

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH. 2021120818

DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 25 and May 4, 2022. Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or Service Agency). Claimant was represented by his mother (Mother). The names of Claimant and his family are omitted to protect their privacy. Spanish language assistance was provided for Mother pursuant to her request.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on May 4, 2022.

ISSUE

Should HRC be required to fund roundtrip airfare in the amount of \$700 for Claimant to travel to Arkansas twice per year to visit his friend for purposes of social skills development?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1-15, and Claimant's Exhibits A-I. The testimonial evidence considered in this case was that of Kristina Zerhusen, Client Services Manager, Kimberly Lavelanet, Behavior Consultant, and Mother.

FACTUAL FINDINGS

1. Claimant is a 25-year-old conserved male consumer of HRC. He qualifies for regional center services under a diagnosis of autism spectrum disorder (ASD). Mother was appointed as the limited conservator of Claimant's person in 2016.

2. Claimant current lives with Mother and requires assistance with most activities of daily living and self-care tasks. While Claimant's preferred language is English, Mother prefers to communicate in Spanish.

3. Claimant reportedly likes drawing and art-related tasks. Mother wants Claimant to enhance his independent living and social skills.

4. On November 5, 2021, HRC conducted a telephonic Individualized Person Centered Plan (IPP) meeting attended by Claimant, Mother, Claimant's brother,

two family friends, Ryan Rouch, Program Director of Cole Partial Inclusion Long Beach (CPI), Cristina Gomez, CPI's Program Supervisor, Christina Alvarez, CPI's Program Manager, Kris Zerhusen, HRC Client Services Manager, Hilda Aceves, a Spanish Interpreter, and Karin Valverde, Claimant's Service Coordinator (SC).

5. At the IPP meeting, Mother reported that while Claimant has a history of depression and aggressive behaviors, Claimant did not engage in physical aggression, destruction of property, or self-injury at that time. However, Claimant displays anxious behavior in social settings and when he hears loud noises or sounds. According to Mother, Claimant's anxiety has increased due to the COVID-19 pandemic and Claimant's fear of becoming infected with the virus.

6. It was noted at the IPP meeting that Claimant previously participated in the PEERS (Program for Education & Enrichment of Relational Skills) for young adults. PEERS is a "16-week evidenced based social and relational skills program designed for motivated young adults who are interested in learning skills to make and keep friends and develop romantic relationships." (Ex. 10, p. A67.) PEERS teaches participants, among other things, how to enter and exit conversations, maintain appropriate conversations, and use appropriate humor.

Claimant was admitted to PEERS on September 11, 2018, and was discharged on February 7, 2019. Claimant attended five of the 16 sessions, and PEERS concluded that he was unlikely to show improvement in social skills due to his poor attendance and unsatisfactory homework compliance. In addition, Mother could not participate in PEERS's parent group because it was offered in English.

7. HRC recommended that Claimant take the PEERS class with Spanish interpreting services and Applied Behavior Analysis (ABA) services to develop his social

skills. ABA therapy is used to treat individuals with ASD to improve language and communication skills, attention, focus, social skills, memory, and academics, and to help decrease maladaptive behaviors. HRC also suggested Mother take HRC's Understanding Behavior classes in Spanish. Mother agreed to the ABA services and to take the Understanding Behavior classes. Mother was open to Claimant's participation in PEERS but was not sure whether Claimant would be willing to attend. HRC referred Claimant to vendor Applied Behavior Analysis Consultation Services, Inc. (ABACS) for ABA services and agreed to fund an assessment by ABACS, behavior management consultation services from February 1 to March 31, 2022, and individual or family training from December 15 to December 31, 2021, and from January 18 to February 22, 2022.

8. Claimant was previously admitted to CPI, a day program, to attend in-person four hours per day, Monday through Friday, in the afternoon. However, Claimant stopped attending due to the COVID-19 pandemic. CPI offered alternative services including tele-visits, wellness phone calls, and "activity drop offs" so that Claimant could participate in drawing and painting activities. (Ex. 4, p. A22.) However, Claimant had not been receiving the alternative services due to miscommunication and scheduling conflicts. At the IPP meeting, Claimant was invited to return for in-person services, but Mother stated she wanted Claimant to receive services virtually.

9. CPI prepared a day program plan/report for Claimant's participation once CPI opened for in-person services. The proposed alternative services included working one-on-one with a recreational therapist on arts and crafts, participating in sketching and drawing classes with staff, lifting weights at the gym and participating in stretch exercises with the physical therapist, and participating in community integration activities such as bowling, golfing, and visiting museums and aquariums. CPI also

offers book club classes where Claimant can choose a book to read with staff assistance. Mother agreed to the plan and HRC agreed to fund services with CPI from December 1, 2021, through November 30, 2022.

10. In addition to CPI, HRC referred Claimant's case to Able Arts Work, pursuant to Mother's request that Claimant participate in a program that offers art activities. The program has community integration activities that can be implemented once the COVID-19 pandemic emergency subsides.

11. The "Social/Recreational/Community" section of Claimant's IPP states Claimant made progress in improving his social skills over the years in that he is able to introduce himself and talk about subjects of interest to him; however, Claimant continues to need prompting to initiate social contact with peers. Mother reported Claimant met a friend, Pedro, who resides in Arkansas. They get along well, have the same interests, and are both working on their social skills. In addition, Claimant and Pedro send each other gifts, and they have visited each other's families. Mother requested HRC fund travel expenses for Claimant to travel twice per year to Arkansas. SC Valverde provided Claimant's family with information regarding social, recreational and fitness opportunities in the community in English and Spanish. The desired outcome for Claimant was continued work on initiating conversations with peers and engaging in the community. The plan was for Mother to continue to provide Claimant opportunities to practice and learn appropriate skills, and for Claimant to engage in social and recreational activities of his choice when it was safe to do so in terms of the COVID-19 pandemic.

12. On November 30, 2021, the Service Agency sent Claimant a Notice of Proposed Action (NOPA), denying the request to fund the cost of roundtrip airfare in

the amount of \$700 twice per year for Claimant to fly to Arkansas to visit and socialize with Pedro.

13. In its NOPA, the Service Agency cited Welfare and Institutions Code section 4512, subdivision (b), as the law supporting the denial of services. The stated factual bases for the NOPA were as follows:

In 2018, [Claimant] participated in the PEERS Social Skills program. He attended five out of the 16 sessions provided. [Claimant] decided not to continue to attend this program and was discharged from the program. We discussed [Claimant] being referred to the PEERS Social Skills program again; however, [Claimant] declined this referral. We discussed the option for [Claimant] to develop friendships with his peers at his current day program. A socialization goal can be added to his day program plan to help him develop friendships. We reviewed [Claimant's] progress reports from his day program on 9/28/18, which noted "[Claimant] has been interacting with staff and peers more often during the day program and has even initiated some of the conversations." Another option for [Claimant] to work on his social skills goals is to access [ABA] services and this need can be assessed through the regional center. Information on social and recreational activities available in the community were shared with you where [Claimant] could meet peers who share like interests with him. Because traveling to Arkansas is not a specialized service and there

are other means available to support [Claimant] in developing opportunities to make friends through [a] social skills training program, day program, and ABA services: HRC is denying your request at this time.

(Ex. 3, p. A10.)

14. Mother filed a Fair Hearing Request on December 8, 2021.

15. On February 3, 2022, SC Valverde spoke with Mother about Claimant's services and supports. Mother reported Claimant was motivated to return to in-person services at CPI but was wary about going to CPI because of the surge in COVID-19 cases. Mother indicated that she did not want to force Claimant to attend. With respect to Able Arts Work, Mother stated she would wait until the program resumed in-person services. In the meantime, HRC authorized participant directed transportation services beginning February 7, 2022.

Mother confirmed that she had been contacted by ABACS regarding Claimant's ABA assessment. Mother declined the service because ABACS staff could not provide proof that they had been tested for COVID-19, although testing was not required by ABACS's COVID-19 protocols. Mother insisted that she would continue to require ABACS staff to provide proof of a negative COVID-19 test and, therefore, she would wait to have the assessment conducted until the number of COVID-19 cases declines. HRC submitted a copy of ABACS's COVID-19 protocols followed by ABACS staff when providing in-person services that was admitted as Exhibit 9. The Service Agency contends that it provided Mother with the protocols, but Mother denied receiving them.

16. Ms. Zerhusen, HRC Client Services Manager, testified at the hearing. She supported Claimant's service coordinator in assessing the need for the services/funding requested by Mother and assisted in drafting the NOPA. Ms. Zerhusen confirmed HRC's agreement to fund PEERS with Spanish interpreting services, ABA therapy, and social skills programs as well as Claimant's denial of some services and stated intention to participate in others in the near future. Ms. Zerhusen noted the sole request by Claimant's family was for the purchase of airfare to Arkansas for the purpose of improving Claimant's social skills. The family did not request funding for any programs to address Claimant's social skills deficits.

17. Ms. Lavelanet was certified as a Behavior Analyst in 2013, she is certified by the University of California, Irvine to administer the PEERS program, and has worked with individuals with developmental disabilities for 16 years. Ms. Lavelanet has been an HRC Behavior Consultant since 2015. Her duties include assessing the behavioral needs of HRC consumers to determine whether they can benefit from ABA or other behavioral services.

18. Ms. Lavelanet has not observed Claimant in the community but is familiar with Claimant in that she consulted with HRC's case management team in December 2021 to determine appropriate services and supports for him. She is aware Claimant requires prompting for many things on a daily basis, he lacks expanded communication skills, and his family has expressed concerns about his sensory deficits.

19. It is Ms. Lavelanet's opinion that Claimant requires a functional behavioral assessment, which would reveal his areas of need through observation. Behavior goals can then be developed. She believes Claimant would benefit from the PEERS program with translation support as well as local programs that provide social skills training and recreational activities for Claimant and his family. Claimant would

need to demonstrate the ability to refrain from physically challenging behaviors for one and one-half hours in a small group setting to participate in PEERS. Ms. Lavelanet's testimony established that socialization skills can be incorporated into day programs and some programs address aggression. In addition, social skills training can be incorporated into ABA services.

20. Ms. Lavelanet also offered the opinion the proposed travel to Arkansas is an inappropriate way for Claimant to develop and maintain social skills. She explained that Claimant's visits with Pedro would be very limited with respect to social skills development as there are no identified goals and skills to be worked on. Ms. Lavelanet would advise against someone with behavior challenges boarding an airplane.

21. Mother testified Claimant was diagnosed with ASD by the regional center in 2001. According to Mother, Claimant has always demonstrated severe maladaptive behavior. Mother submitted reports and letters from Claimant's various schools between 2010 and 2013, which describe Claimant's problem behaviors, which have included knocking down and hitting aides, throwing things in the classroom, threatening staff, engaging in tantrums, and being suspended for aggression and disrupting school activities by defying authority.

22. Mother explained that it is important for Claimant to have a daily structured environment. She uses rewards and notifies Claimant in advance of any changes to his routine to manage his behavior. Mother has taken over 200 classes in connection with Claimant's developmental disability including courses for parents on behavior with Family Behavioral Services in Torrance. She provides most of Claimant's supports in an effort to prevent regression.

23. Mother confirmed Claimant is not currently receiving ABA services nor does he participate in a day program. However, Mother pays for a board-certified behavior analyst to consult with her regarding how Mother should act or behave when Claimant demonstrates maladaptive behavior. Mother described Claimant's current behavior as moderate and under control.

24. Claimant receives therapeutic massage three times per week when he feels anxious or depressed. He also has a service dog and attends training sessions with a personal dog trainer three times per week.

25. Mother is concerned Claimant's maladaptive behavior will increase if the funding request for travel to Arkansas is not granted. She has driven Claimant to Arkansas for the visits in the past. According to Mother, the trips help Claimant exercise patience and are preparing Claimant to tolerate trips away from home for more than 24 hours so he can visit his grandmother in Mexico. Mother is confident Claimant will not act out on a trip to Arkansas because she travels with Claimant once per month for two hours and he does not misbehave. Mother believes that HRC's transportation policy authorizes funding of the requested travel to Arkansas.

26. Mother wants HRC's support so Claimant will have a more independent lifestyle. She would like Claimant to participate in groups of his peers to improve his social skills.

LEGAL CONCLUSIONS

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

4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for this appeal was established.

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.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

3. In seeking funding for airfare to travel to Arkansas, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Claimant has failed to meet his burden of proving he is entitled to the funding he seeks.

Relevant Provisions of the Lanterman Act

4. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their individual program plan. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

5. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

6. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

7. Welfare and Institutions Code section 4512, subdivision (b), specifically provides:

"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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

8. Welfare and Institutions Code section 4646.4 specifically provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5. . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

HRC Policies

9. HRC's General Standards as set forth in its Service Policy state:

[¶] . . . [¶]

Services and supports may be purchased for a client only under the following circumstances:

When he/she has special needs associated with a developmental disability or condition determined by an interdisciplinary team to present a risk of developmental disability . . .

When it has been determined by the Planning Team that such services will accomplish all or any part, of a client's Individual/Family Service Plan;

When such services are identified in the Individual/Family Service Plan and are tied to one or more outcomes desired by the client;

[¶] . . . [¶]

(Ex. 12, pp. A94-A95.)

10. HRC's Transportation and Mobility Services policy defines transportation services as services that allow an individual to travel "as independently and cost effectively as possible, to the destinations identified in his/her . . . IPP." (Ex. 15, p. A102.) HRC may only purchase transportation services when the purchase is for destination training and/or use of the least restrictive/most independent option or a

mobility assessment indicates that the person cannot be trained to safely utilize other options to access specific services identified in his IPP.

11. The travel for which Claimant seeks funding does not qualify as transportation services as defined by HRC's Transportation policy as the travel is not being used to access specific services identified in Claimant's IPP. HRC never agreed to fund Claimant's travel to Arkansas. In addition, the requested travel for purposes of Claimant visiting his friend Pedro is not a therapy or specialized service with identified treatment goals to address Claimant's disability. Although Claimant's visits with Pedro may arguably help Claimant develop his social skills, Claimant did not establish that traveling to Arkansas to visit a friend is necessary and specifically tailored to address any identified deficits arising from Claimant's regional center qualifying diagnosis of ASD. While Claimant and Pedro share common interests and enjoy each other's company, the visit/travel is not specialized. On the other hand, HRC established that PEERS, CPI's day program, ABA services, and the list of suggested social and recreational activities provided to Claimant can and do incorporate social skills training that will benefit Claimant. Consequently, Claimant's family is responsible for funding Claimant's travel to Arkansas.

12. Given the foregoing, HRC's denial of funding airfare for Claimant to travel twice per year to visit Pedro for the purpose of social skills training was appropriate.

///

///

///

ORDER

Claimant's appeal is denied. Harbor Regional Center's denial of funds for Claimant to fly to Arkansas to visit a friend is upheld.

DATE:

CARMEN D. SNUGGS-SPRAGGINS

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.