

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2018050640

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on June 28, 2018, in Torrance, California.

Latrina Fannin, Manager of Rights and Quality Assurance, represented the Harbor Regional Center (HRC or Service Agency). Claimant's mother (Mother) represented Claimant. Mariana Rudy, Certified Interpreter, provided Spanish language interpreter services to Mother. Claimant appeared at the hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on June 28, 2018.

ISSUES

1. Must the Service Agency fund five hours of personal care assistance per day, Monday through Friday, while Claimant is out of school for the summer?
2. Must the Service Agency increase respite hours from 30 hours per month to 40 hours per month (or from 90 hours per quarter to 120 hours per quarter)?

3. Must the Service Agency fund for a personal computer, printer, and adaptive keyboard for Claimant's home use, in order to develop independent abilities for adult life?

FINDINGS OF FACT

1. Claimant is a 13-year-old boy who lives with Mother within the Service Agency's catchment area, and is a consumer of the Service Agency. Specifically, Claimant is autistic and intellectually disabled, and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code sections 4500, et seq.¹

2. Claimant has limited language, as he generally verbalizes single word utterances. He uses the Proloquo2go communication application on his iPad² to communicate and clarify his expressed messages.³ Claimant is dependent on others for his self-care needs, such as feeding, bathing, dressing, and toileting, and requires constant care and attention to ensure his safety. Claimant also suffers from fine motor skill deficiencies.

3. The Service Agency provides Claimant with respite services that average 30 hours per month or 90 hours per quarter. Claimant also receives MediCal benefits and In

¹ All statutory references are to the Welfare and Institutions Code.

² Claimant's school district provided Claimant with an iPad with the Proloquo2go program.

³ Proloquo2go is a display voice output communication application, to which Claimant has access in all of his natural environments.

Home Supportive Services (IHSS). The Long Beach Unified School District (District) funds for Claimant to attend a Non-Public School (NPS) in Yorba Linda, California.

4. On April 12, 2018, during Claimant's Individual Personalized Plan (IPP) meeting, Mother requested five personal care assistance hours per day during Claimant's summer break, a 30-hour increase in quarterly respite hours, and a printer, computer, and adaptive keyboard for Claimant's use at home.

PERSONAL CARE ASSISTANCE HOURS

5. In response to Mother's request for five hours per day of personal care assistance hours during the summer break, the Service Agency acknowledged that Claimant had many care needs and required supervision throughout his day, and that during the summer months when school was not in session, Mother was tasked with finding extra activities in which Claimant could participate. The Service Agency explained in a letter dated May 3, 2018, that as a payer of last resort, regional centers must identify and pursue all possible sources of funding for consumers receiving regional center services, "including ensuring that [the Service Agency's] clients maximize all available supports such as IHSS." (Exhibit 3, page 2.) In that regard, the Service Agency asked Mother to provide it with a copy of the award letter she received from the Department of Public Social Services concerning the number of IHSS hours it had approved for Claimant. However, Mother declined to do so, stating that her representation to the Service Agency that Claimant required personal care assistance hours was sufficient. In support of her request, Mother provided the Service Agency with detailed schedules of Claimant's daily tasks and activities—one that described his day while he was at school and one that described his day when he was not at school. The Service Agency determined that the schedules were unhelpful in determining Claimant's personal needs. Consequently, the Service Agency requested to conduct a formal personal care assessment to determine Claimant's unmet needs. Mother refused.

6. Without a formal assessment or access to an award letter outlining Claimant's current IHSS hours, the Service Agency determined that it lacked the requisite information to provide personal care assistance hours, and accordingly denied Mother's request in a letter dated May 3, 2018.

RESPITE HOURS

7. At hearing, Mother explained that she needed an increase in respite hours, because she was the only one who cared for Claimant, which is an exhausting job, and she needed the additional hours to regroup and have a social life. In response to Mother's request for increased respite hours, the Service Agency conducted a family respite needs assessment on April 15, 2018, which considered Claimant's age, adaptive skills, mobility, day program attendance, medical needs, behavioral needs, and family situation, and determined that 16 hours of respite per month was appropriate. Despite the 16 hour finding, the Service Agency provided 30 hours per month of respite, 14 more hours than the assessed finding. While the Service Agency acknowledged that some families are not able to meet all or part of their respite needs through traditional sources, Mother provided the Service Agency with no evidence demonstrating that she lacked a daily intermittent break from Claimant's care, especially given the award of hours in excess of the 16 deemed necessary. As such, the Service Agency denied Mother's request for additional respite hours.

COMPUTER, PRINTER, AND ADAPTIVE KEYBOARD

8. Mother explained that Claimant required a computer, printer, and an adaptive keyboard for home use, as having those items would help Claimant's potential for becoming independent in terms of communicating with others, as well as developing technological skills to achieve an independent life with the assistance of communication development, and eventually procure a job. Mother explained that

another reason for the equipment, particularly the adaptive keyboard, stemmed from reported limitations concerning Claimant's fine motor skills for writing. The District prompted Claimant to compose sentences using a QWERTY keyboard,⁴ and developed a communication-related goal for Claimant that involved the use of the equipment Mother requested. Mother further explained that the District determined that Claimant required a computer, and that an iPad could not be used for the purpose of defining his fine motor skills.

9. On April 10, 2018, Melissa Greener, who is a licensed speech pathologist from the Service Agency, as well as Sue Barco, who is an assistive technology specialist, conducted an Augmentative/Alternative Communication Consultation concerning Claimant. Ms. Greener testified at hearing and confirmed that Claimant would benefit from access to the QWERTY keyboard with voice output, but concluded that Claimant had access to the Proloquo2go application which had a QWERTY keyboard on his iPad, as well as voice output.

10. The Service Agency's General Standards and Durable and Non-Durable Equipment and Supplies (General Standards) policies provide, in part, that Harbor Regional Center may purchase durable equipment if the need for the specific supplies or equipment is associated with, or has resulted from, a developmental disability; and the equipment to be purchased has been denied by, or the client is not eligible for, Medi-Cal, private insurance or any other third party payer.

11. The Service Agency, in applying the General Standards, determined that the adaptive keyboard is something to which Claimant already had access through his

⁴ QWERTY refers to the arrangement of keys on a standard English computer keyboard or typewriter. The name derives from the first six characters on the top alphabetic line of the keyboard.

iPad, which was supplied to him by the District. Even if the iPad had no adaptive keyboard, Mother had provided no information demonstrating that the purchase of an adaptive keyboard had been denied by a third party payer, such as the District. Given these factors, the Service Agency denied Mother's request for an adaptive keyboard for Claimant, and stated the same in its Service Agency's May 3, 2018 letter to Mother.

12. Mother testified that she felt that it was unfair that Ms. Greener, who provided a one hour consultation, could give an opinion about Claimant, who has so many limitations, which has resulted in the regional center not providing tools that Claimant needs.

13. With respect to the printer and computer, in applying the General Standards, the Service Agency concluded that they are pieces of equipment designed for anyone and the need to utilize them are not directly associated with Claimant's disability. As such, the Service Agency viewed the computer and printer as the family's responsibility for providing to Claimant. Given these factors, the Service Agency denied Mother's request for a printer and computer for Claimant, and stated the same in the Service Agency's May 3, 2018 letter to Mother.

LEGAL CONCLUSIONS

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). A consumer's choice plays a part in the construction of the Individual Program Plan (IPP). Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a),

4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

"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, normal lives. The 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . .

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

6. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

7. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).) Additionally, when purchasing services and supports, service agencies are required to ensure the “utilization of generic services and supports when appropriate,” and the “consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities.” (Welf. & Inst. Code § 4646.4, subd. (a)(2) and (4).)

8. California Code of Regulations, title 17, section 52109, subdivision (b), provides that the regional center is the payer of last resort for a service where all other public sources for payment have been identified but decline funding. Section 4659, subdivision (a), provides that regional centers shall identify and pursue all possible sources of funding for consumers receiving regional center services, such as school districts, community programs, or generic sources. As of July 1, 2009, regional centers were instructed to no longer purchase services that were otherwise available from sources such as IHSS, Medi-Cal, and private insurance. If these generic resources denied the service, families could appeal the denial and the regional center could pay for the service under certain conditions. The statute was clearly designed to identify and pursue alternative funding sources for services that were previously funded by regional centers. Harbor Regional Center’s General Standards and Durable and Non-Durable Equipment and Supplies policies are consistent with the foregoing statutes in that HRC is prohibited from purchasing durable medical equipment where the equipment or supplies are otherwise available through Medi-Cal or another program, private insurance, a health care service plan, or other third party.

9. Respite is one of the specific services available to consumers listed in section 4512, subdivision (b). “In-home respite services” are defined as “intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, . . . designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members."

(§ 4690.2, subd. (a).)

An almost identical definition of in-home respite services is found in California Code of Regulations, title 17, section 54302, subdivision (a)(38).

The statutory and regulatory definitions of in-home respite services clearly indicate that the primary goal of respite is to provide care to a consumer that is ordinarily provided by the consumer's family, thereby relieving the family from that duty so that the family may absent themselves and be free to do other things.

ANALYSIS RE: PERSONAL CARE ASSISTANCE HOURS

10. Mother failed to sustain Claimant's burden of establishing that the Service Agency should be compelled to provide personal care assistance hours. As set forth in Legal Conclusion 8, Welfare and Institutions Code, section 4659, subdivision (a), provides that regional centers shall identify and pursue all possible sources of funding for consumers receiving regional center services, such as school districts, community programs, or generic sources. However, the evidence shows that when the Service Agency attempted to obtain information from Mother concerning Claimant's use of generic resources, such as information concerning the amount of IHSS hours he had been awarded, Mother refused to provide the requested information. Even after Mother's refusal, the Service Agency attempted to obtain information regarding

Claimant's personal care needs by requesting Mother to permit it to conduct an assessment, but again, Mother refused. Without the information concerning the amount of generic resources available to Claimant, the Service Agency could not make an informed decision concerning any of Claimant's needs, or the amount of personal care assistance hours Claimant required, if any, while simultaneously adhering to its statutory duty to be the payer of last resort only. Given these factors, the Service Agency shall not be required to provide Claimant with five hours per day of personal care assistance hours as Mother requested.

ANALYSIS RE: RESPITE HOURS

11. Mother failed to sustain Claimant's burden of establishing that the Service Agency should be compelled to provide additional respite hours. As set forth in Legal Conclusion 9, Welfare and Institutions Code section 4690.2, subdivision (a), provides that respite consists of intermittent relief from caregiving to the consumer, and it is intended to be periodic as opposed to continuance. While Mother explained that she needed an increase in respite hours, because she was the only one who cared for Claimant, which is an exhausting job, and she needed the additional hours to regroup and have a social life, Mother provided no evidence demonstrating that additional respite hours were required to maintain Claimant in the home, or that Claimant's current respite hours were inadequate to provide intermittent breaks from her care and supervision of Claimant, especially given the Service Agency's assessment completed showing that Mother needed only 16 hours per month or 48 hours per quarter of in-home respite. Given these factors, the Service Agency shall not be required to provide Claimant with additional respite hours as Mother requested.

ANALYSIS RE: COMPUTER, PRINTER, AND KEYBOARD

12. Mother failed to sustain Claimant's burden of establishing that the Service Agency should be compelled to provide Claimant with a computer, printer, and adaptive keyboard. As set forth in Legal Conclusion 8, the Service Agency developed General Standards and Durable and Non-Durable Equipment and Supplies policies that were consistent with Welfare and Institutions Code, section 4659, subdivision (a), that requires that regional centers identify and pursue all possible sources of funding for consumers receiving regional center services, such as school districts, community programs, or generic sources. With respect to the printer and computer, in applying the General Standards, the Service Agency properly concluded that they are equipment designed for anyone and the need to utilize them is not directly associated with Claimant's disability, and, as such, Mother would be required to purchase those items. Given these factors, the Service Agency shall not be required to provide Claimant with a computer and printer as Mother requested.

13. Additionally, with respect to the adaptive keyboard, the evidence showed that the Service Agency, in applying the General Standards, properly determined, through the assessment conducted by Ms. Greener, that the adaptive keyboard was something to which Claimant already had access through his iPad, which was supplied to him by the District. Even if the iPad had no adaptive keyboard, or that the adaptive keyboard on his iPad was insufficient for Claimant to improve his fine motor skills, Mother provided no information demonstrating that the purchase of an adaptive keyboard had been denied by a third party payer, such as the District. Because the Service Agency is a payer of last resort, such information would be required accordingly. Given these factors, the Service Agency shall not be required to provide Claimant with an adaptive keyboard as Mother requested.

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14. For the reasons stated above, Claimant's appeal shall be denied.

ORDER

Claimant's appeal is denied.

Date:

CARLA L. GARRETT

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.