

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2019020271

DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Torrance, California, on June 4, 2019.

Claimant appeared at the hearing and was represented by his mother (Mother), who is his conservator.¹ Latrina Fannin, Manager of Rights and Quality Assurance, represented the Service Agency, Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on June 4, 2019.

ISSUE

Must the Service Agency fund for an additional four hours² per day in personal care service hours for Claimant?

¹ Initials and family titles are used to protect the privacy of Claimant and his family.

FACTUAL FINDINGS

1. Claimant is a consumer of the Service Agency. A few days after the fair hearing, Claimant reached his 19th birthday. He is eligible for services as an individual diagnosed with Autism Spectrum Disorder pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.³ Claimant resides with Mother and his older brother (Brother) within the Service Agency's catchment area.

2. Claimant is completely dependent on others for his activities of daily living. He is non-verbal, is not toilet trained, exhibits self-injurious behaviors, and is physically aggressive towards others. Claimant requires constant supervision to prevent him from harming himself or others. Claimant does not sleep well, in that sleeps, on average, approximately two or three hours per night. He whines loudly in the evening and during the night.

3. Mother works full-time (7:30 a.m. to 4:00 p.m.) as an In Home Supportive Services (IHSS) social worker for Los Angeles County.

4. Claimant attends Vista High School from 7:00 a.m. to 3:40 p.m., Monday through Friday, where he receives specialized academic instruction. Pursuant to his Individualized Education Program (IEP), Claimant is to receive one-on-one aide services at school and during round-trip transportation on a school bus from home to school. Claimant's aide is required to meet Claimant at his residence in the morning and ride

² At the hearing, Mother modified the number of additional personal care service hours that she sought on Claimant's behalf from 16 hours to four hours.

³ All statutory references are to the Welfare and Institutions Code.

the school bus with Claimant to and from school. For safety reasons, Claimant is not permitted to ride the school bus without his one-on-one aide.

5. On December 18, 2017, the Service Agency's registered nurse, Laurie Garabedian, R.N., B.S.N., conducted an evaluation of Claimant's IHSS care needs. The purpose of the evaluation was to summarize Claimant's ability to perform daily living tasks and to detail the assistance Claimant required to remain safely in his home. Nurse Garabedian found that Claimant required more assistance than the average person of the same age for domestic services; related services such as meal planning, meal preparation, meal service, meal clean-up, laundry, shopping, and running errands; non-medical personal services such as bowel and bladder care, feeding, bathing, dressing, ambulation, bathing, oral hygiene, grooming, and rubbing and massaging skin; protective supervision; and paramedical services. Overall, Claimant required 280.76 hours per month of care above the hours of care that a person of the same age without a disability required. Additionally, Dr. Garabedian noted that Mother was overwhelmed and exhausted.

6. Claimant receives 283 hours per month (nine hours per day) of IHSS to assist with his personal care needs, and Brother is listed as Claimant's primary IHSS provider. Claimant also receives 20 hours per week of personal care services from the Service Agency,⁴ and Brother is listed as Claimant's primary personal care services provider. Claimant also receives 90 hours per quarter of respite services from the Service Agency.

⁴ At the hearing, the Service Agency explained that it initially provided Claimant with 20 hours per week of personal care services on an interim basis, but since the filing of the Fair Hearing Request, it has decided to continue providing 20 hours per week of personal care services, based on Claimant's needs.

7. At hearing, Mother explained that she has experienced a great deal of problems with Claimant's one-on-one school aides. Specifically, even though Claimant is required to have an one-on-one aide to work with Claimant, and ride the school bus with him, the aides often fail to show up, leaving Mother to "fix the problem," which generally entails Mother missing a day from work to either take care of Claimant for the day, or to take Claimant to school and to bring him home. Mother also explained that the school does not have any "back-up" aides willing to work with Claimant because Claimant "is a handful." The unavailability and inconsistency of school aides have become a constant problem for Mother, despite the vice-principal's repeated representations in IEP meetings that he will address and resolve the problem. At hearing, Mother learned for the first time that the Service Agency provides IEP advocacy in which Mother can speak with a special education attorney to help ensure that the school district remedies IEP violation issues.

8. Mother wishes for Claimant to have services 24-hours per day, seven days per week, given his need to have constant supervision, his extreme behaviors, especially those that pose a danger to him or others, and his constant care needs. Mother especially requires coverage for Claimant "to help out in crisis and emergency situations," such as when Claimant's one-on-one aide fails to show up to accompany Claimant to school on the school bus. Mother expressed that she does not want to place Claimant "in an institution," but wants to be provided the type of service hours that he would receive if he was "in an institution."

9. Mother also testified that she is challenged with medical issues and is becoming "worn down." She believes that she will be able to preserve herself longer if she is granted the additional hours that she seeks for Claimant. Mother has sought help from family members, in addition to Claimant's brother, but Mother learned that family members react poorly during Claimant's aggressive moments, resulting in the family

members hitting Claimant. Mother has also turned to church members for help, but when they discover how much work is involved in caring for Claimant, they retract their offers to watch him.

10. The Service Agency's client services manager, Pablo Ibanez, who supervises service coordinators, including Claimant's, testified at hearing. Mr. Ibanez obtained bachelor's and master's degrees in psychology. His duties as a client services manager include ensuring that HRC appropriately assesses and provides services to HRC consumers. Mr. Ibanez explained that the Service Agency considered Claimant's request for additional personal service hours, a service which Mr. Ibanez described as similar to IHSS services, in that it involves the assistance with activities of daily living and supervision.

11. Mr. Ibanez testified that the Service Agency considered all of Claimant's supports, including Claimant's IHSS hours, as well as the personal care services hours and respite hours funded by the Service Agency, and considered Claimant's natural supports (i.e., family, friends, and community supports). The Service Agency also considered the summary of care hours outlined by the nurse's evaluation of Claimant's IHSS needs, to wit 280.76 hours of total care services per month. The Service Agency noted that Claimant currently receives 283 per month of IHSS services and supervision, 90 hours per quarter (30 hours per month) of respite services funded by the Service Agency, 87 hours per month of personal care services funded by the Service Agency, and 151 hours per month of school attendance,⁵ totaling 550 hours per month of services, which equal approximately 20 hours per day of services, Monday through

⁵ During the periods in which Claimant did not have school, the Service Agency was committed to funding for after school services, as well as during winter and summer breaks.

Friday, not including respite services, which can be used on weekends. The Service Agency viewed the remaining four hours per day of weekday non-service hours as sleeping hours for Claimant, and hours to be addressed through natural supports.

12. Mr. Ibanez explained that the Service Agency determined that Claimant failed to establish the need for the Service Agency to fund additional personal care services, and issued a letter to Claimant on January 4, 2019 stating the same. On February 7, 2019, Mother filed a Fair Hearing Request on Claimant's behalf.

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act Lanterman Act).⁶ Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's proposed denial of funding for additional personal care services for Claimant. Jurisdiction in this case was thus established.

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Claimant is requesting that the Service Agency fund personal care services for Claimant. Under these circumstances, Claimant bears the burden of proof.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established ... to meet the needs and choices of each

⁶ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

person with developmental disabilities ... and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

4. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community ... and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. Regional centers must develop and implement IPPs, which shall identify services and supports "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of ... the cost-effectiveness of each option" (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

6. Regional centers have a duty to ensure that a consumer utilizes generic services and supports, and to consider the family's responsibility for providing similar supports and services for a minor child without disabilities, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(2), (a)(4).) Regional centers are also mandated to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental or other entities or programs required to provide or pay the cost of providing services. (§ 4659, subd. (a).) The Service Agency's General Standards policy is consistent with the foregoing statutes in that the Service Agency is prohibited from purchasing services unless all public resources and

well as other resources of funding available to the client have been used to the fullest extent possible.

7. Claimant has not met his burden of proving that the Service Agency should fund an additional four hours of personal care services per day. The Service Agency is a payor of last resort and, as provided by statute and as set forth in the Service Agency's General Standards policy, it is prohibited from funding the additional hours of personal care services that Mother requested, particularly for helping address Claimant's needs when his school fails to provide one-on-one aides. The school's failures do not constitute a basis for the Service Agency to fund services as a back-up for its failures. Rather, the Service Agency can provide Mother with IEP advocacy, should Mother seek it on Claimant's behalf, to ensure that the school, as a generic resource, provides services as mandated. Additionally, given the current provision of a total of 20 hours per day of services, and no expert or other persuasive evidence demonstrating that Claimant requires more, it is reasonable for Claimant's natural supports to provide the remaining four hours per day of supervision and care.

8. For the foregoing reasons, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied. The Service Agency's denial of Claimant's request for the Service Agency to fund an additional four hours per day of personal care services is affirmed.

DATED:

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings