

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2020100399

PROPOSED DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 8, 2020.

Claimant was represented by his mother (Mother).¹

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

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

Testimony and documents were received into evidence. Prior to the hearing, Mother attempted to upload her exhibits to OAH's Secure e-File System. Though she was able successfully uploaded the majority of her exhibits, she was unable to upload documents she had pre-marked as Exhibits C and H. The Service Agency agreed to upload those exhibits on Claimant's behalf and submit any objection to the exhibits by December 16, 2020. The documents were timely received and no objection to the documents was filed. The documents were marked as Exhibit C and H and admitted into evidence.

The record was closed, and the matter was submitted for decision on December 16, 2020.

ISSUE

Whether HRC should increase funding of Claimant's respite hours.

EVIDENCE

Documents: Service Agency, Exhibits 1-9 and 11-12; Claimant, Exhibits A-H

Testimonial: Client Services Manager (CSM) Judy Samara Taimi, Mother and Independent Facilitator Carla Lehmann

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a seven-year old male client of HRC and qualifies for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a qualifying diagnosis of Autism Spectrum Disorder (ASD).

2. Mother requested HRC increase its funding of respite service hours from 90 hours per quarter to 120 hours per quarter. Claimant was assessed as needing a temporary increase of 10 additional hours of respite per month due to the COVID-19 pandemic while Claimant was receiving distance learning from home. After the Service Agency temporarily increased funding of respite services to 120 hours per quarter to accommodate Claimant's needs, Claimant requested that the Service Agency increase funding by an additional 10 additional hours per months or 150 respite hours a quarter.

3. On August 19, 2020, the Service Agency issued a letter notifying Mother that the request had been denied. Mother filed a fair hearing request on Claimant's behalf on October 22, 2020, appealing the Service Agency's decision.

4. All jurisdictional requirements have been met.

Background

5. Claimant resides with Mother and an older sibling, who is also an HRC client, in the Service Agency's catchment area. The Service Agency is currently funding 30 hours per month (90 per quarter) of respite services for Claimant and 19 hours per

month of childcare services. Additionally, due to the COVID-19 pandemic and school closures, the Service Agency has funded an additional 15 hours [per month?] of childcare and an additional 10 hours a week of respite. Through the School District, Claimant receives receiving specialized instruction six hours per day, occupational and speech therapy one time per week, and applied behavior analysis (ABA) two times a month.

2020 Individual Program Plan

6. Initial self-determination meetings were held on July 17, 2020, July 31, 2020, and August 12, 2020. An Individual Program Plan (IPP) meeting was also held on August 12, 2020. In attendance were Mother, Independent Facilitator Carla Lehmann, CSM Taimi, and Service Coordinator (SC) Brenda Brito.

7. Under the IPP's "Home," category it was noted that Claimant resides with Mother, who is a full-time homemaker, and older Brother, who is also a HRC client, in the family home. Father resides in a different city but provides support when available. Family was described as having "limited natural support."² (Exh. 4, p. 3.)

8. Under "Daily Living Needs," Claimant was reported to require prompting to complete his daily living activities. (Exh. 4, p. 6.) Mother explained that though Claimant may help during these activities, she has to prompt him for completion. Claimant requires help with getting dressed, is capable of using the toilet but will have accidents, brushes his teeth daily and nightly, but needs help with flossing, is able to

² The IPP did, however, indicate under "Family/Significant Others" that Claimant's maternal grandmother and aunt were part of Claimant's circle of support. (Exh. 4, p. 1.)

use his hands and utensils to eat, but is not a good eater, and needs assistance with bathing. In addition, Claimant lacked safety awareness which required supervision at most times to ensure his safety.

9. Under "Health/Medical," Claimant was noted to have maintained stable health, having had no hospitalizations, injuries or illnesses. Mother reported that Claimant has allergies during certain seasons, constipation issues requiring him to drink water, prune juice and raisins, and gets fevers more often than others. Mother's main concern was that Claimant is underweight, which requires him to drink PediaSure twice a day. Mother also shared that Claimant has had a stye near his eyelid twice in 2019, which went away after 14 to 20 days with application of an oil provided by his doctor and he has a cyst in his neck that requires annual monitoring.

10. Under "Behavioral Health," Mother reported that Claimant continued to engage in maladaptive behaviors that require supervision and re-direction. These behaviors include screaming, using foul language, and throwing objects. Claimant was also reported to have trouble sleeping, to engage in pica (*i.e.* eating non-edible items), to play rough and to lack safety awareness, causing him to run out of the home regularly in order to try to play with other children.

11. Under "School/Program/Employer," it was noted Claimant was entering second grade. Though he had an Individual Education Plan (IEP), Claimant's school did not provide him with a 1:1 aide at school. Mother intends to request this support through his IEP. Due to the COVID-19 pandemic, however, Claimant is currently participating in classes through distance learning.

12. During the IPP meeting, the Service Agency discussed In Home Supportive Services (IHSS) with Mother in great detail. Mother initially expressed her

reluctance to access this generic support for a number of reasons, including the fact that she did not want strangers in the home, the stress and uncertainty of applying for the services, and concerns as to how it may affect Claimant's legal status. After Mother was provided with additional information regarding the application process, Mother ultimately stated that she would apply for IHSS hours.

Nurse Evaluation of IHSS Care Needs

13. To support Claimant's request for IHSS, the Service Agency conducted a Nurse Evaluation (IHSS Evaluation) on November 11, 2020. The IHSS Evaluation summarized Claimant's ability to perform daily living tasks and details the assistance he needs to remain safely in the home.

14. The IHSS evaluation noted Claimant was assessed as needing "substantial assistance" in the areas of non-medical personal services, feeding, and dressing, and totally dependent in the area of hygiene.

15. With regard to non-medical personal services, Claimant was noted to have the following behaviors: (1) Claimant had a tendency to have bladder accidents, which results in a corresponding need for domestic services, (2) Claimant needs total assistance after bowel movements; and (3) Claimant requires constant supervision while in the bathroom due to pica disorder and his tendency to put inappropriate items into the toilet.

16. With regards to feeding, it was noted that though Claimant could feed himself, Mother typically fed him due to his refusal to eat. It was also noted that Claimant needed constant supervision due to his risk of harming himself with the silverware.

17. With regarding to dressing, Claimant was noted to need continual prompts and some physical assistance to ensure that his clothes are put on correctly. In addition, Claimant would at times refuse to put on clothes, change under his sheets due to his light sensitivity issues or require multiple changes of clothes.

18. The IHSS evaluation concluded that Claimant needed protective supervision because he has "no perception of safety or danger and displays many endangering behaviors" which included eloping, pica, and aggression toward himself and others. (Exh. C.)

Respite Care

19. HRC has been providing in-home behavior respite services for Claimant in accordance with its Purchase of Service Policy on Respite Care. Respite care is defined in the policy 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. 11.)

20. 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." (*Id.*)

21. 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."

22. The Service Agency assessed Claimant's needs in the area of self-care as intermediate, in the behavioral area as high, in the area of medical as low, and in the area of family support as high. Application of the assessment tool resulted in a determination that 30 hours of respite services per month was appropriate.

Mother's Testimony

23. Mother disagreed with the assessment of need and corresponding calculation of service hours and asserted that the Assessment Tool is not capable of grasping the extent of Claimant's needs.

24. Mother further asserted that the Service Agency's application of the Assessment Tool was also inaccurate. Mother insisted that Claimant should have been rated as having intermediate need in the area of medical care, high need in the area of self-care, and exceptional need in the area of behavioral and family support, resulting from anywhere from 31 to 40 hours.

25. In the area of self-care, individuals are assessed as having intermediate need if the individual's needs are "greater than typical peers," the individual "[r]equires multiple physical, gestural and verbal prompts," and "[s]ome hand over hand assistance is required." Individuals are assessed as having high need if the individual's "needs are "much greater than typical peers," "the individual "[r]equires hand over hand assistance," "the individual "[c]annot perform helpful movements," and "the individual "[n]eeds help with transfers." (Exh. 8 & F)

26. In the behavioral area, individuals are assessed as having high need if the individual's "[b]ehavioral issues are much greater than typical peers," and the individual displays "[i]ntense behaviors." (*Id.*) Individuals are assessed as having exceptional needs if the individual requires "a very high level of supervision to remain safe." Mother asserts that his behavior is exceptional as Claimant will bite his nails until blood comes out and bite his brother's nails, chews on metal utensils until he bends it, eats toilet paper, needs to drink two PediaSure a day, and elopes.

27. In the medical area, individuals are assessed as having low need if the need is "similar to typical peers" requiring "[s]imple medication management" and "[r]egular medical check-ups." (*Id.*) Individuals are assessed as having "intermediate need" if the individual's needs are "greater than typical peers," with "[m]oderate medical needs," "[f]requent medication management," and "[r]egular monitoring (blood sugar, respiration)." (*Id.*)

28. In the area of family support, individuals are assessed as having high need if parents or caregivers a "have high need for physical, emotional support," have "[n]o natural and/or generic supports," and "[m]ultiple regional center clients living in the home." Individuals are assessed as having exceptional need if there is a "[c]risis level situation," "[p]arents/caregivers have significant health issues" and "[c]aregiver and generic services together do not meet the client's care needs." (*Id.*) Mother asserted that she is in a crisis level situation, has suffered from facial paralysis since 2017 due to extreme stress, had a rotator cuff tear for which she received surgery in 2016, and has multiple regional clients living at home. Since the IPP, Mother noted that Claimant's maternal aunt and maternal grandmother are no longer able to assist with Claimant's care. The level of need at which the Service Agency assessed Claimant, however, contemplates a situation in which Mother has no natural supports.

29. The level of assistance Mother provides Claimant as described by Claimant's most recent IPP is consistent with the level of care described by Mom during the hearing and by the IHSS evaluation. Specifically, though Claimant requires multiple prompts, he is able to provide helpful movements. 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 and IHSS, do not indicate that Claimant has medical needs that are atypical to his peers.

30. 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, the Assessment Tool would still result in a determination that 30 hours of respite services per month is appropriate.

Independent Facilitator

31. Carla Lehmann testified at the hearing and submitted a letter on Claimant's behalf. Ms. Lehmann is the independent facilitator for both Claimant and Brother. Ms. Lehmann met Mother at a Self-Determination Independent Facilitator round table at the State Council of Developmental Disabilities in February 2020.

32. Ms. Lehmann created a Person-Centered Plan report for Claimant, as Claimant has been selected to participate in the Self Determination Program. Ms. Lehman noted that she has seen Mother breakdown and cry during their virtual meetings because "she feels very overwhelmed and stressed out taking care of two children with disabilities in [sic] time of COVID." (Exh. H.)

33. Ms. Lehmann also noted that she accompanied Mother during the IPP and noted that though Mother tried to explain to the Service Agency why she needed more respite hours, the Service Agency insisted on using the Assessment Tool, which Ms. Lehmann did not feel was appropriate. In closing, Ms. Lehmann asserted her belief that Mother would benefit from receiving extra respite hours.

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 request, 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 funding for additional respite hours, must prove by a preponderance of the evidence that the additional funding is necessary to meet his needs. Claimant has not met his burden.

Applicable Law

4. 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. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.)

5. The consumer's needs are determined through the IPP process. (Welf. & Inst. Code, § 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (Welf. & Inst. Code, § 4646, subd. (b).)

6. The "services and supports" which may be provided to a consumer as part of their IPP may include respite. (Welf. & Inst. Code, § 4512, subd. (b).) "In-home respite services" are "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member." (Welf. & Inst. Code, § 4690.2, subd. (a).)

7. When making determinations to acquire services for its consumers, the regional center must ensure that the services conform to its purchase of service guidelines. (Welf. & Inst. Code § 4646.4, subd. (a)(1).)

8. The Department of Developmental Services (DDS) reviews the guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (Welf. & Inst. Code § 4434, subd. (d).) As the guidelines reflect the regional center's expertise and knowledge, they are deserving of deference. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

Analysis

9. As part of the IPP process, HRC appropriately considered the specific characteristics of Claimant's developmental challenges in several domains, including Claimant's self-care, behavioral, medical, and family support needs. HRC properly determined that respite services were required to alleviate the constant demands and responsibility on Mother to care for Claimant.

10. In order to determine the number of respite hours to fund, HRC's purchase of service policy requires use of HRC's Respite Needs Assessment. Using information gathered from the IPP, HRC completed the Respite Needs Assessment and determined that Claimant was eligible for up to 30 hours per month of respite services. In addition to the 30 respite hours, HRC approved funding ten additional COVID respite hours per month per the DDS directive, for a total of 40 hours of respite services per month.

11. Mother failed to establish that HRC utilized the Assessment Tool incorrectly in assessing Claimant's needs. As current funding of Claimant's respite

conforms to HRC's Purchase of Service Policy, Claimant did not establish a need for an increase to 50 hours of respite per month.

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.