

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

In the Matter of:

Claimant,

vs.

Harbor Regional Center,

Service Agency.

OAH No. 2023010636

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 13, 2023 by videoconference.

Latrinia Fanin, Fair Hearing Coordinator, represented Harbor Regional Center (HRC).

Julissa Pineda, advocate, represented Claimant. Claimant's Mother (Mother) was present for the hearing. Claimant was present for parts of the hearing.

A Spanish language interpreter translated the proceedings.

At the beginning of the hearing, Claimant withdrew all issues except his request for funding of an attorney.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 13, 2023.

EVIDENCE RELIED UPON

Testimony: Bjorn Peterson; Jalissa Pineda; and Respondent and Exhibits: 1-10, 13 and 18.

SUMMARY

Claimant requests funding for an attorney to assist him in pursuing an increase in In-Home Support Services (IHSS). HRC has denied his request because it asserts that generic resources are available to assist him. For the reasons set forth below, Claimant's appeal is denied because available generic resources have not been exhausted.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a conserved 22-year-old developmentally disabled male eligible for HRC services based upon his diagnosis of Intellectual Disability. Claimant also has Arthritis and Schizophrenia diagnoses.

2. Claimant requested HRC pay for an attorney to represent him in obtaining an increase in IHSS hours. On December 15, 2022, HRC denied the funding

request for an attorney and other services that are not at issue in this hearing. Claimant filed an appeal. All jurisdictional requirements have been met for this matter to proceed.

Background

3. Claimant lives in subsidized housing with his Mother who is also his conservator. His older brother is also a support for Claimant, but does not live in the residence. Mother is in poor health from ailments not established by the evidence.

4. Claimant graduated from a Non-Public School (NPS) in the summer of 2022 and has been living at home. He spends his time playing videogames and watching television. Claimant receives Supplemental Social Security Income (SSI) monthly. Although referrals have been made by HRC, Claimant has not yet agreed to enroll in a day program. Claimant has a history of violent outbursts toward Mother. He does not assist with any household tasks and requires constant assistance with his daily activities. Currently, Claimant receives 168 hours per month of IHSS. His older brother is his IHSS worker.

Claimant's Services and Supports

5. Claimant's Individual Program Plan (IPP) provides desired outcomes related to (1) living at home safely; (2) independence and self-sufficiency; (3) safety awareness; (4) health maintenance; (5) accessing the community; (6) engaging in social recreation; and (7) basic financial needs. To address those needs, Claimant receives a variety of services and supports through his IPP and generic resources including SSI, Medi-Cal and IHSS. Claimant's services include 40 hours per month of respite, 40 hours per month of in-home personal care from December 1, 2022 to June 30, 2023 because of Mother's unavailability for health reasons, 20 hours per week of personal

care per week to assist Claimant in accessing the community, an Independent Living Skills (ILS) assessment, Get Safe safety and sexuality training, a behavioral services referral, service coordination and transition planning.

Request for Funding

6. At the administrative hearing, it was established that Claimant does not yet have a provider in place for his personal care hours (Testimony of Pineda and Petersen). It was also established that HRC agreed to conduct a nursing assessment that could be used by Claimant in any claim or hearing pertinent to his IHSS allotment (Testimony of Petersen). Claimant has not scheduled the nursing assessment, but is willing to do so (Testimony of Petersen and Pineda). Additionally, it was established that Claimant's Service Coordinator is authorized to assist Claimant with his IHSS application, request for additional hours, and preparation for hearing, and may attend any hearing on Claimant's IHSS appeal provided that the service coordinator has been given adequate notice and that Claimant has requested the service coordinator's assistance and attendance (Testimony of Petersen).

7. Claimant requests that HRC fund the services of an attorney to assist him with and appear on his behalf in any IHSS matter, because he is unable to adequately represent himself and, according to Claimant, Mother is not in good health and her conservatorship rights are not broad enough to allow her to represent him.

8. HRC referred Claimant to Disability Rights Center of California and the Office of Clients Rights for legal assistance. According to Claimant's representative, Claimant contacted the Disability Rights Center of California for assistance and was provided a list of three attorneys who provided reduced cost services. However, Claimant was not able to afford the reduced cost services.

9. HRC's General Standards provide:

Services and supports may be purchased for a client...after public resources, which are available to implement and or coordinate the services identified by the interdisciplinary team, as well as other sources of funding available to the client, have been used to the fullest extent possible.

(Ex. 13.)

LEGAL CONCLUSIONS

1. The burden of proof is on Claimant in this matter because it is Claimant who seeks to add a service or change the status quo. The party seeking a change to the IPP bears the burden of proof. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

2. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (Welfare and Institutions Code (Code) § 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. (Code § 4520.)

3. Regional centers must develop and implement IPPs, which shall identify services and supports on the basis of the needs and preferences of the consumer, or

where appropriate, the consumer's family, and shall include consideration of the cost-effectiveness of each option. (Code, § 4512, subd. (b); see also Code, §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (Code, §4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) "Services and supports for persons with disabilities" includes "advocacy assistance," "information and referral services," and "self-advocacy training". (Code, §4512, subdivision (b).)

4. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, or conservator. (Code, § 4646, subd. (d).) The planning team, which determines the content of the IPP and the services to be utilized, is made up of the individual with developmental disabilities, their parents, guardian, conservator, or authorized representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (Code, § 4512, subd. (j).)

5. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (Code, §§ 4646; 4646.5, subd. (a)(1), (2) and (4); 4512, subd. (b); and 4648, subd. (a)(6)(E).) The planning process includes the gathering of information about the consumer and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. Assessments shall be conducted by qualified individuals.

Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. (Code, § 4646.5, subd. (a)(1).)

6. Code section 4646.4, subdivision (a), provides, in part, that regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's IPP developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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.

7. 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. (Code, §§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Code, § 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency.

8. Code section 4659, subdivision (a), states: "Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services." Also, Code section 4648, subdivision (a)(8), states: "Regional center funds shall not be used to

supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

9. Here, Claimant has access to generic resources that have not been exhausted. Specifically, Claimant has access to a nursing assessment to support his case for increasing his IHSS hours and service coordinator assistance, which have not been utilized. Additionally, Claimant has contacted only one of the generic resources provided by HRC (Disability Rights of California). Claimant has not exhausted the generic resources available to him and therefore HRC is not obligated to fund legal services for him at this time.

ORDER

1. Claimant's appeal is denied.
2. Harbor Regional Center shall ensure that a service coordinator is available to assist Claimant with all aspects of his request to increase his IHSS hours and any related hearing on the issue.

DATE:

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.