

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2017051266

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 10, 2017, and December 5, 2017, in Long Beach, California.¹

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or Service Agency).

Claimant's mother (Mother) represented claimant. Claimant was present during the first day of the hearing held on July 10, 2017; he did not attend the December 5, 2017 hearing.² Mother had the assistance of a Spanish language interpreter during both days of the hearing and was also assisted by claimant's sister (Sister).

¹ Because of the similarity of issues and circumstances, this matter was consolidated for hearing on December 5, 2017, with OAH case number 2017080901, which involves a request by the same claimant for additional regional center services.

² Names are not used in order to protect the privacy of claimant and her family.

The record was closed, and the matter was submitted for decision at the conclusion of the hearing.

ISSUES

The parties agreed that the issues to be decided are as follows:

(1) Should HRC be required to fund the purchase of an electric treadmill for use by claimant?

(2) Should HRC be required to fund equestrian therapy for claimant?

(3) Should HRC be required to fund training necessary for a service animal license for claimant's family pet?

(4) Should HRC be required to fund an assessment for speech therapy for claimant and fund speech therapy in addition to the speech therapy claimant receives in school?

(5) Should HRC be required to fund an assessment for occupational therapy (OT) for claimant and also fund OT for claimant?³

FACTUAL FINDINGS

1. Claimant is a 17-year-old male who qualifies for regional center services based on his diagnoses of moderate intellectual disability and autism spectrum disorder.⁴

³ At the July 10, 2017 hearing, Mother withdrew her demand for additional respite hours. She agreed to accept HRC's offer to fund 10 hours per week of personal care assistance and to address her request for additional hours for the summer when claimant was not in school in a separate proceeding.

⁴ Mother asserted during the hearing that claimant also qualified for regional center services based on a diagnosis of cerebral palsy. However, no documentation was

2. By Notice of Proposed Action and letter dated April 21, 2017 (NOPA letter), HRC informed claimant that it was denying his request for the purchase of a treadmill, funding of a service animal license/training for the family dog, and equestrian therapy. HRC also indicated that it was "unable to make a decision regarding the need for a speech and OT evaluation at this time without" the submission of certain documents. (Exhibit 3, at p. 7.)⁵ On May 25, 2017, claimant timely filed a request for a fair hearing appealing HRC's decision. (Exhibit 2.) This hearing ensued.

CLAIMANT'S BACKGROUND

3. Claimant lives at home with Mother. Claimant's parents are divorced. Mother suffers from several serious health problems. Sister, who is several years older than claimant, lives with claimant's father but is very close with claimant. Claimant visits with his father once a week.

4. Mother is claimant's In Home Supportive Services provider; Sister provides personal assistant and respite services. Claimant also receives Medi-Cal and is eligible for assistance from California Children's Services (CCS).

5. In addition to his qualifying diagnoses, claimant has been diagnosed with Dandy Walker Syndrome (a congenital brain malformation with fluid filled spaces around the cerebellum), microcephaly, auditory impairment, with profound hearing loss

submitted that reflects that claimant has been diagnosed with cerebral palsy. The doctor's notes submitted by Mother (Exhibit O) states that claimant has "no past medical history of . . . Cerebral palsy."

⁵ The NOPA letter also stated that it was denying claimant's request for purchase of a vehicle. Subsequently, HRC agreed to fund the modification of a new vehicle for wheelchair access, and claimant withdrew his demand.

in one ear, and vision impairment. He is non-verbal and wears leg braces. He uses a wheelchair when he becomes fatigued from walking long periods of time. He has difficulty feeding and eating, and is on a soft-food diet. Claimant requires constant monitoring and maximum assistance with all daily tasks and self-care needs, including toileting.

6. In the past, claimant has had daily tantrums, which have at times lasted more than an hour. He also has had other maladaptive behaviors, such as aggression towards himself and others, throwing things and loud vocalizations. Claimant's aggression has put his safety and the safety of others at risk and also has severely limited his ability to participate in community settings.

7. As a result of his maladaptive behaviors, Tichenor Clinic for Children (Clinic), a non-profit organization providing rehabilitative and enrichment services to children in Long Beach, California, was forced to discontinue providing speech-language therapy, OT for feeding, and swimming lessons to claimant in May of 2017. Claimant had been receiving services from the Clinic since he was a toddler. The Clinic reported that it would be happy to resume the therapy and swimming lessons once claimant's behavior control improves.

8. The Medical Therapy Unit of CCS also has declined to continue providing PT to claimant because of his maladaptive behaviors.

9. Starting in early July 2017, claimant began receiving Intensive Behavioral Intervention (IBI) therapy through the Center for Autism and Related Disorders (CARD) in order to control his maladaptive behaviors. Mother and Sister both reported that claimant's behaviors have started to improve as a result of CARD's services.

10. Claimant is in the 11th grade. Although HRC documents indicate that claimant attends the Beacon Day School through the Long Beach Unified School District

(School District), Mother testified that he has now transferred to a new school. Details of the transfer were not made known at the hearing.

11. The most recent Individual Education Plan (IEP) for claimant was completed on November 12, 2015. (Exhibit 5.) HRC has obtained a copy of the IEP, and the speech and OT assessments conducted by the District in connection with the IEP. Mother has not shared with HRC any more recent School District assessments, reports or communications regarding the services claimant receives from the School District.

12. Claimant's Individual Program Plan (IPP) was the result of meetings held on November 10, 2016, and April 6, 2017. (Exhibit 4.) The IPP does not specifically address the speech therapy or OT either needed by or provided to claimant. Because Mother had refused to share claimant's recent school records, the IPP assumes that the School District is meeting claimant's speech therapy and OT needs.

13. In the past, in addition to the School District records, Mother has refused to supply HRC with complete records from claimant's other service providers, including CCS, the Clinic, Medi-Cal and claimant's physicians. Mother has also refused to authorize HRC to speak with claimant's service providers. HRC has had difficulty assessing claimant's needs because it lacks current information about the scope and nature of the services claimant is receiving.

14. Before the December 5, 2017 hearing, Mother supplied additional records to HRC that Mother claimed contained medical records sufficient to support her request for a new speech therapy assessment, additional speech therapy, an OT assessment and other services.⁶ HRC did not have adequate time to review the records in depth before

⁶ At the hearing, HRC objected, pursuant to Welfare and Institutions Code section 4712, subdivision (d), to the admission of any document it received from claimant less than 5 days prior to the date of the hearing. (All further statutory references are to the

the hearing, and stated that it would require several weeks to determine whether a new speech therapy or OT assessment would be needed based on the documents provided or whether HRC required additional documents to make an assessment decision.

15. At the hearing, Mother agreed to provide any additional medical records sought by HRC and to authorize HRC staff to speak with claimant's service providers provided she was present during the conversation.

REQUEST FOR A TREADMILL

16. Mother requested an electric treadmill for claimant because she believes it allows him independence, provides him with his only form of exercise, and helps with his constipation. Mother intends the new treadmill to replace an electric treadmill given to the family that is no longer operable. Claimant had been exercising on the treadmill on a daily basis for 20 minutes a day under the constant supervision of Mother and Sister. Mother and Sister both reported that claimant had not suffered any accidents when on the treadmill.

17. Claimant engages in limited physical exercise outside of the treadmill. Claimant's maladaptive behaviors make it impossible to take him out into the community for exercise at a gym or at local parks. Mother testified that claimant cannot leave his classroom to participate in physical education programs at the school because of his behaviors. Sister sometimes takes claimant outside to walk once or twice a weekend.

18. Both Mother and Sister testified that claimant's use of the treadmill has helped significantly with his constipation, which is an ongoing problem. Sister testified

Welfare and Institutions Code unless otherwise stated.) After having the opportunity to review the documents at the hearing, HRC withdrew its objection.

that the treadmill also encourages claimant to drink more water, something he usually does not like to do. Because claimant has not been able to use the treadmill, both Mother and Sister reported that his constipation has returned.

19. Mother also testified that she had requested that CCS pay for the treadmill but CCS had refused her request. No written documentation of Mother's request or CCS's denial was provided at the hearing.

20. In the NOPA letter, HRC informed Mother it was denying her request for an electric treadmill because the treadmill was not considered medical equipment "associated with, or [resulting] from, a developmental disability." (Exhibit 3 at p. 5.) According to HRC, "the treadmill is a piece of equipment that is designed for anyone and the need to utilize it for exercise and alleviation of constipation is not directly associated with [claimant's] disability." (*Ibid.*)

21. HRC authorized Northstar Physical and Occupational Consulting Services, P.C., Inc. to conduct an assessment of claimant's treadmill request, which was completed on May 17, 2017. In doing the assessment, the assessor did not observe claimant on the treadmill, and she acknowledged her unfamiliarity "with the other exercise opportunities that may exist such as in school and community." Based on the assessor's conversations with Mother, the assessor made the following recommendation:

Since the safety of [claimant's] treadmill exercise cannot be assessed, and a treadmill is not defined as durable medical equipment, continued support provided by [claimant's] personal assistant currently being funded by Harbor Regional Center should be sufficient to assist [claimant] and his mother to exercise in the community. He also attends school 5 days per week where physical activities are built into his school day. (Exhibit 2.)

22. Dr. Ahoo Sahba, a physician employed by HRC, testified at the hearing regarding claimant's treadmill request. Dr. Sahba had not examined claimant; she based her testimony on the review of claimant's medical records and her observation of claimant at the hearing. According to Dr. Sahba, an electric treadmill was not medically indicated for claimant because using a treadmill was not a recommended medical treatment to alleviate constipation. Dr. Sahba also testified that use of an electric treadmill was unsafe for claimant because claimant had a seizure disorder that was not controlled by drugs. As a result, Dr. Sahba asserted that a potential existed for claimant to seize on the treadmill, and thus a risk existed that claimant could injure himself in the future.

23. In response to Dr. Sahba's testimony, Mother and Sister acknowledged that claimant had two seizures in the recent past but that neither were related to claimant's treadmill use nor occurred while claimant was using the treadmill. Mother provided an advertisement of a harness that claimant could wear on the treadmill to ensure his safety.

24. Mother introduced three documents to establish claimant's medical need for a treadmill. The first, entitled Chronological Log of Case Activity by CCS, contains entries dated January 27, 2017, and April 25, 2107, by claimant's physical therapist that acknowledge claimant's use of a treadmill at home. (Exhibit N.) A description of the activity, however, is not sufficient to demonstrate that the treadmill is medically indicated.

25. The two other documents introduced by Mother appear to be abbreviated notes prepared by two of claimant's treating physicians. Dr. Robert Tran, claimant's pediatric gastroenterologist, wrote in an untitled document that claimant was using a treadmill along with other medication. (Exhibit Q.) Dr. F. Armosilla, claimant's pediatrician, wrote on a prescription the following: "Patient may have treadmill machine.

Pt behavior improved with the machine and also constipation [illegible]." (Exhibit U.) Neither document addresses whether use of a treadmill is required to address either claimant's constipation or developmental disabilities.

26. While claimant has benefitted from the use of a treadmill, the evidence was insufficient to demonstrate that the treadmill was medically necessary to address claimant's medical condition or his developmental disabilities.

REQUEST FOR EQUINE THERAPY

27. Mother requested that HRC fund equine therapy for claimant to help claimant's scoliosis and balance issues, improve his sensory perception, and provide a calming effect. In support of her request, Mother provided a copy of an application for claimant to enroll in a program of equine therapy offered by Dream Catcher of Los Angeles Therapeutic Riding Centers. (Exhibit S.) Dr. George Jayatilaka, another of claimant's pediatricians, signed a medical release in connection with the application, stating he knew of no reasons why claimant could not participate in supervised equestrian activities. (*Id.* at p. 7.) The release also provided that the equestrian program would be implemented pursuant to a review by a physical or occupational therapist of claimant's abilities and limitations. (*Ibid.*) It was not made known at the hearing whether Mother ever submitted the application or whether claimant had been accepted into the Dream Catcher program.

28. Mother also introduced two articles discussing the therapeutic benefits of equine therapy for autism. The first article was titled "Effects of Equine Assisted Activities on the Social Function of Children with Autism"; the second article was titled "The Impact of TR on the Social Communication and Sensory Processing of Children with Autism." (Exhibits C and D.) However, Mother did not introduce any evidence as to whether the findings of either article were peer-reviewed or appeared in any respected medical journal. Notably, the first article acknowledges that "equine assisted activities"

are not considered therapy. (Exhibit C, p.1 [“These [Equine Assisted Activities] are not considered therapy, but are viewed as therapeutic if a participant is able to show improvement within one or more of the following areas: physical, social, emotional or educational.”]).

29. In the NOPA letter, HRC informed Mother it was denying claimant’s request for equine therapy, citing several grounds. HRC asserted that claimant’s emotional, behavioral and sensory needs were already being addressed through services by licensed professionals that he received at school and at home through CARD. HRC noted that equine therapy is a social recreation activity barred from funding under Welfare and Institutions Code section 4648.5, and that the therapy was not the “primary or critical means for ameliorating” claimant’s “physical, cognitive, or psychosocial effects of [his] developmental disability.” HRC also pointed out that equine therapy was considered experimental in nature and not a recognized OT or behavior treatment modality.

30. At the hearing, Dr. Sahba testified that she did not believe equine therapy was medically indicated for claimant. She also believed that the therapy program could be dangerous for claimant in light of claimant’s seizure disorder. At the time of her testimony, Dr. Sahba was not aware of the release provided by claimant’s pediatrician allowing claimant to participate in equine therapy.

31. HRC provided Mother with a list of resources that may provide claimant equine therapy for free or at reduced costs. Mother testified that she had contacted these resources and all required payment for the therapy. Mother did not supply any records documenting her request to these resources or their response.

32. No evidence was presented at the hearing demonstrating that equine therapy was an accepted OT treatment or a necessary part of claimant’s behavior therapy. Nor did Mother demonstrate that equine therapy was medically necessary or

the primary or critical means to ameliorate the effects of claimant's developmental disabilities. In addition, no evidence was provided demonstrating that claimant's posture, communication skills, sensory perception, muscle strength or balance would improve as a result of his participation in the equine therapy.

REQUEST FOR ANIMAL TRAINING

33. Mother requested that HRC fund training to enable the family dog to obtain from the City of Long Beach a special service animal license. According to Mother, claimant is much calmer when he is with the dog. She also testified that the dog senses when claimant is going to have a seizure.

34. In support of her request, Mother provided an Addendum Note from Dr. Theodore Prentice Jr., claimant's neurologist, dated October 18, 2016, stating that the dog had a calming effect on claimant (Exhibit K) and an article from Pawsitivity Service Dogs describing how service dogs are trained to respond to seizures, warn of an onset of a seizure and improve the quality of life for dog owners. (Exhibit I.) Mother did not provide any medical report stating that claimant needed a service dog or that claimant's developmental disabilities would be ameliorated if claimant had a trained service dog.

35. In the NOPA letter, HRC informed Mother that it had denied claimant's request because having a service dog was not an established medical therapy or a critical means of ameliorating claimant's developmental disabilities. HRC also offered to provide Mother with community resources that would provide animal training at low or no cost.

36. Dr. Sahba testified there was no medical need for claimant to be accompanied by a dog at all times.

37. Mother testified she had contacted the community resources recommended by HRC and each of the organizations required payment for the training

required to obtain a service license. Mother provided no documentation of her contacts with these organizations or their responses.

REQUEST FOR SPEECH ASSESSMENT AND ADDITIONAL SPEECH THERAPY

38. Mother requested a speech therapy assessment for claimant and additional speech therapy outside of the therapy claimant receives at school. According to Mother, many of claimant's maladaptive behaviors are caused by his frustration and inability to communicate. Although claimant receives speech therapy at school, Mother believes the therapy is solely for academic purposes and therefore is inadequate to address all of claimant's communication needs. Until the spring of 2017, claimant also had received speech language therapy (Alternative Augmentative Communication) at the Clinic; those services however were discontinued because of claimant's behavior. Mother provided no explanation as to what additional speech therapy she believed claimant needed.

39. The most recent assessment of respondent's speech therapy was conducted by the Long Beach Unified School District in connection with the IEP. The speech assessment, reflected in a report dated November 12, 2015, found that claimant had profound levels of impairment in the sensory, motor, behavior, oral, speech, receptive and expressive language areas. (Exhibit X.) The report concluded that claimant required speech and language intervention but did not recommend the frequency or time of such intervention. The speech assessment did not state or suggest that the speech therapy provided by the School District was inadequate to meet claimant's needs or that claimant required speech therapy in addition to the therapy provided by the School District.

40. Claimant's IEP, based on the speech assessment, recommended that claimant receive weekly individual speech and language services for 30 minutes and group speech therapy twice a month for 30 minutes. (Exhibit 5, IEP at p. 11.) It was not

made known at the hearing whether claimant is currently receiving the recommended therapy.

41. HRC does not dispute that claimant may need additional speech therapy, and the Service Agency has identified generic resources that might be available to provide the additional needed therapy, including the School District, CCS and Medi-Cal. According to HRC, Mother can request a new IEP meeting at school to discuss expansion of claimant's speech therapy and HRC would be available to assist claimant's mother throughout the IEP process to ensure claimant receives the services he needs. HRC would also like to speak to CARD to see if claimant's communication issues can be addressed through his IBI therapy. HRC would also assist Mother in obtaining a prescription from Medi-Cal for additional speech therapy if claimant's needs dictate.

42. HRC has been stymied in its efforts to assist Mother in accessing these generic services because, until December 5, 2017, Mother had refused to allow HRC access to claimant's most recent records. (See Factual Findings 11 through 15.) Those records include claimant's 2016 and 2017 IEP records and any amendments addressing speech therapy, claimant's CCS records or written consent for HRC to speak to CCS on claimant's behalf, and any denials for speech therapy or OT from CCS or Medi-Cal. HRC also would like to obtain Mother's authorization to speak with the Clinic about the speech therapy it provided. HRC cannot proceed in evaluating what services claimant requires without access to this information.

REQUEST FOR OT ASSESSMENT AND ADDITIONAL OT

43. Mother requested an OT assessment and funding for OT because claimant no longer receives OT at school or at the Clinic. (See Factual Finding 7.) Mother testified that claimant needs OT to help him to become more independent and allow him to participate in the community.

44. Mother introduced a "Referral Request" for an OT evaluation from Dr. F. Armosilla, claimant's pediatrician, dated June 17, 2017, in support of her request. (Exhibit J.) Mother did not provide any evidence as to the basis for the Referral Request. The Referral Request by itself is an insufficient basis to warrant an OT assessment

45. The most recent OT assessments obtained by HRC were conducted in November 2015: one assessment was conducted by the School District (District OT Assessment) and the other by Cornerstone Therapies (Cornerstone OT Assessment), claimant's OT provider retained by the School District. (Exhibit 21.) At the time, claimant was receiving one 60 minute direct OT service per month concentrating on monitoring sensory processing and self-care skills. Both assessments concluded that claimant no longer needed professional OT services.

46. The District OT Assessment observed that claimant had delayed fine motor and perceptual skills that affected his ability to access his educational environment independently, poor ocular motor control, emerging self-care needs, and difficulty tolerating and processing various sensory inputs. The District OT Assessment noted that the School District had provided professional OT to claimant for 12 years, but claimant had not made significant gains from the therapy. The District OT Assessment concluded that the OT claimant needed could be provided by a special education school aide or trained school on-site staff. (Exhibit 21, District OT Assessment at p. 7.)

47. The Cornerstone OT Assessment similarly noted that school staff was able to "implement modifications/strategies for [claimant] to access his school environment, coping mechanisms, and assignment modifications to meet [claimant's] needs without occupational therapy intervention required." (Exhibit 21, Cornerstone OT Assessment at p. 7.) According to the Cornerstone OT Assessment, professional OT services were no longer warranted for claimant because claimant was able to access his educational

program and complete his classroom assignments with the assistance of his aide and school/classroom staff. (*Ibid.*)

48. HRC does not dispute that claimant may need additional OT, and the Service Agency has identified generic resources that might be available to provide the additional needed therapy, including the School District, CCS and Medi-Cal. As noted in Factual Findings 11 through 15 and 42, HRC has been unable to obtain from Mother the information it needs to determine whether a new OT assessment is needed, what additional therapy, if any, is needed, and whether claimant has made sufficient progress with CARD to allow him to resume receiving OT from the Clinic or obtain OT elsewhere.

LEGAL CONCLUSIONS

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Developmental Disabilities Act (§ 4500 et seq.) are decided under the fair hearing and appeal procedures in the Act. (§ 4706, subd. (a).) Under the Lanterman Act, regional centers are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” and with determining “the manner in which those services are to be rendered.” (§ 4620.)

2. The Lanterman Act defines the kinds of services and supports to be provided by the regional center. According to the Act, “‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives.” (§ 4512, subd. (b).) The determination of claimant’s services and supports is to “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." (*Ibid.*)

3. The development and implementation of the IPP is a cornerstone of the regional center's responsibilities to the consumer. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports the consumer needs in order to achieve the goals set forth in the Act. (§§ 4646, 4646.5, and 4648.) The Legislature's intent is that an IPP should address the needs and preferences of the consumer and the family, through a collaborative process, in order to provide consumers with the opportunity to live independent and productive lives. (§§ 4646, 4646.5.) The services and supports are to be "flexible and individually tailored to the consumer and, where appropriate, his or her family." (§4648, subd. (a) (2).) When considering the purchase of services and supports, the IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a).) These supports include "governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare . . . [and] school districts." (§ 4659, subd. (a)(1).)

4. Claimant has the burden of proving HRC should fund the disputed services (see *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161), and must do so by a preponderance of the evidence. (Evid. Code, § 115 [preponderance of evidence standard applies unless another law or statute provides otherwise].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.'" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

REQUEST FOR A TREADMILL

5. Claimant has not met his burden of proving that HRC should purchase him an electric treadmill. The purpose of the treadmill is to provide exercise and to relieve claimant's constipation, neither of which is specific to claimant's developmental disabilities. Claimant did not establish that he requires a treadmill to treat any medical condition associated with or resulting from his developmental disabilities. (Factual Findings 16 through 26.)

6. The electric treadmill claimant seeks therefore does not fall within the kinds of services and supports to be provided by a regional center as defined in section 4512, subdivision (b). (Legal Conclusion 2.) The treadmill is a generic piece of exercise equipment that has not been adapted for claimant's use. It can be used by a non-disabled individual as well as a disabled individual. (See Cal. Code Regs., tit. 22, § 51160 (equipment which is not useful to an individual in the absence of functional impairment or congenital anomaly does not constitute reimbursable durable medical equipment under Medi-Cal).)

7. In addition, purchase of an electric treadmill for claimant based on the medical evidence provided would be contrary to HRC's policy guidelines. Under those guidelines, HRC may purchase durable equipment for minor clients only if, among other things, "the need for the specific supplies or equipment is associated with, or has resulted from, a developmental disability." (HRC Policy on Durable and Non-Durable Equipment and Supplies.) The need for a treadmill, as articulated by Mother, is for exercise and relief of constipation, neither which are associated with or resulting from a developmental disability.

8. Based on the totality of the evidence, HRC is not required to fund an electric treadmill for claimant's use. (Factual Findings 16 through 26; Legal Conclusions 1 through 7.) While claimant has the right to physical exercise (§ 4502, subd. (b)(7)) and

benefits from using a treadmill, he has not established that HRC should purchase the equipment to engage in such exercise.

REQUEST FOR EQUINE THERAPY

9. Claimant has not met his burden of proving that HRC is required to provide him with equine therapy. Since July 1, 2009, HRC has been prohibited from purchasing four categories of services: "(1) Camping services and associated travel expenses. (2) Social recreation activities, except for those activities vendored as community-based day programs. (3) Educational services for children three to 17, inclusive, years of age. (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music." (§ 4648.5, subd. (c).) An exemption may be granted on an individual basis in "extraordinary circumstances . . . when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." (*Ibid.*)

10. Equine therapy is a nonmedical therapy, and, as such, its funding by HRC is subject to the provisions of section 4648.5. HRC is therefore precluded from funding equine therapy unless claimant can prove he qualifies for an exemption due to "extraordinary circumstances." (§ 4648.5, subd. (c).) As set forth in Factual Findings 27 through 32, the evidence does not establish that equine therapy is a primary or critical means for ameliorating the effects of claimant's developmental disabilities, or that it is necessary to enable claimant to remain in his home. Claimant is already receiving IBI and other services from the School District and CARD to address his emotional, behavioral, and sensory needs; no evidence was presented that equine therapy would be a critical addition to these services or is necessary to enable claimant to remain in his home. In addition, while equine therapy might also help with claimant's posture and physical

infirmities, no evidence was introduced at the hearing sufficient to establish that equine therapy was medically indicated for claimant for those purposes.

11. HRC is also statutorily prohibited from funding experimental treatments and therapies. (§ 4648, subd. (16) [“regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown.”].) Mother did not demonstrate that equine therapy is considered a scientifically proven treatment modality for claimant’s medical condition, behavioral issues, sensory perception or anxiety. Accordingly, pursuant to section 4648, subdivision (16), equine therapy cannot be funded by the regional center based on Mother’s claim that the therapy is medically beneficial to claimant.

12. Based on the totality of the evidence, HRC is not required to fund equine therapy for claimant. (Factual Findings 27 through 32; Legal Conclusions 1 through 4 and 9 through 11.)

SERVICE ANIMAL TRAINING

13. Claimant has not met his burden of proving that HRC is required to provide training for the family dog to become a licensed service animal. Providing animal training for a family pet is not within the kinds of services and supports to be provided by a regional center as defined in section 4512, subdivision (b), as it is not a specialized service “directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives.” In addition, even if the training could be considered a covered service, all generic resources are required to be explored before the regional center can provide funding. (§ 4646.4, subd. (a).)

14. According to Mother, the special animal license is necessary to anticipate and spot claimant's seizures as well as to calm claimant when claimant is out of the home. Claimant is not at risk of having his seizures go unnoticed as claimant is constantly monitored by either Mother or Sister when outside of school. The dog's calming influence on claimant is not sufficient to establish that claimant requires the presence of the dog at all times. In addition, no evidence was presented that a service dog was medically indicated to alleviate claimant's developmental disabilities. Nor did Mother provide documentation that she had explored other sources of funding, including organizations that provide low-cost or free training.

15. Accordingly, based on Factual Findings 33 through 37 and Legal Conclusions 1 through 4, 13 and 14, HRC is not required to provide special training for claimant's dog to allow the dog to obtain a service animal license.

REQUEST FOR SPEECH THERAPY ASSESSMENT AND ADDITIONAL SPEECH THERAPY

16. Claimant has not met his burden of proving that HRC should fund a speech therapy assessment at this time. The IPP process requires HRC to conduct assessments to determine the "life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a)(1).) Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. (*Ibid.*)

17. A regional center, such as HRC, cannot discharge its duty pursuant to section 4646.5, if it does not have the right to obtain information, and the power to obtain that information. At the same time, a person who seeks benefits from a regional center must bear the burden of providing information, submitting to reasonable exams and assessments, and cooperating in the planning process. (See Civ. Code § 3521 ["He

who takes the benefit must bear the burden.”].) Of course, parents can refuse to do anything that they feel works to the detriment of their children. However, if the exercise of that right interferes with the implementation of the Lanterman Act, then a regional center may have no choice but to refuse to render services, as the failure of cooperation may negate the authority to compel the regional center to fund services and supports.

18. Further, a consumer’s request for services essentially waives objection to the regional center and its staff and consultants having access to otherwise private information when such access/information is needed to assess the need for services and/or the effectiveness of those services. That does not mean, however, the information can otherwise be disseminated for any other purpose. Thus, a consumer must cooperate with reasonable requests for assessments and evaluations, to assist the regional center in discharging its responsibility. Concomitantly, the regional center must be responsible in its use of the information.

19. As set forth in Factual Findings 38 through 42, HRC has acknowledged that claimant might need additional speech therapy but Mother has refused to provide the necessary School District and other service provider records to allow HRC to determine (i) whether an additional speech therapy assessment is needed; and (ii) whether claimant has any unmet speech therapy needs. HRC cannot make any of these determinations until Mother provides the requested information and authorizes HRC staff to discuss claimant’s needs and services with the School District, the Clinic, CCS, claimant’s doctors and CARD.

20. Claimant’s request for a speech therapy evaluation and additional speech therapy is denied at this time. Once claimant provides the requested information and authorizations, the parties can meet to discuss whether a new speech therapy assessment is required, claimant’s readiness to resume speech therapy at the Clinic, what speech therapy needs are unmet, if any, and the appropriate resource to provide

any needed speech therapy. It is premature to determine whether HRC is required to fund speech therapy for claimant without first determining claimant's level of need.

REQUEST FOR OT ASSESSMENT AND ADDITIONAL OT

21. Claimant has not met his burden of proving that HRC should fund an OT assessment at this time. As set forth in Legal Conclusions 16 through 18 in connection with claimant's request for a speech therapy assessment, claimant has a duty to cooperate with the Service Agency center and provide the Service Agency with sufficient information to assess the need for claimant's services, which duty also applies to his request for OT services.

22. As set forth in Factual Findings 43 through 48, HRC has acknowledged that claimant might require additional OT and claimant's pediatrician has requested OT for claimant. However, Mother has not provided HRC with the information needed to determine what OT services claimant requires.

23. Accordingly, claimant's request for an OT evaluation and additional OT is denied at this time. Once claimant provides the requested information and authorizations, the parties can meet to discuss whether a new OT assessment is required, whether claimant should demand additional OT services from the School District, claimant's readiness to resume OT therapy at the Clinic, the nature of claimant's unmet OT needs, if any, and the appropriate resource to provide any needed OT. It is premature to determine whether HRC is required to fund OT for claimant without first determining claimant's level of need.

ORDER

1. Claimant's appeal of Harbor Regional Center's decision to not provide funding for an electric treadmill is denied.

2. Claimant's appeal of Harbor Regional Center's decision to not provide fund equine therapy is denied.

3. Claimant's appeal of Harbor Regional Center's decision to not fund animal training to allow the family pet to become a licensed service animal is denied.

4. Claimant's appeal of Harbor Regional Center's decision to not provide a speech therapy assessment is denied at this time. After Service Agency's review of the information submitted by Mother, the parties may further discuss, in the context of the IPP process, claimant's need for an assessment or additional speech therapy services.

5. Claimant's appeal of Harbor Regional Center's decision to not provide an OT assessment is denied at this time. After Service Agency's review of the information submitted by Mother, the parties may further discuss, in the context of the IPP process, claimant's need for an OT assessment or additional OT services.

DATE:

CINDY F. FORMAN

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.