

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER, Service Agency.

OAH No. 2021050255 (Primary)

OAH No. 2021060685 (Secondary)

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 20, 2021, November 29, 2021, December 2, 2021, and January 21, 2022.

Claimant was represented by Armida Y. Ochoa, Independent Facilitator, Ochoa's Consulting, LLC. Harbor Regional Center, which is referred to as HRC or the Service Agency, was represented by Latrina Fannin, HRC's Manager of Rights and Quality Assurance. Titles, in this case Mother, Sister, and Claimant, are used to protect confidentiality and privacy. A Spanish interpreter assisted in the proceedings.

This matter is governed by the Lanterman Act, that is, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885.

The record was held open until February 4, 2022 for Claimant's submission of documentation and until February 11, 2022, for the Service Agency's response. Claimant timely submitted without objection documents that were marked collectively as Exhibit V and admitted into evidence: various email messages in 2021 between Service Agency personnel and Sister regarding Claimant's condition following his March 2021 surgery; several photographs of an ulcer on Claimant's heel and leg and foot sores; and correspondence from medical professionals which was already admitted into evidence in other exhibits.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on February 11, 2022.

STATEMENT OF THE CASE

Claimant underwent surgery in March 2021. Largely confined to bed for a time as a result, the Service Agency funded personal wipes for those who helped him clean up after bowel movements and personal services for help with all the difficulties the surgery caused Claimant. The Service Agency also provided \$100 for Claimant's purchase of a blender, to process Claimant's food to make it soft enough for his consumption. Claimant contends that more wipes should be provided, that personal service hours should be increased from 60 to 70 per month, and that the Service Agency should fund purchase of a specialized blender that costs a few hundred dollars. The Service Agency contends that there is inadequate medical documentation

for Claimant's requests and that Claimant has hampered the Service Agency's ability to gather such documentation, by preventing Service Agency personnel from communicating with his physicians.

ISSUES

Whether the Service Agency must:

1. Provide more personal wipes than currently.
2. Fund the type of food blender Claimant has requested.
3. Continue to fund 60 hours per week of personal care services and increase these hours to 70 hours per week.

FINDINGS OF FACT

1. Claimant submitted a May 5, 2021, Fair Hearing Request to appeal the Service Agency's decision against providing Claimant with a package of wipes each day while he recovers from surgery, and a June 15, 2021 Fair Hearing Request, asking that the Service Agency continue to fund personal care services at the rate of 70 hours per week instead of the previous 60 hours per week, and to provide funding for a specialized blender.

Eligibility and Services Provided

2. Claimant, 21 years old, is eligible for services under the Lanterman Act based on two diagnoses: autism, also called ASD, for autism spectrum disorder, and ID, intellectual disability.

3. Claimant has several other diagnoses, including Dandy Walker Syndrome, which is an abnormal development of a part of the brain that affects voluntary muscle movement, balance, and posture; optic nerve hypoplasia, which is underdevelopment of nerves that allow a person to see, and nystagmus, which is involuntary rhythmic motions of the eyes; and auditory impairment, requiring that he wear hearing aids. Claimant wears corrective lenses. He uses a wheelchair often. He is mostly non-verbal, requires assistance with all daily activities, and his lack of safety awareness is dangerous because he will elope if opportunity arises.

4. Claimant is sometimes aggressive. There have been instances of self-injury and self-stimulatory behavior.

5. Much of the Service Agency's most current general information concerning Claimant derives from the December 15, 2020 conference in preparation of his most recently completed Individualized Person Centered Plan or IPP, Exhibit 6. The IPP states that with assistance from Sister, Mother is Claimant's main caregiver.

6. At the December 15, 2020 conference, Mother withheld certain information that Service Agency personnel, such as SC Alvarez, believe would be helpful for Claimant's IPP and for understanding the services and supports most suitable for Claimant. For instance, Mother would not provide details of Claimant's IHSS, which stands for in-home supportive services. Claimant's August 11, 2021 IPP, Exhibit N, following a conference on November 7, 2019, indicates that Claimant "receives an undisclosed amount of hours for IHSS. [Mother] is his IHSS provider." The IHSS Program, operated by the Department of Social Services, provides services such as housecleaning, meal preparation, laundry, grocery shopping, personal care services (such as bowel and bladder care, bathing, grooming and paramedical services), accompaniment to medical appointments, and protective supervision.

Services Provided as of May 2021

7. As set out in a May 13, 2021 letter, Exhibits 5 and R, to Claimant from Service Agency personnel, SC Lizbeth Moreno and Client Services Manager Josephina Cunningham, the Service Agency was providing Claimant services of different kinds.

8. One service provided was self-directed respite services through Cambrian Homecare at the rate of 90 hours per quarter through December 31, 2021.

9. A second service provided was personal care services also through Cambrian Homecare at the rate of 40 hours per week through June 30, 2021 as a COVID-19 related support. This second service was later extended.

10. A third service provided was personal care services, also through Cambrian Homecare, at the rate of 60 hours per week scheduled to continue through June 18, 2021, to assist with Claimant's recovery from surgery on March 5, 2021.

11. A fourth service provided was wipes, specifically Prevail Adult Washcloths, eight packs per month scheduled to continue through December 31, 2021.

12. The Service Agency offered but Claimant declined nursing services related to Claimant's recovery from surgery.

March 5, 2021 Surgery

13. On March 5, 2021, Claimant underwent surgery on his leg. Claimant presented little evidence regarding the success or failure of the surgery. Claimant has had seizures post-surgery, but the evidence did not establish whether the seizures have decreased or become less disruptive.

14. On the other hand, Claimant presented evidence that recovery from the surgery has been long and difficult. For weeks after the surgery Claimant was almost wholly bedridden. As a result, he developed sores, as depicted in Exhibits 8, L, and M.

Wipes

15. Regarding specifically the issue of wipes that Claimant contends the Service Agency should provide, Claimant asserts that he has lazy bowel syndrome. He takes laxatives, but they are not immediately or consistently effective. He may not have a bowel movement for days at a time, sometimes up to six days. This means that some bowel movements are unusually large, and consequently difficult to clean up.

16. Sister testified that she has helped with cleaning Claimant following a bowel movement. Because Claimant is an adult, is physically unable to use a commode, and will at times void all at once days of accumulated material, he may end up covered in feces from back to legs. It thus happens often, in Sister's experience, that six or more wipes are needed to clean Claimant after a single bowel movement. Sister has helped document the need for more wipes by sending the Service Agency a videotape of Claimant after he has voided but before he has been cleaned.

17. In their April 13, 2021 letter, Exhibits 3 and T, SC Valeria Alvarez and Client Services Manager Erika Godoy explained the decision of the Service Agency's to deny the request to fund more wipes. They noted that the Service Agency was already funding eight packs of wipes per month. The Service Agency did not have medical documentation indicating that more wipes, or the requested one pack of wipes per day, were necessary. They cited from the Service Agency's General Services policy: paragraph 4, regarding exhaustion of other available resources before any from the Service Agency; and paragraph 5, which states that Service Agency resources are

available only when other public sources of funding, such as Medi-Cal, are not available.

Specialized Blender

18. Claimant is unable to chew food normally. The family requested Service Agency funds to purchase a new blender to process Claimant's food and make it easy for him to swallow. If food is not sufficiently processed, such as with a blender, it presents Claimant with a risk of choking.

19. In a January 15, 2021 letter, Exhibit I, Kareem H. Sassi, M.D., wrote that, as Claimant could not tolerate solid food, he should be provided a blender and a diet processed with a blender. In a June 22, 2021 letter, Exhibit J, Dr. Sassi elaborated, writing that Claimant has significant oropharyngeal and esophageal dysphagia, which may cause food boluses not only to stick in his esophagus but also to be regurgitated. Dr. Sassi also noted that Claimant is at risk for aspiration. In a July 2, 2021 letter on the subject, Exhibit K, Dr. Sassi wrote: "It is my medical opinion that [Claimant] be provided with a Blendtec blender for him to blenderize his food." Regarding an October 13, 2021 evaluation of Claimant, a note, Exhibit U, from Jiyeon M. Jeong, M.D., also stated that Claimant should consume only soft or pureed food.

20. Claimant requested that a blender be provided by Los Angeles County Public Health. In a January 27, 2021 letter, Exhibit H, that agency denied the request. It stated that a blender is not a California Children's Services or CCS benefit because it is not considered medically necessary.

21. The Service Agency accommodated Claimant's request for a blender by offering a \$100 gift certificate. Such gift certificates are donated to Harbor Help Fund and distributed to families who are in financial need. A gift certificate in that amount

would more than cover the cost of any one of several blenders manufactured by reputable sellers of appliances. The family in fact purchased such blenders. They found that such ordinary blenders are inadequate to their purpose. New blenders they bought and put to use quickly became overloaded and burned out.

22. A Blendtec blender such as that referenced in Dr. Sassi's July 2, 2021 letter costs approximately \$350. The \$100 gift certificate provided by the Service Agency was thus not enough to fully fund the purchase of a Blendtec blender. Claimant argued that in these circumstances the Service Agency should fund the specific model of blender recommended by Dr. Sassi.

Personal Assistance

23. The Service Agency has had limited information about Claimant's seizures since surgery or about his general condition. The Service Agency assigned a registered nurse, RN Laurie Weeda, to visit Claimant. Her report of this July 27, 2021 visit is Exhibit 9. It indicates that the Service Agency should have more information about Claimant's condition and plan of care. The visit was approximately four and one-half months after surgery.

24. RN Weeda's report indicates that there were setbacks to Claimant's recovery from surgery. She noted that all was good after removal of Claimant's first cast. But Claimant had trouble with a second cast. Claimant was upset and wanted the cast off. On removal, Claimant's leg and foot showed signs of a burned appearance, crammed toes, and a blister on the heel. The blister opened up and Claimant was sent to a hospital emergency room for treatment. He also experienced a seizure, which emergency room personnel stated could have been caused by stress or infection.

25. An April 26, 2021 letter, Exhibit B, from Rachel Thompson, M.D., likewise discussed difficulties Claimant experienced while recovering from surgery. A May 12, 2021 letter, Exhibit C, from Malcolm Shaner, M.D., has no details, but stated that Claimant required "complete care," without which he would likely require hospitalization. In a June 3, 2021 note, Dr. Shaner estimated that Claimant's recovery would last approximately six months.

26. RN Weeda's report also indicates that Claimant has not healed well even with personal care services in place. This suggests that Claimant may need a higher level of care, from an LVN or licensed vocational nurse. In any event, Claimant may need to be assessed more thoroughly and regularly. This concern is the more serious as Mother has refused the Service Agency permission to speak directly to Claimant's physicians. The limited medical information available to the Service Agency regarding Claimant hampers its ability to approve services and supports of various types, including the appropriate number of hours of personal services.

27. Claimant is receiving more than 24 hours per day of care, some funded by the Service Agency, others funded by other agencies or programs. The hours are of different types, such as 197 hours per month of protective supervision, and 86 hours per month of IHSS. To some extent the hours may be justified in that Claimant sometimes requires care from more than one person at a time, so that service hours may overlap. In a May 12, 2021 letter, Exhibit D, Jiyeon M. Jeong, M.D., noted that Claimant required 24 hour supervision, "including full-time assistance from two caregivers to allow for safe transfers, rehabilitation, wound care, and seizure precautions. I recommend that he has this support and assistance in place for the next 3 months. There is a possibility that he will require extension thereafter."

28. In a June 4, 2021 letter, Exhibit E, Matthew D. Carroll, M.D., wrote that Claimant's recovery from the March 2012 surgery has been "complicated and prolonged."

29. However, because Claimant has prevented the Service Agency from acquiring medical information, such as by denying permission to speak to treating physicians or provide medical documentation, Claimant has hampered the ability of the Service Agency to thoroughly and realistically assess his need.

PRINCIPLES OF LAW

1. Under Evidence Code sections 115 and 500, Claimant bears the burden of proof by a preponderance of the evidence.

2. Welfare and Institutions Code section 4512, subdivision (b), states:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life.

3. Welfare and Institutions Code section 4512, subdivision (e), states that a consumer's natural supports include family and friends.

4. Welfare and Institutions Code section 4646.5 provides in part:
 - (a) The planning process for the individual program plan . . . shall include all of the following:
 - (1) Gathering information and conducting assessments Assessments shall be conducted by qualified individuals Information shall be taken from the consumer, the consumer's parents and other family members, the consumer's friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. . . .

ANALYSIS

Wipes

1. Claimant provided sufficient evidence to support the need for more wipes. The Service Agency reasonably estimated the amount of wipes that Claimant and his caregivers would need. But more have been needed because of circumstances unknown or insufficiently known.

2. Claimant is an adult who unfortunately cannot use a commode as do other adults. Claimant has also been suffering from lazy bowel syndrome and a sort of constipation, which causes him to move his bowels less than daily, and sometimes not for days at a time. Claimant often has no choice but to void while prone. This causes a great deal of soiling, which must be carefully and completely cleaned to avoid other problems for Claimant's health.

3. Sister has witnessed Claimant's struggles with bowel movements and has attended to his cleaning following them. There is no reason to believe that her testimony and estimate of the number of wipes necessary to keep Claimant clean in these circumstances is anything other than reasonable and in good faith.

4. The Service Agency argued, generally and quite justifiably, that it is hampered in providing Claimant appropriate services because Claimant and Mother in particular have hindered access to medical documentation. But the number of wipes Claimant should be provided is more a practical than a medical issue.

5. A caution to be noted here is that more than a year has passed since the surgery that caused the difficulties to which Sister testified. It is reasonable to expect that at some point post-surgery Claimant's difficulties will have eased along with the need for a large number of wipes.

6. How and when the difficulties may ease or have eased is not clear. In great part this is because Claimant's cooperation with the Service Agency has been lacking. This lack of cooperation frustrates the purposes of the Lanterman Act, and more specifically that, under Welfare and Institutions Code section 4646.5, services and supports must be supplied according to the planning process for Claimant's IPP.

7. Nevertheless, it is appropriate that though Sister may be believed and more wipes should be ordered, the time for providing the extra wipes should be limited to a few more weeks. Within that time, it is in Claimant's interest that a meeting or some effective communications take place between Service Agency personnel and Claimant to cooperate in planning what services, whether more wipes or any other services, should be provided going forward.

Specialized Blender

8. The evidence did not support Claimant's assertion that he must have a particular type of blender to soften his food. Dr. Sassi's correspondence in this regard is noted, but there is no indication that Dr. Sassi has any expertise in blenders or food preparation that make his opinion reliable and convincing.

9. A blender in these circumstances, moreover, does not come within the types of services and supports enumerated in Welfare and Institutions Code section 4512, subdivision (b). The blender requested would not alleviate Claimant's developmental disability. It is not significant as help toward the social, personal, physical, or economic habilitation or rehabilitation of Claimant. It would not significantly advance Claimant's achievement and maintenance of an independent, productive, and normal life.

10. Sister and Mother testified that they tried various types of non-specialized blenders to process Claimant's food correctly and found them inadequate, to the point that the blender would soon fail, even burn up. Sister and Mother's testimony was credible, but not convincing. The testimony was credible because there was every indication that the witnesses were telling the truth as they saw it. But ordinary blenders are used to soften ordinary foods of all kinds. There was no evidence that Claimant's diet consists of foods that are especially resistant to being softened in an ordinary blender.

11. Here again it should be noted that Claimant's lack of cooperation with Service Agency personnel affects the evidence. Mother's and Sister's testimony might or might not be corroborated by medical documentation. Claimant however has withheld medical documentation, leaving uncertainty. In the less than comprehensive

state of the evidence, especially medical evidence, in writing, there is in the end no compelling reason to believe that Mother and Sister are correct about the need for a specialized blender.

Personal Service Hours

12. The evidence was insufficient to support Claimant's request for an increase in personal service hours from 60 to 70 hours per month. Regarding this issue especially Claimant's lack of cooperation works against his assertion of extra need.

13. Mother has provided the Service Agency significantly less than full information about how Claimant has been recovering from his March 2021 surgery. It was anticipated from the beginning that 60 hours per month of personal services would not be necessary once Claimant made significant progress in his recovery from surgery.

14. In Claimant's favor, there is evidence to suggest that his recovery from surgery has been prolonged and marked by unexpected setbacks. For this reason it has been appropriate that he has had the benefit of personal services for months since his surgery. But in the end, the evidence did not support the need for more such services, so that the request for an increase of 10 hours per month of personal services, 70 instead of 60, is properly denied at this time, absent more compelling medical evidence and documentation.

CONCLUSIONS OF LAW

1. It is appropriate that the Service Agency provide more personal wipes than currently, but for a limited time. One pack of wipes per day for six weeks should be funded by the Service Agency.

2. The evidence did not support Claimant's request that the Service Agency fund a specialized type of food blender such as Claimant requested.

3. The evidence did not support Claimant's request for funding an additional 10 hours per week of personal care services. The 60 hours per week of personal care services that the Service Agency was funding for a period while Claimant recovered from surgery has ended, so that the Service Agency need not continue to fund such personal care services.

ORDER

1. The Service Agency shall fund one pack per day of personal wipes, which shall be provided for an additional four weeks.

2. The Service Agency shall not be required to fund a specialized or other type of food blender for Claimant, as the Service Agency has already provided sufficient funds for a blender for Claimant.

3. The Service Agency shall not be required to fund an additional 10 hours per week of personal care services. The 60 hours per week of personal care services previously funded need no longer be funded.

DATE:

THOMAS LUCERO
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.