabilities Services Act, codified at Welfare and Institutions Code section 4500 et seq. (Lanterman Act). (Gov. Code, § 95004, subd. (a).) In providing Early Start services, regional centers shall comply with the Lanterman Act and its implementing regulations, and "[n]otwithstanding any other law or regulation to the contrary, private health insurance for medical services or a health care service plan identified in the individualized family service plan, other than for evaluation and assessment, shall be used in compliance with applicable federal and state law and regulation." (Gov. Code, § 95004, subd. (b)(1).)

3. Under the Lanterman Act, regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services, including but not limited to, governmental programs required to provide or pay the cost of providing services, including Medi-Cal. (Welf. & Inst. Code, § 4659, subd. (a)(1).) In addition, "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, . . . 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." (Welf. & Inst. Code, § 4659, subd. (c).) The Lanterman Act further provides: "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." (Welf. & Inst. Code, § 4648, subd. (a)(8).)

4. The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62; see also, 34 C.F.R. § 303.425(a).) In this case, petitioner is seeking funding for ABA services that HRC has not before agreed to pay. As the party seeking relief in this matter, petitioner bears the burden of proof. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

5. In this case, petitioner has Medi-Cal coverage, through Health Net, for ABA services from one of Health Net's in-network providers. Mother, however, has chosen not to pursue the coverage with Health Net by insisting on services from CARD, which is an out-of-network provider. Mother has chosen not to consider one of Health Net's in-network ABA providers. Mother has also chosen not to change petitioner's Medi-Cal managed care health plan to one that contracts with CARD, such as Anthem Blue Cross under LA Care. Mother feels that

a center-based program would be better for petitioner than an in-home ABA program because of the setting in the family home. However, there is nothing in Dr. Cohen-Maitre's evaluation report indicating that petitioner's ABA services must be given in a center-based program as opposed to an in-home program. Under these circumstances, HRC is prohibited from funding ABA services for petitioner from CARD or any other ABA provider. (Factual Findings 1-16; Legal Conclusions 1-4.)

6. Mother contends that HRC is required to fund ABA services for petitioner because of Government Code section 94004, subdivision (b)(2), which provides: "When compliance with the above described law would result in any delays in the provision of early intervention services for the provision of any of these services, a regional center may be authorized to use a special service code that allows immediate procurement of the service." In this case, any delay in petitioner receiving ABA services has resulted from Mother's decision not to pursue the available Medi-Cal coverage for petitioner's ABA services, after HRC staff discussed with Mother her options for accessing ABA services through petitioner's Medi-Cal coverage. HRC's compliance with the laws governing the provision of Early Start services is not the cause of the delay. The law is clear that HRC is prohibited from purchasing a service that is otherwise available through Medi-Cal.

7. Based on the foregoing, petitioner's appeal must be denied.
(Factual Findings 1-16; Legal Conclusions 1-6.)

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ORDER

Petitioner's appeal is denied. Harbor Regional Center is not required to provide funding for petitioner to receive ABA services through CARD at this time.

DATED: November 21, 2016

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings