

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2019030438

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 2, 2019, in Culver City, California.

Claimant's mother (Mother) represented Claimant, who was not present at the hearing.¹

Lisa Basiri, Fair Hearing Specialist, represented Westside Regional Center (Service Agency or WRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 2, 2019.

ISSUE PRESENTED

Must Service Agency retain Claimant as a consumer, even though Claimant and her family have relocated to a home outside of Service Agency's catchment area?

¹ Family titles are used to protect the privacy of Claimant and her family.

EVIDENCE RELIED UPON

Documents. Service Agency's Exhibits 12 – 21; Claimant's Exhibit A.

Testimony. Lisa Basiri; Mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a six-and-one-half-year-old girl who is a consumer of WRC based on her qualifying diagnosis of autism spectrum disorder (ASD). Claimant's fraternal twin sister and Claimant's younger sister, age four and one-half, are also WRC consumers because they too have been diagnosed with ASD.²

2. Claimant was referred to WRC in 2014 because of global developmental delays, and she thereafter became a WRC consumer. In September 2018, Claimant and her family moved from the WRC geographical catchment area to Torrance, which is located in a geographical catchment area served by Harbor Regional Center (HRC). WRC informed Claimant by Notice of Proposed Action (NOPA) dated February 12, 2019, of its intent to relocate management of her case to HRC, effective February 12, 2019. The

² The parties agreed to consolidate the hearing in this matter with the hearings in OAH case number 2019030434, involving Claimant's twin sister, and in OAH case number 2019030435, involving Claimant's younger sister, because the appeals address the same issue and seek the same relief. Separate decisions will be issued for each matter.

NOPA cites Welfare and Institutions Code sections 4620 and 4640 in support of WRC's decision.³

3. On March 6, 2019, Claimant filed a Fair Hearing Request appealing the proposed transfer of her case management to HRC. (Ex. 7.)

4. In an attempt to informally resolve the dispute, Claimant's parents met with WRC on March 18, 2019. On March 19, 2019, WRC upheld its initial decision to transfer Claimant's case management to HRC. WRC has continued to provide funding for the services in place at the time it proposed to transfer Claimant's case management.

BACKGROUND

5. Claimant lives at home with her two parents, her twin sister, her younger sister and an older teenage half-brother, who has been diagnosed with Attention Deficit Hyperactivity Disorder. Mother stays at home to take care of the children; Claimant's father works outside of the home.

6. Claimant has received supports from WRC since she was two years and eight months of age. She has a medical history significant for sleep and behavioral issues and is under the care of a neurologist. Claimant has a history of getting lost and undressing herself in public. She also engages in other erratic behavior, including playing with her feces and smearing it on the walls. Claimant tends to overstuff her mouth and tends to gag while eating. She demonstrates very disorganized play, uses echolalic speech, is difficult to engage, and has limited eye contact.

³ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

7. On December 14, 2018, Wilhelmina Hernandez, MD, conducted a psychological evaluation of Claimant for WRC. Dr. Hernandez noted her impressions as follows:

On this evaluation, [Claimant's] cognitive abilities were assessed to be well below expected range for her age. ... Her adaptive skills were noted to be overall mild to moderately delayed in all areas. She presents with a current functioning of that [of] a child with Mild Intellectual Disability. ... In terms of behavioral functioning, [Claimant] was noted to evidence some behavioral regulation difficulties (impulse control problems, difficulty controlling her emotions and resultant behavior, difficulty adjusting to changes) that are impacting her behavior and general functioning. [Claimant's] parents indicated concerns about Claimant's behavior at school as well, which include running and hiding when upset and becoming agitated when transitions are required. ...

[Claimant] was noted to evidence some social deficits and stereotypical behaviors on evaluation. She had difficulty with reciprocal interactions. Her nonverbal communication skills were not on par with her peers either. Further [Claimant] was observed to exhibit motor mannerisms and nonfunctional vocalizations during the session. She was also noted to evidence some sensory interests and sensitivities.

(Ex. 21, p. 6.)

8. Based on her observations and testing, Dr. Hernandez diagnosed Claimant with ASD, with accompanying intellectual impairment, and requiring substantial supports for deficits in social communication and requiring very substantial support for restricted, repetitive behaviors with accompanying language impairment. Dr. Hernandez also diagnosed Claimant with Mild Intellectual Disability. (Ex. 21, p. 7.)

9. Claimant currently attends public school in Torrance where she participates in a special education classroom based on her ASD. In addition to services she receives at school, Claimant each week receives three hours of occupational and speech therapy from Kids in Motion and eight and one-half hours of Applied Behavior Analytic (ABA) therapy from First Step for Kids. These services are provided through Claimant's family's private insurance and Medi-Cal, and WRC pays the co-payments for the services until the insurance deductibles are met. WRC also funds 30 hours of respite care each month at the triplet rate. It is expected that Claimant's use of these services and vendors will not be interrupted if Claimant's case management is transferred to HRC because either the service vendors are HRC-approved or the applicable co-payments are for services provided by the Individual Program Plan (IPP) and satisfy the requirements of section 4659.1, subdivision (a).

10. To address Claimant's social deficits, Claimant's IPP provides for 1.75 hours of social skills training each week at Leaps n Boundz (LNB), a WRC-approved vendor located in Culver City, which is in WRC's catchment area. Claimant and her twin sister have attended LNB for three years, and her younger sister attends the program as well.

11. Mother presented persuasive evidence that LNB meets both the needs of Claimant and of her family. According to Mother, LNB offers a stimulating social program for Claimant and her sisters, based on each individual child's needs. Claimant and her sisters are very active, and LNB offers plenty of space for them to run around and use trampolines and other play equipment. The program is also large enough to

accommodate Claimant and her younger sister in separate age groups at the same time. According to Mother, Claimant and her sisters “come out happy and different” after attending a session at LNB.

12. At LNB, Claimant has specific goals to help her communicate her wants and needs and sustain joint attention and joint play with a peer. During the weekly sessions, Claimant participates in a small group with a 3:1 ratio; Claimant’s parents also regularly meet with the service providers to discuss Claimant’s progress and how they may support Claimant’s social skills at home. Mother testified that Claimant has demonstrated significant improvement since attending the program. According to Mother, because of her participation in LNB, Claimant is less likely to engage in fighting with other children and her sisters and is more interested in socially interacting with others.

13. Claimant’s family faces unique obstacles to obtaining social skills training that LNB is able to address. Specifically, LNB can accommodate Claimant and her two sisters at the same time so that Claimant’s family only needs to make one trip each week for the girls to attend the program. In addition, LNB offers a program on Sunday, which is the only day Claimant and her sisters can attend. The three girls cannot attend a social skills program during the school week, as they are busy from Monday to Friday until 5:30 p.m. with school, occupational and speech therapy, and ABA therapy. Mother is unable to take Claimant and her sisters to a social skills program on Saturday because Mother cannot transport the three girls on her own as Claimant tends to elope and requires constant attention. Claimant’s father is unable to assist Mother on Saturday because he oftentimes works on Saturday as part of a rotating work schedule. Sunday is also convenient for the family because there is less traffic on the road and the travel time to LNB is relatively short.

PROPOSED TRANSFER TO HRC

14. Mother does not dispute that she no longer resides in the WRC catchment area. Mother opposes the transfer of Claimant's case management to HRC because she fears Claimant and her sisters will no longer be able to attend LNB after the transfer is completed because LNB is not an HRC-approved vendor. Mother has investigated each of the social skills training providers located in the HRC catchment area that were recommended by WRC and HRC, but none meet the needs of Claimant or her family. Most do not offer the kind of sensory stimulation or the freedom of movement offered by LNB. Claimant and her sisters are not able to participate in others because of age requirements. One program that Mother found attractive has a waitlist and may not be able to accommodate Claimant and her two sisters. In addition, most, if not all, of the recommended providers do not offer programs on Sundays.

15. Mother pointed out at the hearing that her family has not purchased a home in the HRC catchment area, and it is uncertain how long they will live at their present location. Mother also indicated that the family will move if better educational opportunities are available for Claimant and her sisters elsewhere.

16. Lisa Basiri testified that it is appropriate to transfer Claimant's case to HRC because WRC's contract with the Department of Developmental Services specifies that WRC shall provide regional center services to eligible consumers who reside in WRC's catchment area. According to Ms. Basiri, it is reasonable and cost-effective (promoting a numerically defined case load for each regional center) to have each regional center responsible solely for clients who reside within a regional center's defined catchment area. Ms. Basiri testified that Claimant's needs would be better served by HRC because its staff are more familiar than WRC staff with the services and resources available in Claimant's area of residence. Ms. Basiri noted that Claimant will be able to attend LNB without issue for at least 30 days and potentially until November 2019, the date of

Claimant's next IPP meeting, if the proposed transfer takes place. Even after that date, Ms. Basiri explained HRC could continue to fund Claimant's attendance at LNB if HRC approves the program either as an HRC vendor or as a "courtesy vendor" for Claimant and her sisters only. Ms. Basiri also pointed out that Mother had the right to appeal any decision by HRC to stop funding Claimant's continued participation in the LNB program.

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LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.)
2. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700–4716.) Claimant requested a fair hearing to appeal Service Agency's proposed transfer of her case to HRC. Jurisdiction in this case was thus established. (Factual Findings 1–4.)
3. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Service Agency bears the burden of proving, by a preponderance of the evidence, that its decision to transfer Claimant's case to another regional center is correct. (Evid. Code, § 115.)

TRANSFERRING CLAIMANT'S CASE MANAGEMENT RESPONSIBILITY

4. The State of California has accepted a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (§ 4501.) As noted by the Legislature, the "complexities of providing services and supports to person with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports." (*Ibid.*) The purpose of the Lanterman Act is to ensure that the regional centers do everything necessary to allow the developmentally disabled to be integrated into the community and become as independent as possible. And, "it is the intent of the legislature that regional centers provide or secure family support services that do all of the following: (1) Respect and support the decision making authority of the family. (2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time." (§ 4685, subd. (b)(1), (2).)

5. Pursuant to the Lanterman Act, consumers of services and supports, and their parents, should be empowered to make choices in all life areas, including program planning and implementation. (§ 4501.)

6. Regional centers are established as "fixed points of contact" to enable the state to carry out its duties to the developmentally disabled and to allow those persons access to the services and supports best suited to their individual needs throughout their lifetimes. (§ 4620, subd. (a).) A regional center's catchment area is "the geographical area within which a regional center provides services specified in its contract with the [Department of Developmental Services] as required by Welfare and Institutions Code Section 4640." (Cal. Code Regs., tit. 17, § 50501, subd. (18).) Section 4640, subdivision (a), provides that regional centers operate under contracts with the

state that specify the service area and the categories of persons that regional centers shall be expected to serve and the services and supports to be provided.

7. Section 4643.5, subdivision (a), provides that "If a consumer is or has been determined to be eligible for services by a regional center, he or she shall also be considered eligible by any other regional center if he or she has moved to another location within the state." Moreover, "Whenever a consumer transfers from one regional center catchment area to another, the level and types of services specified in the consumer's individual program plan (IPP) shall be authorized and secured, if available, pending the development of a new individual program plan for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new IPP within 30 days. Prior to approval of the new IPP, the regional center shall provide alternative services and supports that best meet the IPP objectives in the least restrictive setting." (§ 4643.5, subd. (c).)

8. The Lanterman Act does not specifically address whether a consumer may receive services from a regional center outside of the catchment area of the consumer's residence. The relevant statutes and regulations suggesting that consumers be assigned to regional centers solely based on the consumer's residential address, e.g., sections 4620, subdivision (a), 4640, subdivision (a), and 4643.5, must be balanced against the Lanterman Act's emphasis on family preferences and choices as reflected in sections 4501 and 4685. However, that is not to say that a consumer or consumer's family ought to be able to select whatever regional center is perceived most favorable or responsive to the consumer's wants and needs. In general, the geographic boundaries should be respected in order to give order and effect to the greater legislative scheme. But in the individual case, circumstances may justify that an exception be made.

9. Here, Mother's sole objection to the transfer of Claimant's case management to HRC is that Claimant will lose the opportunity to participate in LNB,

which Mother believes is the only social skills program that meets Claimant's and the family's unique needs. However, as set forth below, Mother's concerns do not constitute a circumstance justifying an exception to the catchment protocols of the Lanterman Act.

10. The transfer of Claimant's case management to HRC does not preclude her from continuing to attend LNB, even if it is located outside of the HRC catchment area, as long as the services it provides continue to be necessary to meet the IPP needs of Claimant and her family. The Lanterman Act requires the regional center to be flexible to ensure delivery of a necessary service to a regional center consumer. For example, regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve goals (§ 4651); and to utilize innovative service-delivery mechanisms (§ 4685, subd. (c)(3).) Similarly, services and supports "shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4648, subd. (a)(2).) The Lanterman Act further provides that regional centers respect and support the decision-making authority of a consumer's family; be flexible and creative in meeting the unique and individual needs of a consumer's family as they evolve over time; and meet the cultural preferences, values, and lifestyles of the consumer's family. (§ 4685, subd. (b).)

11. Claimant's IPP provides that social skills training is a necessary service for Claimant's development, and social skills training is an identified service and support provided to regional center consumers. (§ 4512, subd. (b).) The Lanterman Act sets forth alternative ways a regional center may fund necessary services such as social skills training. "A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, when appropriate, his or her parents ... determines will best accomplish all or any part of that consumer's program plan." (§ 4648, subd. (a)(3).) The regional center may "reimburse an individual or agency for services or supports

provided to a regional center consumer if the individual or agency has [an established] rate of payment for vendored or contracted services ..., and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements." (*Ibid.*) In addition, a regional center may "issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the [Department of Developmental Services]." (§ 4648, subd. (a)(4).)

12. At the hearing, Mother established that LNB provides necessary IPP services for Claimant and her family. (Factual Findings 11–13.) Mother also articulated specific reasons why the recommended social skills programs located in the HRC catchment area were unsuitable for Claimant and her sisters. (Factual Findings 14–15.) Mother's concerns and Claimant's needs, however, can be addressed in the IPP process pursuant to section 4643.5, subdivision (c), after transfer of the management of Claimant's case to HRC. If it is determined in the IPP process that no social skills program other than LNB meets Claimant's particular needs, HRC would not be foreclosed under the Lanterman Act from funding Claimant's participation in LNB, despite its location outside of the HRC catchment area. HRC could provide such funding in a variety of ways, including vendorizing LNB as an HRC-approved vendor, approving LNB as a "courtesy vendor" based on WRC's vendorization of LNB or vendorizing Mother to allow her to pay LNB directly. (§ 4648, subds. (a)(3) & (a)(4).) Indeed, HRC may be obligated under the Lanterman Act to do so if Claimant's needs are sufficiently compelling and unique and cannot be met elsewhere.

13. Because of HRC's latitude in funding services located outside of its catchment area that meet its consumers' IPP needs, Claimant's concerns do not

outweigh the state's interest in maintaining a statutory scheme based on the location of a consumer's residence. In addition, while LNB meets the current needs of Claimant and her family, it is not known whether it will do so in the future. Claimant's IPP is always subject to negotiation and modification as Claimant grows and her and her family's needs evolve, regardless of which regional center is managing her case. Mother offered no evidence that Claimant has any other needs for which only WRC is capable of providing services or that those needs would be unmet if her case is transferred to HRC. It also would be more advantageous for Claimant to have her services managed by the regional center contractually responsible for providing services in her geographic area of residence because it is more familiar than WRC with the resources available in the area. Mother's speculation that Claimant and her family may move away from HRC's catchment area at some future date is not enough to warrant an exception to the transfer rules; if Claimant moves to another catchment area, case management can be reassigned.

14. Accordingly, under sections 4620, subdivision (a), 4640, subdivision (a), and 4643.5, subdivision (c), Service Agency met its burden of establishing by a preponderance of the evidence that cause exists to transfer Claimant's case management responsibility to HRC. (Factual Findings 1–16 and Legal Conclusions 1–13.)

ORDER

Claimant's appeal is denied. Claimant's case management responsibility shall be transferred to Harbor Regional Center. Claimant's weekly attendance at Leaps n Boundz shall continue to be funded until either (1) HRC and Claimant agree to an alternative as part of Claimant's Individual Program Plan or (2) the parties resolve any disagreement during the fair hearing process.

DATED:

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.