

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

In the Matter of:

CLAIMANT,

VS.

HARBOR REGIONAL CENTER,

SERVICE AGENCY.

OAH No. 2020040433

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 24, 2020.

Claimant, who was not present, was represented by her mother (Mother) who is her authorized representative, with assistance from a certified Spanish language interpreter, as needed. (Claimant and family members are identified by titles to protect their privacy.) Lucilia Saccone, a friend of Claimant's family, was also present.

Harbor Regional Center (Service Agency or HRC) was represented by Latrina Fannin, Manager of Rights and Quality Assurance.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 24, 2020.

ISSUE

Is HRC required to fund the purchase of a trailer for transportation of Claimant's adaptive bicycle?¹

EVIDENCE

Documentary: Exhibits 1-8 and A-E.

Testimony: Mother, Bjoern Petersen.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an eighteen-year old-woman who is eligible for HRC services pursuant to her diagnosis of Intellectual Disability related to Down Syndrome and Autism Spectrum Disorder. Claimant also has a medical diagnosis of Alanto-Axial Instability which impacts her balance.

2. Claimant lives with her mother and her younger sibling who also is a consumer of the regional center. Claimant's older sibling lives with Claimant's father in a separate household and attends college.

¹ This matter was consolidated for hearing with OAH No. 2020040506. On June 16, 2020, Claimant's mother executed a Notice of Resolution and withdrew that matter.

3. Emily has limited speech and communicates with single words and gestures. She becomes frustrated when attempting to communicate with others. Claimant needs assistance with all aspects of self-care. Claimant occasionally engages in self-injurious behavior and elopement. She often tantrums and displays a grumpy stubborn demeanor. Claimant prefers to remain at home, is more comfortable at home and displays fewer maladaptive behaviors when at home.

4. Claimant's Individual Program Plan (IPP) dated May 7, 2020, developed at a meeting on February 12, 2020, contains desired outcomes targeting independence, money and math skills, self-care, community navigation, use of a computer, social interactions, safety awareness and participation in activities. According to the IPP, Claimant plans to complete high school and receive a Certificate of Completion. She will either obtain employment or enroll in her local community college after completing high school. Claimant likes to swim, dance, ride her bike and make art projects.

5. Claimant receives 283 hours per month of In-Home Support Services (IHHS), Claimant also receives Applied Behavioral Analysis (ABA) funded by her health insurance, eight hours per week, and 40 hours per month of in-home respite, 21 days per year of out-of-home respite and 32 hours per week of Personal Assistance hours for community integration funded by HRC.

6. Claimant's mother made application to a non-profit organization and was able to obtain special adaptive bicycles, which resemble large tricycles for Claimant and her younger sibling. The bicycles are very heavy and require a small trailer, if transported. The streets in Claimant's neighborhood are busy with fast moving vehicular traffic and not conducive to safe bicycle riding. Claimant's mother is concerned about her safety while riding her bicycle and would transport her bicycle to

the beach or a park if she had a trailer to do so. Claimant's personal assistant may accompany her while she is riding in the neighborhood, but the narrow sidewalks and traffic remain a concern. Appropriate trailers are available for purchase for approximately \$1300. During the IPP meeting, Claimant requested that HRC fund the purchase of a trailer for her bicycle. On March 9, 2020, HRC denied the request on the grounds that is barred from funding social recreational activities pursuant to the provisions of Welfare and Institutions Code section 4648.5. On March 31, 2020, Claimant appealed the denial and this hearing ensued.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500, et seq. (Lanterman Act) governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf & Inst. Code, §§ 4700-4716.) Claimant requested a fair hearing to appeal HRC's denial of her request to fund a trailer to transport her adaptive bicycle.

2. The burden is on Claimant to establish by a preponderance of the evidence that HRC is obligated to purchase the trailer, which is a new benefit or service. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. Welfare and Institutions Code section 4648.5, subdivision (a) provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

- (1) Camping services and associated travel expense.
- (2) Social recreation activities, except for those activities vendored as community-based day programs.
- (3) Educational services for children three to 17, years of age.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

4. Welfare and Institutions Code section 4648.5, subdivision (c) provides:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects

of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's need.

5. HRC may not fund non-medical therapies or social recreational activities for the reasons set forth above. The trailer that Claimant seeks is to be used to transport her adaptive bicycle to the beach or a safer location than her neighborhood so that she can ride and exercise. Claimant's desire to exercise and ride her bike is commendable as is Mother's efforts to obtain the bike and advocate for Claimant's interests. Unfortunately, the bike trailer falls within the categories of supports and services that HRC is prohibited from funding. While it is clear that Claimant would benefit from riding her bicycle on a regular basis, the trailer she seeks does not meet the criterion for an exception to the prohibition because it is not a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of her disability. Additionally, it does not meet the criterion as a support or service that is necessary to enable the consumer to remain in her home because there are other ways, although less preferable, for Claimant to exercise.

6. Claimant's argument that her health requires the purchase of the trailer also fails. HRC may not fund services which are available from other resources. (Welf. & Inst. Code, §4659.) HRC funds also "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf & Inst. Code, 4658, subd. (a)(8).) Claimant receives services for her developmental disability through her school district. Additionally, Medi-Cal is obligated to provide Claimant with any medically-necessary services.

Disposition

7 For the reasons set forth above, Claimant's request for the purchase of a trailer to transport her adaptive bicycle must be denied.

ORDER

Claimant's appeal is denied. Service Agency is not required to fund the purchase of a trailer to transport Claimant's adaptive bicycle.

DATE:

GLYNDA B. GOMEZ

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.