

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**HARBOR REGIONAL CENTER, Service Agency.**

**OAH No. 2020110076**

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter remotely by video and teleconference on March 8, 2021.

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

Claimant's mother represented claimant, who was not present.<sup>1</sup> Claimant's mother used the services of Sonia Hernández, a Spanish-language interpreter.

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<sup>1</sup> Family and party titles are used to protect claimant's privacy.

Oral and documentary evidence was received. The record was held open to allow HRC to provide claimant's mother with Spanish translations of its exhibits by March 12, 2021, as it agreed to do at hearing, and to March 19, 2021, to allow claimant's mother to file a reply.

HRC provided the translated documents, which were marked collectively as exhibit 9 and admitted into evidence. HRC did not translate certain sections of the Welfare and Institutions Code and an exhibit comprising Consumer I.D. Notes, i.e., notes created by claimant's service coordinator. No undue prejudice to claimant resulted. First, pertinent portions of the statutory sections were translated into Spanish in other exhibits previously provided to claimant's mother, notably the Notice of Proposed Action letter denying claimant's request for services. Moreover, those statutory sections are readily available from authoritative sources online in Spanish translation. Second, HRC did not rely on or cite any of the Consumer I.D. Notes at hearing and they were given no weight.

Claimant's mother filed no reply to HRC's documents.

The record was closed, and the matter was submitted for decision on March 19, 2021.

## **ISSUE**

Is the Service Agency required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to provide personal care services for claimant?

## **EVIDENCE RELIED UPON**

Documents: Service Agency's exhibits 1 through 9, claimant's exhibits A through C.

Testimony: Josephina Cunningham; claimant's mother.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is 11 years old and lives at home with his parents and three brothers aged 13, 10, and 4 years old. He is eligible for regional center services due to diagnoses of intellectual disability and autism spectrum disorder.

2. At claimant's Individualized Program Plan (IPP) meeting on July 22, 2020, claimant's mother asked the Service Agency to fund personal care services (personal care services) for claimant based on an increase in claimant's behaviors due to school closures.

3. By a Notice of Proposed Action (NOPA) letter dated August 24, 2020, HRC first noted that it had already authorized 10 hours per week of "COVID-19 support." (Ex. 3, p. 2.)

In consideration of the total supports currently in place, HRC funded (respite at 90 hours per quarter and the additional 10 hours per week of COVID-19 respite services), the support you and your husband provide as [claimant's] parents, and the availability of publicly funded resources

(IHSS, ABA, and school), we believe that your family already has sufficient support to care for [claimant] and also provide you with a break. Therefore, HRC is denying your request for funding of personal care services at this time.

(Ex. 3, p. 2.) HRC cited as authority for its position Welfare and Institutions Code sections 4659, subdivision (a), and 4646.4, subdivision (a)(4).

4. On October 10, 2020, claimant's mother filed a fair hearing request to appeal the Service Agency's denial of personal care services. This hearing ensued.

### **Claimant's Services and Service Requests**

5. Josephina Cunningham is the client service manager for the HRC Children's Essentials Team, supervising nine service coordinators, including the one assigned to claimant. The service coordinator is claimant's primary contact at HRC, and helps the family access and advocate for services and supports, including from generic sources of funding such as school districts, In-Home Supportive Services (IHSS), and Medi-Cal.

6. Ms. Cunningham testified that personal care services are for individuals who have not acquired a certain skill set (like bathing or meal preparation) by a certain age, always taking into account parental responsibility. Though HRC denied claimant's request, it authorized at the IPP meeting 10 hours per week of COVID-19 respite support in addition to the 90 hours of respite per quarter claimant already receives. The additional 10 hours of support was put in place when claimant was not attending school in person and there were many resulting stressors, and because claimant cannot get out into the community. The additional 10 hours of respite services are

temporary because they are designed to ameliorate conditions arising from the pandemic. Ms. Cunningham testified claimant's mother understood that and agreed.

7. HRC is still providing the temporary COVID-19 respite support, even though claimant is now attending school in person, and the COVID-19 respite services funding was scheduled to expire on March 31, 2021. HRC is considering whether to extend the funding.

8. Claimant's weekly schedule (ex. B) establishes that claimant's care consists of HRC services (regular respite plus COVID-19 respite) and generic services (IHSS, school district services, and Medi-Cal-funded Applied Behavior Analysis (ABA) services).

9. Claimant's pediatrician, Adebanke L. Lesi, M.D., with The Children's Clinic, wrote, in a letter dated December 11, 2020, that claimant has received the following diagnoses: autism, attention deficit hyperactivity disorder, achromotopsia (causing visual impairment), and developmental delay, including speech and fine motor delays. "Due to his diagnoses, he has difficult behaviors including aggression and requires constant supervision with all activities of daily living." (Ex. A.) Claimant engages in maladaptive behaviors, he tantrums and is aggressive, and he elopes when in the community.

10. Claimant receives 10 hours of ABA services weekly, funded by Medi-Cal. He receives SSI payments and 232 hours of IHSS per month, including 195 hours of protective supervision.

11. Claimant is currently attending school in person at a non-public school five days per week. Claimant's mother has not provided claimant's current Individualized Education Plan to HRC, but the non-public school claimant attends has

behavior supports in place and a high staff-to-student ratio. The school environment is set up to address behaviors.

12. Ms. Cunningham testified that HRC uses its Service Policy, General Standards, to determine whether there is a need for services and whether to provide funding. (Ex. 6.) According to the policy, services and supports may be funded "after public resources . . . as well as other sources of funding available to the client, have been used to the fullest extent possible." Also, as the payers of last resort, "regional centers shall identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a)(1).) And regional centers must consider "the family's responsibility for providing similar services and supports for a minor child without disabilities." (Welf. & Inst. Code, § 4646.4, subd. (a)(4).)

13. Ms. Cunningham testified that, though claimant has no unmet needs, HRC would like to help the family maximize the effectiveness of the services they do have. To accomplish that, HRC must review claimant's ABA reports and his IEP. HRC would like to talk to claimant's behavior program providers and have the regional center behaviorist work with that team. HRC would also like to communicate with claimant's school. But claimant's mother has, for reasons not made clear on the record, chosen not to share with HRC certain information about services and supports claimant receives from generic sources of funding.

14. Claimant's mother described claimant's visual impairment, testifying that he is legally blind. She testified claimant lacks safety awareness and requires constant supervision. His behaviors put him in constant danger. He elopes when on family outings with his mother and siblings in the community. Claimant gets upset when he is denied any preferred activity; he screams, runs, bites, and cries. His visual impairment

makes him especially susceptible to injury. It is overwhelming for anyone to supervise him. Claimant's mother wants claimant to have access to the community, but she requires additional support for him in order to keep claimant and her family safe.

15. Claimant's mother is with claimant 24 hours per day. She is the IHSS provider for claimant. Claimant's mother uses some IHSS hours in the morning, for daily activities. Claimant's father is unable to provide additional care due to his work demands.

16. Claimant's mother testified that claimant's ABA program, Behavior and Education (BAE), is working with claimant on his behaviors at home, not in the community. But she testified that she wants personal care services funded because of claimant's behaviors and safety needs while outside the home, in the community.

17. On family outings, claimant walks fast, ahead of his mother and siblings, and tries to cross streets. He starts using foul language to his brothers, and starts hitting them. When the family goes to a store, claimant leaves the family and gets lost. Claimant's mother wants someone to take claimant to the bathroom at a mall or park the family is visiting. She wants a service that will keep claimant safe.

18. Claimant's mother has not provided HRC with a copy of BAE's progress reports for claimant because, she testified, she is asking HRC for a personal aide, not behavior support. She agreed at hearing to provide a copy of the most recent BAE progress report to HRC, and to sign a consent form allowing an HRC behaviorist to speak to BAE. She then, however, refused to identify the goals BAE is currently working on, again because she is not requesting ABA services from HRC. Ms. Cunningham testified that personal care services providers are not behaviorally trained. That is why

HRC wants to speak to BAE, the ABA provider, to ensure BAE is focusing on goals that are important for the family.

19. HRC has tried to assess claimant's needs, but claimant's mother has hampered those efforts by refusing to share pertinent information with HRC. From the information it has, HRC believes claimant is receiving appropriate services and supports through IHSS, the school district, ABA services, and HRC-funded services.

20. Claimant's mother's refusal to share pertinent information with HRC serves no discernable purpose and unnecessarily impedes HRC in assessing and delivering services and supports efficiently. As long as claimant's mother persists in withholding from HRC information about claimant's services, it may be difficult for her to establish that HRC is failing to fund necessary and appropriate services and supports.

21. Claimant's mother has not sought vision services to help claimant in community.

## **DISCUSSION**

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of her request for funding personal services. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, he bears the burden of proving he is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available

through another publicly funded agency or other “generic resource.” Regional centers are required to “identify and pursue all possible sources of funding. . . .” (§ 4659, subd. (a).) The IPP process “shall ensure . . . [u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a client’s IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

6. The Lanterman Act defines “services and supports” to include “personal care.” (§ 4512, subd. (b).)

7. The Service Agency denied funding on the grounds that, between HRC-funded services and generic sources of funding, claimant’s family has sufficient support to care for claimant. (Factual Finding 3.)

8. Claimant did not establish that HRC must fund personal care services. Services and supports tailored to addressing claimant’s needs are being implemented, funded by appropriate sources. (Factual Findings 1-21.) To the extent claimant’s IPP does not reflect his current service needs due to claimant’s mother’s decision not to share with HRC information from claimant’s ABA provider and from his school district, she may provide the information to HRC. After that, if she believes it necessary, claimant’s mother may request another IPP meeting.

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## **LEGAL CONCLUSION**

The evidence did not establish that the Service Agency is required under the Lanterman Act to fund personal care services for claimant at this time.

## **ORDER**

Claimant's appeal of the Service Agency's decision to deny the request to fund personal care services is denied.

DATE:

HOWARD W. COHEN

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.