

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2019071213

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 13, 2019 in Torrance, California.

Elizabeth Stroh and Latrina Fannin, Managers of Rights & Quality Assurance, represented Harbor Regional Center (HRC or Service Agency).

Mother appeared on behalf of Claimant, who was not present.¹

¹ Titles are used to protect Claimant and his family's privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 14, 2019.

ISSUE

Should Service Agency be required to pay for two sessions per week of Claimant's communication services with Hello World?

EVIDENCE RELIED UPON

Documentary: Service Agency Exhibits 1-14; Claimant's Exhibits A - K;

Testimonial: Iris Owens, HRC Behaviorist; Monica Diaz, HRC Client Service Manager; Bernadette Rivera, Speech-Language Pathologist, Hello World; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 23-year-old conserved man who is eligible for regional center services under the diagnoses of Intellectual Disability and Cerebral Palsy. He also has accompanying diagnoses of severe cortical vision impairment and residual estropia. Claimant resides in his own part of the family home which has been modified to be his own apartment with his biological parents. He has one sibling, a 25-year-old brother.

2. Claimant receives Supplemental Security Income and is covered through private insurance Anthem Blue Cross as well as Medi-Cal insurance. He receives 283 hours per month of In Home Support Services (IHSS). HRC is currently providing funding for the following supports and services: 1) Speech/Communication therapy, one session per week, from Hello World; 2) Community Integration program 6 hours

per day, 23 days per month with Creative Steps; and, 3) Family-directed respite services provided by a friend through Cambria, 60 hours per quarter (20 hours per month). Claimant's second weekly session with Hello World is funded by family.

Deleted:

3. In August 2018, Service Agency agreed to temporarily fund for one weekly session of communication therapy with Hello World in order for Bernadette Rivera, Speech and Language Pathologist at Hello World, to train Claimant's coach from Creative Steps to support Claimant to communicate while in his community. The described "Train the Trainer" model was identified as potentially beneficial to Claimant. In addition, HRC agreed to temporarily fund one Hello World session to allow family time to pursue generic resource funding through their primary insurance or Medi-Cal.

4. On October 23, 2018, an Individual Person-Centered Plan (IPP) was completed for Claimant at HRC. Claimant's communication IPP goals included communicating effectively by being able to express information in the community, at volunteer/work settings, and with peers. It was noted that Claimant has an iPad and applications on the device that are designed to help him put together his thoughts and sentences. Hello World was asked to train the staff at Creative Steps so that they can assist Claimant in communicating effectively. Claimant was referred to HRC's AT (Assisted Technology) lab. Mother was provided with necessary paperwork in order to schedule the appointment at HRC's AT lab. The desired outcome was for Claimant to develop the skills he needs to be able to work in the community with support. As of the date of hearing, Claimant has not had an appointment at HRC's AT lab to evaluate the efficacy of his current AT and to identify potential additional AT that can assist Claimant in meeting his independent communication goals.

5. In April 2019, mother requested HRC to increase funding for communication therapy from one session to two sessions per week. The funding

would facilitate Claimant's communication ability and independence in the community and allow him to cease paying one of the two sessions per week he is receiving from Hello World.

6. On July 15, 2019, Service Agency notified mother that the request was denied (NOA). HRC denied the request on two grounds. One, based on its determination, after observation by HRC staff of Hello World sessions between Claimant and Ms. Rivera, that the "Train the Trainer" model was not effective in the last year. Taking this into consideration and the fact that Claimant has been receiving services from Hello World since 2014, HRC expressed concern as to whether reasonable progress has been made to support the continuation of the service even at the current level of funding of one time a week, even without considering an increase in funding, citing Welfare and Institutions Code section 4648, subdivision (a)(7) ("No service or individual shall be continued unless . . . reasonable progress toward objectives has been made.")

7. Second, the NOA notified mother that in order for HRC to "even consider funding communication therapy we require evidence that this therapy has been denied by both Medi-Cal and your private insurance." (Exhibit 2.) In support, the NOA cited HRC's General Standards Policy and Service Policy on Therapy Services, which both specify that services and supports, such as the therapy services sought by Claimant, may be purchased for a client (1) only after a client's available public resources have been used to the fullest extent possible and, (2) the client has been denied or is not eligible for Medi-Cal, California Children's Services, private insurance or another third party payer coverage. The NOA further cited Welfare and Institutions Code section 4659, subdivision (a)(1), which states that, as a payor of last resort,

"regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services." (*Id.*)

8. In denying the request to fund the second weekly session, HRC notified Claimant that it would continue to fund one session per week until Claimant's next annual planning meeting, which Service Agency anticipates will be held in October 2019.

9. On July 26, 2019, Claimant's mother filed a fair hearing request (FHR), on behalf of Claimant, appealing the denial of funding for the service requested, (i.e., a second weekly session with Hello World), asserting that the service was recommended by Claimant's day program, doctor, and service provider.

HEARING

10. The bulk of the hearing was dominated by testimony and evidence regarding the efficacy of services by Hello World. However, the preliminary dispositive issues in this matter are: 1) whether Claimant has available generic resources, such as private insurance, to pay for the requested service and 2) whether Claimant has been denied coverage for the requested service by either private insurance or Medi-Cal. Because, as more fully described below, the evidence presented at hearing demonstrated that HRC, as a payor of last resort, is precluded from funding the requested second session with Hello Word because Claimant has private insurance which will partially pay for the requested service and no denial letter from either Medi-Cal and/or private insurance was provided by Claimant, the efficacy of Hello World's communication therapy services is not relevant to this decision and is not, therefore, addressed.

11. Mother testified and submitted evidence that Claimant is covered by private insurance through his father's employer's private premium insurance plan, Anthem Premium Plan. (Exhibit E.) After January 2019, the deductible for Claimant's sessions with Hello World, considered an out-of-network provider, is \$6,000. According to mother, Claimant is charged \$125 per session with Hello World. After the deductible is met, reimbursement for the sessions is at a rate of fifty percent. No denial letter was provided by Claimant from Medi-Cal, as repeatedly requested by HRC. Mother provided no reasonable explanation for why no information was provided regarding whether Medi-Cal will fund Claimant's sessions with Hello World.

12. Claimant mother's testimony at hearing focused on frustration at the three-month delay in the Service Agency's denial of her request for services. Service Agency acknowledged the unfortunate delay, attributing it to transitions in Claimant's service coordinators and the time it took to gather necessary information regarding the request, including the coordination between Hello World and HRC staff to schedule observation sessions at Hello World.

LEGAL CONCLUSIONS

1. Where a change in the status quo is sought, the party seeking the change has the burden of proving that a change is necessary. (Evid. Code, §§ 115 and 500.) The standard of proof in this case required proof to a preponderance of the evidence pursuant to Evidence Code section 115, because no other law or statute requires otherwise. "Preponderance of the evidence" means evidence which is of greater weight or more convincing than evidence which is offered in opposition to it. (BAJI No. 2.6 (8th ed. 1994.))

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case for Claimant after the age of three. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman Act is a comprehensive statutory scheme to provide “[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The services and supports should “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (*Id.*)

3. Under the Lanterman Act, the services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (Welf. & Inst. Code, § 4512, subd. (b); Gov. Code, § 95020, subd. (a).)

4. Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8), “[R]egional Center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

5. Welfare and Institutions Code section 4659, subdivision (a) provides, “Except as otherwise provided in subdivision (b) or (e) , the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, . . . the following: (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical

Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.”

6. In addition, Welfare and Institutions Code section 4646.4, subdivision (a) states:

“Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer’s individual program plan development pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: (1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434. (2) Utilization of generic services and supports when appropriate. (3) Utilization of other services and sources of funding as contained in Section 4659. (4) Consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer’s service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional center shall take into account the consumer’s need for extraordinary care, services, supports

and supervision, and the need for timely access to this care.”

7. Based on Factual Findings 2 through 12, and Legal Conclusions 1 through 6, Claimant did not establish by a preponderance of the evidence that Service Agency should fund for the second weekly session with Hello World currently funded by Claimant. Service Agency utilizes public funds to pay for services under strict guidelines which designate it as a payor of last resort. In this case, Claimant provided no evidence that the requested service has been denied by either Anthem or Medi-Cal. In fact, Claimant’s Hello World sessions are partially covered by the family’s private insurance, Anthem. No extraordinary circumstances were established to justify an exception in this matter.

ORDER

Claimant’s appeal is denied. Service Agency is not obligated to pay for Claimant’s second weekly session with Hello World.

DATE:

IRINA TENTSER
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.