

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**HARBOR REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020021200**

**DECISION**

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 20, 2020, via video and audioconference.

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Claimant's father (Father) represented Claimant.<sup>1</sup> Latrina Fannin, Manager of Rights and Quality Assurance with the Harbor Regional Center (Service Agency), appeared and represented the Service Agency.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 20, 2020.

## **ISSUE**

Must the Service Agency increase Claimant's Individual Budget for social skills services from \$1,699.95 to \$6,667.65?

## **EVIDENCE**

Documentary: Exhibits 1 through 12, and A through D, F through L.

Testimonial: Antoinette Perez, Director of Children's Services; Maria Fitzsimons, Client Service Manager; and Father.

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<sup>1</sup> Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and his family.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a 15-year-old adolescent who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst. Code, § 4500 et seq.), based upon qualifying diagnoses of Autism Spectrum Disorder (ASD) and mild Intellectual Disability (ID). Claimant resides with his mother (Mother) and Father (collectively, Parents) in the Service Agency's catchment area.

2. Claimant was selected to participate in the Service Agency's Self-Determination Program (SDP). The SDP is a voluntary alternative to the traditional way regional centers provide services and supports and is designed to offer consumers and their families more freedom and control in choosing their services and supports. In addition to the increased flexibility and control, many consumers are able to receive services that regional centers are not ordinarily allowed to fund due to changes in state law. Participants have the authority to control a certain amount of money, also known as an Individual Budget, to purchase needed services and supports. The Individual Budget is the total amount of regional center funds available to the SDP participant each year.

3. On January 16, 2020, the Service Agency received a letter from Parents requesting the Service Agency to increase Claimant's Individual Budget of his SDP so Claimant could attend Mychal's Learning Place<sup>3</sup> to address Claimant's social skills.

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.<sup>3</sup> Mychal's Learning Place is discussed in more detail below.

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Specifically, Parents requested an increase from \$1,699.95 to \$6,667.65, in order for Claimant to attend Mychal's Learning Place at a rate of 12 hours per week, to assist Claimant in developing age-appropriate socialization in an effort to make meaningful friendships.

4. On January 24, 2020, the Service Agency issued a Notice of Proposed Action (NOPA), denying Parents' request for an increase in Claimant's Individual Budget.

5. Parents filed a fair hearing request on Claimant's behalf to appeal the Service Agency's decision.

6. All jurisdictional requirements are met.

## **Background**

7. Claimant has been a client of the Service Agency since 2015. Since then, Parents repeatedly requested the Service Agency to provide Claimant services through a social skills program, but the Service Agency did not identify any social skills programs until February 2019. Specifically, the Service Agency identified a social skills program through Our Village, which is a non-profit agency that facilitates the Program for the Education and Enrichment of Relational Skills (PEERS) social skills groups. "PEERS is a 14-week evidence based social skills intervention for motivated teens in middle and high school who are interested in learning ways to make and keep friends." (Exhibit 11.) When Claimant underwent the PEERS intake process, Claimant refused to interact with anyone, prompting PEERS to reject Claimant's admission into the PEERS program.

8. Thereafter, Parents requested the Service Agency to identify other social skills programs, but the Service Agency could not. Consequently, on August 23, 2019, Parents sent the Service Agency a letter inquiring whether it would fund a social skills program that would accept Claimant, assuming Parents could find such a program. Parents cited the following reasons why Claimant needed to participate in a program designed to develop Claimant's social skills and friendship-building:

- [Claimant] lacks the confidence to attempt to make friends, absent an introduction or closed group environment—hence, he is extremely lonely, socially isolated and depressed.
- [Claimant] does not have any siblings close in age after whom he can model behavior; he only has a 20-year-old sister who is away at college.
- [Claimant] tends to be one of the highest functioning children in most of his organized activities. He is often around non-verbal children. He longs to be around others at his same or similar developmental level; however, he does not possess the skills to engage or maintain friendships with typical children his age. As a result, he tends to want to engage and play with children 3 to 5 years younger. As you might imagine, parents of those children most often are uncomfortable with this. The level of discomfort is further exacerbated by [Claimant's] size; he is now roughly 5'-8" with a weight of 160 pounds.

(Exhibit C, p. 1.)

9. Parents also stated in their August 23, 2019 letter, in pertinent part, the following:

[Mychal's Learning Place has] an after school program that fosters the building of social skills. Mychal's Learning Place focuses on providing opportunities that encourage the development of life-long friendships. Importantly, the Mychal's Learning Place program provides a structured environment, which has been strongly recommended . . .

(Exhibit C, p. 2.)

10. According to its brochure, Mychal's Learning Place "provides support, training and opportunities to youth and young adults with developmental disabilities to build their independence and pursue their goals and dreams." (Exhibit 12.)

11. From January 2018 through December 2018, the Service Agency purchased \$4,791.81 in services for Claimant, specifically respite services. From January 2019 through December 2019, the Service Agency purchased \$5,778.77 in respite services for Claimant.

12. On November 25, 2019, the Service Agency prepared Claimant's Individual Budget for Claimant's SDP. The Individual Budget totaled \$7,752.75, representing \$6,052.80 for respite services for a period of 12 months, and \$1,699.95 for social skills services for a period of 15 weeks. The Individual Budget was based, in part, on the prior 12 months of expenditures used by the Service Agency to purchase services set forth in Claimant's Individualized Program Plan (IPP) (i.e., respite services),

as well as the amount of money the Service Agency would have had to pay for Claimant to attend an evidence-based social skills program comparable to PEERS (i.e., \$1,699.95). The Service Agency believed that a 10 to 12-week social skills program that included parent participation, like PEERS, would have given Claimant, with the aid of Parents, an opportunity to practice and generalize the skills learned in the program.

13. On November 27, 2019, the Service Agency prepared a Spending Plan Worksheet for Claimant's Individual Budget regarding his SDP, which stated the following five goals:

GOAL: [Claimant] will be part of a social skills program that helps him develop age appropriate socialization skills to make meaningful friendships.

GOAL: [Claimant] will gain confidence to initiate with peers who are strangers through a social skills program.

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GOAL: [Claimant] will develop a better sense of awareness on how his behavior affects friendships through a social skills program.

GOAL: [Claimant] will learn to be more sensitive and have a better understanding of others' feelings through a social skills program.

(Exhibit F.)

14. Through the testimony of Maria Fitzsimons, Client Services Manager of the Service Agency, the Service Agency identified another evidence-based social skills program called The Gathering Place, which cost approximately \$1,700, but Parents declined to explore The Gathering Place, "because they were already sold on Mychal's Learning Place."

15. On January 15, 2020, Father wrote a letter to the Service Agency discussing his dismay with the Individual Budget proposed by the Service Agency. Father stated, in pertinent part, the following:

As you are aware, my wife and I have been seeking [the Service Agency's] assistance in identifying and placing our son, [Claimant], in one or more programs to aid him in developing his social skills and friendship building for over two years. In our discussions over the past several months, it is my understanding that development of social skills and friendship building skills were acknowledged by [the Service Agency] to be **unmet needs**.

Much to our chagrin, in the . . . [Individual] [B]udget proposed by [the Service Agency], [the Service Agency] equates [Claimant's] potential participation in Mychal's Learning Place social skills program with respite services and has solely deducted some of the hours which were allocated for respite services in 2018-19 and allocated them for social skills.



You shared with us that the respite hours were used because the Mychal's Learning Place program is an after school program. We shared with you that it is not as though the program is solely a childcare service akin to respite. Rather, the primary goal of Mychal's Learning Place is to prepare children for adulthood through: educational/prevocational; life skills training; and social/recreational activities that will foster appropriate behaviors, independence and increased self-esteem. None of the foregoing activities bear any resemblance to respite services. On that basis, we believe the premise upon which [the Service Agency] has equated Michal's Learning Place program with respite services is demonstrably false.

We respectfully request that [the Service Agency] provide [an Individual Budget] for [Claimant] that allocates new money to address the acknowledged unmet need of social skills services. [The Service Agency's] proposal to rob Peter (drastically reduce [Claimant's] previous respite services budget) in order to pay Paul (fund social skills program with previously allocated respite services budget) is intellectually dishonest.

(Exhibit H.) (Bold text in the original.)

16. On August 14, 2020, Father confirmed with Claimant's school district (i.e., Redondo Beach Unified School District) that it does not provide or fund social skills

development programs. Specifically, the school district stated, in pertinent part, the following:

[W]e do not have any formal social skills programming through the district at this time. Typically, we address social skills needs through IEP goals.

(Exhibit L.)

17. Father also confirmed that Claimant's medical insurance (i.e., Anthem BlueCross/Medi-Cal) provides no social skills services.

18. Father stated in his August 23, 2019 letter that Mychal's Learning Place would accept Claimant into its after-school program upon submission of completed enrollment forms and approval of funding by the Service Agency.

19. On January 24, 2020, the Service Agency declined to increase Claimant's Individual Budget.

### **Service Agency's Contentions**

20. The Service Agency's Client Services Manager, Maria Fitzsimons, and its Director of Children Services, Antoinette Perez, testified at hearing, and explained the Service Agency's position. The Service Agency contends that in order for the IPP team to consider adjusting Claimant's Individual Budget, the IPP team is required to consider services and supports that would be funded under the traditional service delivery system; therefore, as part of the assessment process, the team must identify an unmet need that is related to [Claimant's] eligible regional center diagnosis and explore and rule out all possible sources of funding prior to providing funding. The

Service Agency's behavioral team, due to Claimant's age and areas of need, believed he would benefit from an evidence-based program similar to the PEERS model.

21. The Service Agency further contends that it authorized an increase in Claimant's Individual Budget in the amount of \$1,699.95 so that the family could coordinate Claimant's participation in social skills training. The cost incorporated in Claimant's Individual Budget would have been authorized under the traditional services delivery model.

22. The Service Agency additionally contends that Claimant can use the Individual Budget to pay for Mychal's Learning Place, should Parents deem the program important to Claimant's development, and have less money to apply to respite services.

23. The Service Agency further contends that Mychal's Learning Place is not a social skills program and is not vendored as such. Mychal's Learning Place is vendored only for adult daycare, afterschool care services, and adaptive skills training. As such, it provides no evidence-based social skills services. In that regard, Mychal's Learning Place neither takes data to see if the participant has made progress, nor issues any progress reports, like the PEERS and the Gathering Place programs do.

### **Claimant's Contentions**

24. Father testified at hearing and supplied a written statement explaining Claimant's position. Father's written statement set forth Claimant's contentions as follows:

It is undisputed that Claimant has an unmet need in the form of social skills services that had gone unmet for

several years. While a program that would provide services to address this unmet need has been identified, and Service Agency has allocated a budget to fund the services, it is Claimant's position that the allocated amount of \$1,699.95 ("Allocated Amount") is insufficient. As noted on the [Claimant's] Annual Budget as developed solely by Service Agency[,] the period established for the services is 15 weeks. Surely any reasonable intelligent person, let alone any behavioral professional, could not reasonably expect such a critical deficiency (**that has gone unaddressed for years**) to be remedied in 15 weeks. The Allocated Amount, if spread across 52 weeks (which aligns with Service Agency's budget period for other services) would afford Claimant social skills services at the rate of 2.43 hours per week. That quantum of services is inadequate.

(Exhibit A, p. 2.)

25. At hearing, Father queried how the Service Agency could reasonably believe the budget of \$1,699.95 for social skills services would be adequate, given the goals the Service Agency set forth in the Spending Plan Worksheet (Exhibit F).

26. Claimant further contends, in pertinent part, the following:

The proposed budget for social skills services is hardly fair nor equitable. Further, the team had not been transparent in communicating the methodology behind the \$1,699.95 amount, nor the 15-week duration. Further, Section

4685.8(k) of the Lanterman Act requires that the IPP shall detail the goals and objectives of the [Claimant] that are to be met through the purchase of [Claimant]-selected services and supports and that the IPP team shall determine the individual budget to ensure [emphasis added] the budget assists the [Claimant] to achieve the outcomes set forth in his . . . IPP and ensures his . . . health and safety. Query, what goals and objectives could the team reasonably expect Claimant to achieve vis-à-vis 2.43 hours per week of social skills training?

(Exhibit A. p. 3.)

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Pursuant to section 4710.5, subdivision (a), "Any . . . authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." Claimant requested a hearing to appeal the Service Agency's decision declining to increase social skills funding in Claimant's Individual Budget from \$1,699.95 to \$6,667.65. Jurisdiction in this case is established. (Factual Findings 1 through 6.)

## Applicable Law

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

3. The “services and supports” provided to a consumer include “specialized services and supports . . . directed toward the alleviation of a developmental disability . . . or toward the achievement and maintenance of independent, productive, and normal lives . . . .” (§ 4512, subd. (b).) The services and supports necessary for each consumer are determined through the IPP process. (§§ 4512, subd. (b), 4646.)

4. If a generic agency fails or refuses to provide a regional center consumer with those supports and services which are needed to maximize the consumer’s potential for integration into the community, the Lanterman Act requires the regional centers fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.)

5. Section 4685.8, subdivision (a), provides, in pertinent part, the following regarding SDPs:

The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions,

resources, and needed and desired services and supports to implement their IPP.

6. Section 4685.8, subdivision (b)(2)(B), requires regional centers to ensure, in pertinent part, the following regarding SDPs:

Increased participant control over which services and supports best meet the participant's needs and the IPP objectives. A participant's unique support system may include the purchase of existing service offerings from service providers or local businesses, hiring their own support workers, or negotiating unique service arrangements with local community resources.

7. Section 4685.8, subdivision (c)(3), defines Independent Budget as follows:

"Individual budget" means the amount of regional center purchase of service funding available to the participant for the purchase of services and supports necessary to implement the IPP. The individual budget shall be determined using a fair, equitable, and transparent methodology.

8. Section 4685.8, subdivision (d)(3)(B), provides that a participant in the SDP "shall utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available."

9. Section 4685.8, subdivision (k), provides the following regarding SDPs:

The IPP team shall utilize the person-centered planning process to develop the IPP for a participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the participant to achieve the outcomes set forth in the participant's IPP and ensures their health and safety. The completed individual budget shall be attached to the IPP.

10. Section 4685.8, subdivision (n)(1)(A), provides, in part, the following regarding SDPs:

(1) Except as provided in paragraph (4), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A)(i) Except as specified in clause (ii), for a participant who is a current consumer of the regional center, their individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant.

(ii) An adjustment may be made to the amount specified in clause (i) if both of the following occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an



increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the Self-Determination Program.

11. 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.

12. 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 increase his Individual Budget for social skills services from \$1,699.95 to \$6,667.65. Under these circumstances, Claimant bears the burden of proof.

## Analysis

13. Here, Claimant failed to meet his burden of establishing that the Service Agency must increase Claimant's Individual Budget for social skills services from \$1,699.95 to \$6,667.65, in order for Claimant to attend Mychal's Learning Place. While Father established, and the Service Agency acknowledged, that Claimant suffered social skills challenges that had not been addressed formally, primarily due to unavailable generic services, such as Claimant's school district or medical insurance, as well as the Service Agency's inability to identify a social skills program for Claimant for nearly four years, such factors do not justify the Service Agency violating its obligation to exercise fiscal responsibility when creating an Individual Budget for Claimant. As set forth in Legal Conclusion 10, the services the Service Agency funds must be cost effective, as its resources must be shared by many consumers, which means the Service Agency is not required to meet a consumer's every possible desire. Thus, Mychal's Learning Center, though identified by Parents as their preferred program for Claimant to develop his social skills, does not have to be accepted by the Service Agency as a program it must fund.

14. Moreover, the evidence shows that the Service Agency's allotment for social skills services was reasonable, as it was based on the cost of an evidence-based social skills program (i.e., PEERS), to wit, \$1,699.95, and was consistent with the cost of a similar evidence-based social skills program (i.e., the Gathering Place), to wit, \$1,700. While Mychal's Learning Center fosters the building of social skills, it is not an evidenced-based social skills program. Rather, it is a facility that formally provides adult daycare, afterschool care services, and adaptive skills training. Additionally, Mychal's Learning Center does not collect data regarding a participant's progress or issue any progress reports analyzing such data. Under such circumstances, it is

unreasonable to require the Service Agency to fund for Mychal's Learning Center when its core services do not include formal social skills training.

15. In regard to Father's argument that, given the goals created by the Service Agency regarding Claimant's social skills development, the Service Agency's funding of a 14-week program is insufficient to meet those goals or to remedy Claimant's social skills deficits, the evidence shows the Service Agency anticipated parent participation in the social skills program, similar to that required at PEERS, such that Claimant, with the aid of Parents, could practice and generalize the skills learned in the program. Father proffered no evidence from any social skills or behavioral health expert establishing that a 14-week, evidence-based, social skills program was insufficient to address Claimant's social skills deficits or to make progress toward the established goals, despite parental participation. He also proffered no testimony from any expert establishing that Mychal's Learning Center was the most-appropriate place for Claimant to undergo social skills training, to the exclusion of others like PEERS or the Gathering Place.

16. In light of the above factors, the Service Agency shall not be required to increase Claimant's Individual Budget for social skills services from \$1,699.95 to \$6,667.65, in order for Claimant to attend Mychal's Learning Center, without suffering a reduction of his respite services funding.

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## **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.