BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT, and

HARBOR REGIONAL CENTER,

Service Agency

OAH No. 2019060708

DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 7, 2019, in Torrance, California.

Elizabeth Stroh, fair hearing representative, represented Harbor Regional Center (Service Agency or HRC). Claimant was not present but was represented by his mother. (Titles are used to protect confidentiality.)

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 7, 2019.

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ISSUE PRESENTED

Whether HRC should reimburse Claimant's family for the cost for Claimant to attend the UCLA PEERS program, including $392 for an initial payment and a total cost of approximately $4,000.

EVIDENCE RELIED UPON

Fair Hearing Request, and testimony of Elizabeth Stroh and Claimant's mother.

PROCEDURAL MOTIONS AND FACTUAL FINDINGS

1.   Claimant's mother requested a continuance of the hearing, on the grounds that Claimant was recently assessed and accepted by the UCLA PEERS program and she wants to obtain the assessment report.

2.   HRC opposed the request for continuance, and made a motion to dismiss the proceedings, because Claimant's insurer, MHN, has agreed to pay for Claimant to attend the UCLA PEERS program.

3.   Mother opposes the motion to dismiss. She would like to resolve certain issues with HRC, including whether HRC agrees that the UCLA assessment establishes the need for Claimant to receive services from the UCLA PEERS program.

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LEGAL CONCLUSIONS

1.   Under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welfare and Institutions Code section 4500 et. seq.),[1] an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Section 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding to pay for Claimant to attend the UCLA PEERS program. Jurisdiction in this case was thus established. (Factual Findings 1-3.)

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.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes 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, Claimant bears the burden of proof regarding his request for payment for services. (Factual Findings 1-3.)

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 person with developmental disabilities . . . and to support their integration into the

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[1] All references to statutes are to the Welfare and Institutions Code, unless otherwise noted.

mainstream life of the community." (Code section 4501.) These services and supports are provided by the state's regional centers. (Code section 4620, subd. (a).)

4.　　Under Code section 4712, a continuance of the hearing may be granted upon a showing of good cause.

5.　　By law, the Service Agency is required to determine if the needed services can be obtained from other sources, usually denoted as "generic" sources or agencies. This legal obligation is found in several places. For example, Code section 4646.5, subdivision (a)(4), provides that the IPP should include:

> "A schedule of the type and amount of services and
> supports to be purchased by the regional center or
> obtained from generic agencies or other resources in order
> to achieve the individual program plan goals and objectives,
> and identification of the provider or providers of service
> responsible for attaining each objective, including, but not
> limited to, vendors, contracted providers, generic service
> agencies, and natural supports. The plan shall specify the
> approximate scheduled start date for services and supports
> and shall contain timelines for actions necessary to begin
> services and supports, including generic services."

6.　　As relevant here, Code section 4659, subdivision (c), provides that, "Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, . . . private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. . . ."

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7.   Under California Code of Regulations, title 17, section 50966, subdivision (b), a motion to dismiss a fair hearing request is authorized when "a fair hearing request raises issues not appropriately addressed" in the fair hearing process or "does not comply with statutory requirements."

8.   The issue for determination in this matter is moot, because the insurer, MHN, has agreed to pay for the program. Further, the insurer is a generic source of the type which the Service Agency is required to look to for payment before the Service Agency considers providing payment itself.

9.   Because the issue for determination at the hearing is moot, mother's request for a continuance of the hearing will be denied, and HRC's motion to dismiss the fair hearing request is granted.

10.   Mother and HRC should continue in their efforts to exchange relevant information related to Claimant's ongoing need for services.

ORDER

1.   Claimant's request for a continuance of the hearing is denied.

2.   Claimant's fair hearing request is dismissed.

DATE:

DAVID B. ROSENMAN

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.