

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2020090996

DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 17, 2020, January 5, 2021, and March 3-4, 2021.

Claimant was represented by Armida Ochoa, an independent facilitator. Claimant's mother (Mother)¹ was also present during the proceedings. Spanish language interpreters provided translation services throughout the proceedings.

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

The record was held open until March 8, 2021, to allow for submission of the English version of the August 3, 2017 Department of Developmental Services (DDS) Directive filed by Claimant as Exhibit 6F. The DDS Directive was timely received, marked for identification as Exhibit 26, and admitted into.²

The record was closed, and the matter submitted on March 8, 2021.

ISSUE

The issues as expressed by Claimant³ are as follows:

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

² Claimant's representative stipulated to admission of the DDS Directive on March 4, 2021.

³ The Service Agency maintained that the proper issue is: "Whether HRC should increase the budget in Self-Determination Program so parents can fund for Personal assistance hours, AST, Holding Hands, and the increase in respite hours." Claimant,

Whether HRC is required to fund personal assistance hours for Claimant.

Whether HRC is required to fund adaptive skills training (AST) for Claimant.

Whether HRC is required to fund an evaluation through Holding Hands and fund Claimant's attendance in the Holding Hands program.

Whether HRC is required to increase Claimant's respite hours from 30 to 50 hours a month.

EVIDENCE

Documents: Service Agency Exhibits 1-26; Claimant Exhibits R1(A)-(E), R2(A)-(E), R3(A)-(H), R4(A)-(H), R5(A)-(E), and R6(A)-(G).

Testimonial: Service Agency witnesses Antoinette Perez, Director of Children's Services, Katy Granados, Client Services Manager (CSM) and Maribel Gutierrez Franco, Behavior Analyst; Claimant witnesses Mother; Christina Zavala, Psy.D.; and Marela Avila Garcia, family friend

however, objected to the issue as framed by the Service Agency, asserting that the original request was made before Claimant entered the Self-Determination Program.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 12-year old female consumer who qualifies for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)⁴ based upon a diagnosis of autism spectrum disorder (ASD).

2. On a date not established by the record, Claimant's parents (Parents) requested that Claimant's individual budget be increased so that Claimant could access a number of additional services that had not been authorized under her August 2020 individual program plan (IPP). Among these services was a request for increased respite hours, personal care services, a social skills assessment and services, and adaptive skills training.

3. On February 6, 2020, Katy Granados, who was then Claimant's HRC Service Coordinator, and Maria Fitzsimons, HRC Client Services Manager, notified Parents that their recent request to increase Claimant's individual budget had been denied.

4. Mother filed a fair hearing request on Claimant's behalf on October 22, 2020, appealing the Service Agency's decision.

5. All jurisdictional requirements have been met.

⁴ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Background

6. Claimant resides with Parents and two siblings, one of whom is also an HRC client, in the family home within the Service Agency's catchment area.

7. Claimant has been participating in the Self-Determination Program (SDP) since August 15, 2020. Each participant in the SDP is allocated funds, referred to as an individual budget, to purchase services and supports necessary to implement their IPP. The individual budget allocated to each participant is based on the total funds that were expended by the participant the prior year to purchase regional center services and supports, less any one-time costs. The budget may be increased as new needs are identified. A spending plan is developed, detailing how the participant's individual budget will be used. As part of Claimant's spending plan, Claimant retained Ms. Ochoa's services as an independent facilitator.

2020 IPP Meeting

8. On August 18, 2020, IPP meeting was conducted. Present during the IPP meeting was Mother, Ms. Ochoa, Maria Zavala, a family friend, CSM Granados, and Service Coordinator (SC) Ivonne Rivas.

9. During the meeting, Mother shared information regarding Claimant's current level of functioning. In the area of self-care, Mother reported that Claimant can use a spoon or fork with some spillage, drink from an open cup, open the refrigerator herself to get something to eat, and, with prompting, take her plate to the sink after a meal. Claimant was also reported to be able to put on shirts and shorts independently, though she needed Mother's assistance with buttons, zippers and snaps. Mother, however, reported that she has to bathe Claimant, wash and brush her hair, and occasionally assist Claimant with wiping after toileting. Mother also noted Claimant

does not have a good sense of danger and, when out in the community, Claimant may walk away from Parents, talk to strangers and attempt to hug strangers.

10. Mother shared that since the COVID-19 pandemic, Claimant has regressed. In the area of communication, Mother noted that Claimant does answer when she is spoken to, request things she needs or wants or follow two-step directions.

11. Mother did not report that Claimant had any special medical needs. Claimant has had no major illnesses, surgeries or hospitalizations during the past year and though Claimant has been prescribed corrective lenses, her hearing and vision were otherwise within normal range.

12. With respect to her schooling, Claimant qualifies for special education services through the School District due to her diagnosis of ASD. The School District provides 30 minutes of individual speech therapy twice a week, 20 minutes of speech therapy (consultation) twice a month, and curb-to-curb transportation.

13. Due to the COVID-19 pandemic, Claimant is currently participating in long distance learning. When Claimant attended in-person classes, Claimant was bullied and reported to her applied behavior analysis (ABA) therapist that she wanted to kill herself.

14. In order to address Claimant's challenging behaviors and mental health concerns, Claimant had been receiving 10 hours of ABA services per week and mental health services through The Guidance Center once per week. Since the pandemic, Mother reported that those services no longer appear effective as Claimant's challenging behaviors have increased. The behaviors are triggered when Claimant does not get what she wants, when routines are changed or when she does not get

attention. Mother also reported that Claimant tantrums three to seven times a day for one to two hours. In addition, Claimant has become distant, is tearful, and wakes up two to three times per night and excessively washes her hands and face due to her fear of contracting COVID-19. As a result, Mother has asked that ABA services be reduced to eight hours a week.

15. Mother expressed the belief that Claimant needs ongoing social skills training. Claimant had previously participated in two social skills groups. The first series of sessions were through Shabani Social Skills Group and took place from October 2017 to December 31, 2017, and the second series of sessions were through Pediatric Therapy Network (PTN) and took place from May 2019 until December 2019. Mother was advised during the IPP meeting that social skills development should be targeted through Claimant's existing ABA program and that Claimant's school program was an additional natural setting where Claimant can practice her social skills. Mother was also advised that SC Rivas was available to consult with the HRC behaviorist to help Parents revise Claimant's ABA goals if needed.

16. Mother advised the Service Agency that the family had no natural supports for Claimant's care and supervision. The Service Agency had approved 30 hours of respite as well as 28 hours per week of childcare services to provide the family additional support during the pandemic. Though Claimant receives In-Home Supportive Services (IHSS), Mother declined to disclose the number of IHSS hours that had been authorized.

Individual Budget

17. Antoinette Perez, Director of Children's Services, oversees the Service Agency's SDP. Director Perez testified that SDP is an alternative service delivery model

designed to provide participants with increased flexibility in purchasing the services and supports necessary to implement their IPP. For example, under the traditional model, if the IPP identified respite as a need, the regional center would fund respite services. Under SDP, if respite is identified as a need, parents can choose to send their child to the park, to dance classes, or other activities in order to fill their need for respite. Ms. Perez explained that the funds set aside for respite is not increased under the SDP, and the requirement that consumers access generic resources first is not waived.

18. Katy Granados, CSM, was Claimant's service coordinator when Claimant first began participating in SDP. In March 2020, CSM Granados was promoted and now oversees Claimant's current service coordinator, SC Rivas. CSM Granados explained in the 12 months prior to Claimant's participation in the SDP, HRC's expenditures to purchase Claimant services totaled \$31,622.68. CSM Granados explained Claimant's individual budget set at \$27,351.48 because certain one-time expenses, which included the PTN social skills group (\$2,769.29), translation of Claimant's IPP report (\$550), and "PCP development" (\$2,500) were deducted from the budget, while childcare "to allow for trainings" (\$1,815.84) was added from the \$31,622.68 total. (Exh. 8.)

19. Claimant's spending plan in 2020 included: (1) financial management services (FMS) (\$1,800); (2) 30 hours of respite per month (\$4,973.89); (3) 30 hours per month of community integration support in the form of personal assistant hours (\$7,437.60); (4) pre-vocational supports of technology and social media training for four weeks at \$1,079 per week (\$4,396); (5) pre-vocational supports of piano and violin classes twice per week for one hour each session (\$5,510.40); and (6) independent facilitator costs (\$2,008.28).

20. Claimant's 2021 individual budget was increased by \$5,716.12, to \$33,068.40. The increase included the addition of \$4,966.92 for 252 hours of COVID-19 childcare supports and \$750 for financial management services (FMS) costs. Due to Governor Newsom's March 4, 2020 Proclamation of a State of Emergency, DDS waived the statutory requirement that SDP participants pay their FMS costs for a period of time.

21. With these adjustments, Claimant's spending plan was adjusted to include: (1) an increase from 30 hours to 40 hours per month of respite services to be provided by Vianey Gomez (\$8,817.60); (2) 100 hours per month of respite/personal assistance services to be provided by Ms. Gomez in February and March 2021 (\$3,674); (3) 30 hours per month of community integration support in the form of personal assistant services provided by Ms. Gomez (\$7,437.60); (4) piano and violin lessons were decreased to \$4,429.38; (5) community integration support in the form of a social skill assessment by Holding Hands (\$300); (6) independent facilitator costs were increased to \$4,000; (7) goods including a treadmill, office chair, headphones, desk and computer were purchased for \$1,850; (8) behavior intervention services in the form of an AST assessment from SEEK Education, Inc. (\$568.50); and (9) annual training for Parents (\$191.32).

Person Centered Plan

22. On October 3, 2019, Ms. Ochoa and Parents developed a document, entitled "Person Centered Plan for [Claimant]." While the plan contains the type of information in an IPP, there was no evidence that the plan was included Claimant's IPP or endorsed by the Service Agency. (Exh. 3(A).)

Requested Services

PERSONAL CARE SERVICES/PERSONAL ASSISTANCE

23. At the hearing, CSM Granados explained that Claimant was denied personal care services because personal care services “mimic” IHSS. (See §12300.) Additionally, when Parents requested personal care services, they indicated that the services were to assist Claimant with community integration. Personal care services, however, are provided in the home and not outside in the community.

24. At hearing, Mother did not clearly express the reason for which personal assistance hours were being sought, other than to express a general need for assistance. Mother acknowledged that Claimant receives IHSS but reserved the right to share any details.

25. The evidence established that IHSS is a generic resource currently being utilized by Claimant for personal care services. The evidence did not establish that Claimant’s current number of IHSS hours are insufficient to meet Claimant’s needs for personal care/personal assistant services.

AST TRAINING/HOLDING HANDS EVALUATION AND PROGRAM

26. With respect to Claimant’s request for regional center funding of AST training and funding for services from Holding Hands, , the Service Agency asserted AST and social skills training⁵ should be part of Claimant’s ABA services.

⁵ At the start of the hearing, Claimant had articulated that there was a request for HRC to fund AST training and a request for HRC to fund a Holding Hands Evaluation and Claimant’s participation in the Holding Hands Program. Holding Hands

27. Mary Franco Gutierrez, a behavior analyst, testified on behalf of the Service Agency. According to Ms. Gutierrez, ABA encompasses every domain that is socially significant and will allow an individual to access the environment successfully. ABA therefore encompasses both adaptive and social skills training. Further, an evaluation by Holding Hands is unnecessary as the ABA provider should have done a functional behavior assessment. Prior to the hearing, the Service Agency did not have any current information regarding Claimant's progress which would suggest that Claimant required additional services to supplement the ABA program as Mother has not provided HRC with any current ABA progress reports and has declined to provide HRC permission to speak with the ABA provider. Though Mother did provide an ABA progress report dated September 29, 2020, in the evidence exchange prior to the hearing, the report indicates social skills are being addressed in her ABA program. According to the report, Claimant "has made significant progress across many skill domains." (Exh. R5(D), p. 147.) There is no indication in the report that Claimant has a need for separate AST or social skills training.

28. The Service Agency had approved an 18-week social skills program offered by PTN in 2019. The PTN exit report releases Claimant from the program, and indicates that Father, who participated in the program, demonstrated an understanding of the concepts. The concepts should have been practiced and generalized in settings outside the program.

was described by parties during the hearing as a social skill training program. Review of Exhibit R3(G), however, indicates that Holding Hands describes itself as an AST training program.

29. Evidence submitted by the Service Agency also established that social skills training is also appropriately addressed through the School District. Mother, however, declined to provide the Service Agency with any details regarding the services being provided by the School District or a copy of Claimant's most recent Individualized Education Program (IEP).

30. Mother asserted that she does not believe Claimant's ABA services are helpful as Claimant does not want to participate in the program. Mother acknowledged that she has not shared Claimant's most recent ABA progress reports or provided the HRC coordinator permission to speak to the ABA provider. Mother, however, asserted that the Service Agency would have been permitted to conduct their own assessment of Claimant if they had chosen to do so. Mother also acknowledged that she did not provide HRC with a copy of Claimant's IEP as she did not think it was relevant.

31. As Mother has chosen not to share current information regarding Claimant's behavior as assessed by her ABA provider and the School District, there is currently no information to conclude that Claimant needs AST training or social skills training outside the ABA services she is currently being provided.

RESPIRE HOURS

32. HRC has been providing in-home behavior respite services for Claimant in accordance with its Respite Care Policy, which defines respite as:

intermittent relief or rest from the additional demands that may be placed on a family caring for a son or daughter with a disability. It is provided in the client's own home or in a licensed setting for caregivers whose children or adult

children are residing with them. Respite service includes non-medical care and supervision of the client, which is intended to be periodic, as opposed to continuous; it is time-limited and not expected to meet a family's total need for relief from the on-going care of a disabled family member.

(Exh. 12.)

33. Funding for respite hours "is provided pursuant to a needs assessment which takes into account the self-care, behavioral and medical needs of the client as well as the support needs of the family." (*Ibid.*)

34. The Service Agency assessed Claimant's need for in-home respite by employing the HRC Respite Needs Assessment Tool (Assessment Tool). The Assessment Tool assigns numerical values to the consumer's needs based on the consumer's level of functioning in the areas of self-care, behavioral, medical, and family support. A numerical value of one point denotes "low need," two points denote "intermediate need," three points denote "high need," and four points denote "exceptional." (Exh. 5.)

35. On December 10, 2019, the Service Agency assessed Claimant's needs in the area of self-care, behavior, and family support as intermediate (*i.e.* having needs or behavioral issues that are greater than typical peers), and in the area of medical as low. Application of the assessment tool resulted in a determination that 20 hours of respite services per month was appropriate. (*Ibid.*)

36. Mother disagreed with the assessment of need and corresponding calculation of service hours and asserted that the Assessment Tool did not grasp

the extent of Parents' respite need. Specifically, Mother states that the Assessment Tool did not adequately account for the fact that Claimant's sibling is also a HRC client, Claimant's mental health issues and that Mother's own medical issues that resulted in a emergency room visit in August 2019 for one night due to stomach pain and vomiting. Mother asserts that due to her ongoing medical issues, she is required to get regular physical examinations, change her diet, exercise and rest.

37. The level of assistance Mother provides Claimant as described by Claimant's most recent IPP indicates that Claimant can provide helpful movements and does not need help with transfers. As such, the Service Agency appropriately assessed Claimant as having intermediate need in the area of self-care. Similarly, the Service Agency appropriately assessed Claimant as having low need in the medical area in that the level of Claimant's medical needs as described by Mother, and documented in both the IPP, do not indicate that Claimant's medical needs are atypical to that of her peers.

38. There is some question as to whether Claimant should have been assessed higher in the areas of self-care and family support. However, even if Claimant's needs in those areas were adjusted upwards, the Assessment Tool would still result in a determination that 30 hours of respite services per month was appropriate.

Mother's Testimony

39. According to Mother, she does not receive any support from the Service Agency. When she asks for a service, HRC merely applies its policies and does not look to accommodate Claimant's needs. She has made HRC aware that Claimant has difficult behaviors, depressive mental health status and was being bullied at school.

40. Mother initially testified that Claimant has a sibling who is also a regional center client for whom she was not receiving any regional center services. After the Service Agency offered to present evidence of the services that were being provided to Claimant's sibling, Mother amended her testimony and stated that the Service Agency was not providing direct services to Claimant's sibling.

The Guidance Center

41. Claimant has been receiving mental health services from Sarah Duncan, AMFT, at The Guidance Center since November 2019.

42. In December 2020, Claimant was referred for a psychiatric evaluation. Daryl Nucum, MD, a psychologist with The Guidance Center, performed a psychiatric consultation on December 9, 2020, and prepared a report of his recommendations. No testing appears to have been performed at that time, however, a mental status examination was performed. Dr. Nucum noted in his report that Claimant's primary diagnosis was unspecified depressive versus major depressive disorder and that she also had a diagnosis of unspecified anxiety disorder and ASD. Dr. Nucum's recommendations included continuing with regional center services, increasing school interventions, completing the consultation process, and possibly initiating selective serotonin reuptake inhibitor (SSRI) (*i.e.* antidepressant) medications. (Exh. 6(D).)

43. Christina Zavala, Psy.D., with The Guidance Center completed a comprehensive psychiatric evaluation which involved evaluations on September 28, 2020, October 14, 2020, November 2, 2020 and November 16, 2020. Following the evaluations, Dr. Zavala prepared a report of her findings.

44. As part of the evaluation, Claimant was administered a number of tests, many of which are not unrelated to the issues being addressed in the present matter.

Of significance, however, are Dr. Zavala's findings regarding Claimant's social and emotional functioning. Dr. Zavala found that though Claimant was experiencing "some level of distress," the findings "do not seem clinically significant at this time." (Exh. 6(E), p. 178.) With respect to anxiety, Dr. Zavala found that "[d]espite some indications that anxiety and depression may be playing a role in [Claimant's] life, after careful consideration, it can be concluded that neither are contributing as a driving force in her current behaviors and attitudes. (*bid.*)

45. At the hearing, Dr. Zavala noted that she does not specialize in ABA and declined to make a recommendation regarding whether Claimant's current ABA hours were sufficient to meet her needs. Dr. Zavala, however, noted that Claimant has very low ("not enough to diagnose") levels of anxiety and depression related to her inability to engage, and recommended Claimant continue working on socializing "which is not unexpected for someone who has her diagnosis".

Marela Avila Garcia

46. Marela Avila Garcia is a family friend who has known Parents for four to five years. Ms. Garcia has seen Claimant have behavioral episodes and opined that Parents do not have enough support.

LEGAL CONCLUSIONS

Jurisdiction

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing

following the Service Agency's denial of Claimant's requests, and therefore, jurisdiction for this appeal was established.

Standard and Burden of Proof

2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See, Evid. Code, § 500.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See, Evid. Code, § 115.)

3. Claimant, as the party seeking additional funding, has the burden of proving by a preponderance of the evidence that the additional funding is necessary to meet her needs. Claimant has not met her burden.

Applicable Law

4. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and created a comprehensive scheme to provide "an array of services and supports . . . 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 and to support their integration into the mainstream life of the community." (§ 4501.) The purpose of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to

approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501, 4750-4751.)

5. The consumer's needs are determined through the IPP process. (Welf. & Inst. Code, § 4646.) "The IPP is developed through a collaborative effort involving the appropriate regional center, the consumer and/or the consumer's representatives. (§4646, subd. (d).) The IPP process includes gathering information from the consumer, the consumer's family and others to determine to identify and accurately assess a consumer's needs. (§4646.5, subd. (a).)

6. Though regional centers, such as HRC, are mandated to provide services to facilitate the implementation of the IPP, consumers and their parents have the reciprocal obligation to assist the regional center in meeting its mandate. (See Civ. Code, § 3521.) No consumer should benefit by withholding information or by refusing to cooperate with the regional center, even if such conduct is well intentioned.

7. The "services and supports" which may be provided to a consumer as part of their IPP may include respite (§ 4512, subd. (b)), behavior training, behavior modification and social skills training (§ 4512, subd. (n), and personal assistance (§ 4649, subd. (a)(1).)

8. Despite a consumer's entitlement to services and supports, the regional centers must facilitate implementation of the consumer's IPP in a cost-effective manner. (§§ 4512, subd. (b) and 4646, subd. (a).) Regional centers are required to identify and pursue all possible sources of funding for its consumers and to secure services from generic sources where possible. (§§ 4647, subd. (a), and 4646.5, subd. (a)(4).) The regional center is further prohibited from using regional center funds "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.” (§ 4648, subd. (a)(8).)

9. The SDP was implemented to provide participants and their families increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP within their individual budget. (§ 4685.8, subd. (a).) A participant’s individual budget is “the total amount of the most recently available 12 months of purchase of service expenditures for the participant.” (§ 4685.8, subd. (n)(A)(i).) “An adjustment may be made to the amount if . . . [t]he 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.” (§ 4685.8, subd. (n)(A)(ii)(I).)

Analysis

10. Claimant, in her insistence in framing the issue as to whether the Service Agency should be required to authorize services rather than increase her individual budget, is apparently laboring under the misapprehension that the analysis would change whether the analysis is done under the traditional delivery model versus SDP. The SDP, however, is not intended to supplant the IPP process. “Self-determination” is merely an alternative delivery system for funding services and supports necessary to fulfill an individual’s IPP and the services and supports are still subject to the same limitations as that under the traditional system.

11. Specifically, the participants in the SDP may only use the funds in their individual budget to purchase services and supports necessary to implement the needs identified in their IPP when generic services and supports are not available. (§ 4685.8, subd. (d)(3).)

12. As part of the IPP process, the Service Agency appropriately considered the information available to it regarding the specific characteristics of Claimant's developmental challenges in several domains, including Claimant's self-care, and her behavioral, medical, and family support needs. This process, however, was impeded by Mother's refusal to participate in the IPP process by providing anything other than anecdotal evidence regarding Claimant's current level of functioning. Even relying upon the evidence provided by Mother, Claimant did not meet her burden of proving that she has unmet needs for which she requires additional services and supports and that the Service Agency should be required to fund the requested services .

13. Based upon the foregoing, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied.

DATE:

NANA CHIN

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.