

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

In the Matters of the Consolidated Appeals of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2023070056 (Primary)

DDS No. CS0007221

and

OAH No. 2023070460 (Secondary)

DDS No. CS0008183

DECISION

Administrative Law Judge (ALJ) Deena R. Ghaly, Office of Administrative Hearings, State of California, heard these matters by videoconference on April 9, 2024.

The record closed and the matters were submitted for decision at the end of the hearing.

Claimant's mother (Mother) represented claimant. (The names of claimant and her family members are omitted to protect their privacy.) Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC).

An order dated August 18, 2023, consolidated these two matters for hearing and decision. Because the matters concern the same claimant, a single decision will issue for both matters.

ISSUES

(1) Should HRC's decision to cease accepting partial financial responsibility to reimburse claimant's parents (parents) for fees paid to MRCBA/Adaptive BC (Adaptive BC), a non-vendorized service provider whose programs Claimant attended from May 2019 to September 2023 be upheld?

(2) Should HRC reimburse Claimant's parents for all payments they made to Adaptive BC?

EVIDENCE RELIED ON

In making this Decision, the undersigned ALJ relied on HRC's exhibits 1 through 18; claimant's exhibits A through L; and the testimony of HRC Client Services Manager Jessica Guzman and of Mother.

FACTUAL FINDINGS

Background

1. Claimant is a 26-year-old conserved woman who is an HRC client, eligible for services under the Lanterman Act based on her diagnoses of intellectual disability and epilepsy.

2. Beginning in 2015, while Claimant was still a student at Palos Verdes High School, Claimant began working with a behavioral technician, Randy Dowdy during a specialized afterschool program. When Claimant aged out of the school system, Mother began looking for day programs but did not find any she found suitable for Claimant.

3. A day program, as defined by HRC's Service Policy, is "a structured, comprehensive, community-based service for persons with developmental disabilities who are no longer eligible for public schools and who are unable to pursue continuing education through the university or community college system or to become employed in a competitive environment." (Exh. 6.)

4. Sometime in 2019, Mr. Dowdy founded an organization, Adaptive BC, to provide programs for disabled individuals. Based on Claimant's earlier relationship with Mr. Dowdy and his ability to work effectively with her, Mother met with, and enrolled, Claimant in the Adaptive BC program. Over a period, Claimant gradually increased her time there until she reached a maximum of four to six hours a day, several days a week.

5. Mother made several attempts to have HRC agree to fund Adaptive BC in lieu of a day program. In a letter dated February 13, 2020, HRC declined to fund

Adaptive BC because HRC concluded it to be "social and recreational in nature" and therefore at the time, not a service HRC could fund pursuant to Welfare and Institutions Code section 4648.5. (Exh. I, p. B32.) (Further statutory cites if not designated are to the Welfare and Institutions Code.)

6. In 2022, the California Legislature repealed section 4648.5, allowing regional centers to resume funding for socialization, leisure/recreational services, camping services, educational services and non-medical therapies (social/recreational services). HRC developed a service policy, approved by the Department of Developmental Service on May 26, 2022, to fund social/recreational services. Under the terms of the service policy, HRC may fund "one program per quarter during the IPP plan" of social/recreational services. (Exh. 3, p. A16) Nothing in HRC's social/recreational service policy required service providers providing social/recreational activities to be vendorized.

7. Based on these developments, HRC revised its earlier decision regarding whether to fund Adaption, BC, determining that part of its program, the outdoor fitness portion, fell within the social/recreational category and therefore could be funded by HRC. In a letter dated July 29, 2022, claimant's service coordinator, Christina Felix, wrote in part:

We understand your desire for [claimant's] participation at Adaptive BC as she is thriving in her activities. Adaptive BC offers two types of supports, Outdoor Fitness (Mondays through Thursday 9 AM to 11 AM) and Community Day program (Mondays through Wednesdays 11 AM to 2 PM and Fridays 9 AM to 2 PM). We have agreed to fund for [claimant's] participation for the Outdoor Fitness

component under social recreation activities as a reimbursable service as of 6/9/2022.

(Exh. 18, p. A260.)

8. In her July 2022 letter, Ms. Felix also noted HRC could not pay for Adaptive BC's community day program because it remained unvendorized, though HRC personnel had been in touch with Mr. Dowell and the process for vendorizing Adaptive BC was underway. During the hearing, HRC Client Services Manager Jessica Guzman, who is Ms. Felix's supervisor, stated Mr. Dowell decided not to complete the vendorization process on behalf of Adaptive BC and it remains unvendorized.

9. On January 31, 2023, Mr. Dowdy informed HRC that the Adaptive BC curriculum would no longer be divided into a fitness program and a community day program. Rather, the programs would be merged together and "identified" as a day program. HRC determined that, as such, it could no longer partially fund Adaptive BC under the social/recreational category and could not fund Adaptive BC as a day program because it remained unvendorized. By a Notice of Action (NOA) dated May 19, 2023, HRC notified claimant and her family it would cease partially reimbursing family for Adaptive BC after February 28, 2023. Mother timely appealed.

10. Claimant continued to attend Adaption BC with her parents paying the fees. At the hearing, Mother stated she is not only appealing HRC's decision to cease making the partial payments for Adaptive BC but is seeking reimbursement of all fees parents have paid to Adaptive BC. Mother acknowledged neither she nor anyone else on claimant's behalf appealed any of the decisions where HRC declined to fund for Adaption BC until the May 2023 NOA.

11. Effective September 1, 2023, Claimant entered the Self-Determination Program (SDP). SDP allows regional center consumers to access services directly and without need to limit service-providers to those which are vendorized by the regional center.

12. As an SDP participant, claimant continued to attend Adaption BC for the month of September 2023 and paid its fees from her SDP budget. Thereafter, Mother determined the Adaption BC program no longer worked for claimant and claimant stopped attending it.

13. Neither party in these consolidated matters raised issues concerning rights or obligations pursuant the SDP program and this Decision does not address or affect the parties' rights or obligations pursuant to the SDP program.

Additional Evidence

14. Parents have paid a total of \$81,218.74 to Adaption, BC. (Exh. D.) Mother maintained that, even after HRC agreed to pay partial fees, parents did not receive any reimbursements from HRC.

15. HRC referred Mother to several vendored day programs. Mother visited them or spoke to administrators. She found the programs inadequate and, in some cases, unhygienic. Specialized day programs known as tailored day programs told Mother they could not accept claimant as a participant because she is not fully toilet trained.

16. At the hearing, Mother introduced into evidence charts demonstrating the cost-effectiveness of Adaption BC in relation to the costs of the day programs HRC had vendorized. (Exh. K.) According to the chart, traditional (vendorized) day programs

can cost more than twice what parents have paid to Adaption BC and tailored day programs can cost almost three times as much. (Exh. K, p. B34.)

17. Further, Mother noted, under the Lanterman Act, transportation is a recognized service. Mother stated claimant's home in a hilly and remote area made public transportation largely inaccessible and therefore increased the difficulties of claimant to attend the day programs to which HRC referred her since these programs did not include transportation. In contrast, Adaption BC includes door-to-door transportation as part of its services.

18. During her testimony, Ms. Guzman stated vendorization requires programs and their employees to maintain all necessary licenses for their vocations. Mr. Dowdy may not have been able to demonstrate he was properly licensed.

19. Ms. Guzman also stated HRC reimbursed some of the fee's parents paid to Adaption BC for the period of June 5, 2022, through February 28, 2023. Also, claimant and HRC came to a settlement regarding expenses claimant's family incurred during the period from July 15, 2020, to December 20, 2020, including \$4,865.26 Ms. Guzman maintained were to reimburse parents for Adaption BC fees.

20. Mother maintained parents have not received any payments from HRC to reimburse them for fees they paid Adaption BC, even to the extent HRC has acknowledged its responsibility to make those reimbursements.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California takes responsibility to provide service 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 lifetimes.

2. In *Association for Retarded Citizens v. Dep't of Developmental Services* (1985) 38 Cal.3d 384, the California Supreme Court enumerated the main purposes of the Lanterman Act, including that, under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with "access to the facilities and services best suited to them throughout their life"" and with determining "the manner which those services are to be rendered."" (*Assoc. of Retarded Citizens, supra* at p. 389, quoting § 4620.)

3. Regional centers establish suitable services and supports for the disabled individuals they serve through the individual program plan (IPP) process. 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. (§§ 4512, subd. (b), 4646, 4646.5, subd. (a), 4648, subd. (a)(6)(E).)

4. "A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian determines will best accomplish all or part of that consumer's program plan.

5. "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors based on the qualification and other requirements necessary to provide the service." (§ 4648, subd. (a)(3)(A).)

6. When purchasing services and supports, regional centers must ensure conformance with its purchase of service policies, as approved by DDS pursuant to section 4434, subdivision (b). (§ 4646.4, subd. (a)(1).)

7. When there are disagreements between a regional center and a consumer, including during the IPP process, the Lanterman Act provides procedures for redress. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act for consumers to appeal a contrary regional center decision, including requesting a fair hearing. (§§ 4700-4717.)

8. In order to obtain relief, claimants or their representatives must timely appeal the regional center. (§ 4710.5.) Until March 1, 2023, under an earlier iteration of section 4710.5, appeals and requests for fair hearings had to be made by 30 days after receiving notice of an adverse action. Since March 1, 2023, parties have 60 days to appeal.

9. The standard of proof for administrative adjudications is preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

10. The burden of proof is generally on the moving party. (Evid. Code, §500.) Here, because it is HRC seeking to discontinue funding for a service it was formerly funding, i.e., the partial payments to reimburse parents for the social/recreational

portion of the Adaptive BC program, the burden is on HRC to demonstrate that this decision should be upheld. Regarding the second issue, whether claimant's parents should be reimbursed for all payments they made to Adaptive BC, claimant is the moving party and therefore bears the burden of proof.

11. Code of California Regulations, title 17 (Reg. or Regulation) section 50612 provides that regional centers cannot retroactively fund services except in emergency situations. Regulation section 50612 provides in pertinent part:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

12. Regulation section 54324, subdivision (a) authorizes regional centers to approve emergency vendorization for an applying contractor prior to the receipt of a completed vendor application if the regional center determines that the health or safety of a consumer is in jeopardy and no current vendor is available to provide the needed service.

13. When regional centers and consumers cannot agree on services and related issues, an administrative law judge has the authority to make appropriate orders, including retroactive payments. (*Harbor Regional Center v. Office of Administrative Hearing* (2012) 210 Cal.App.4th 293 (*Harbor Regional Center*).)

Disposition

14. HRC did not meet its burden of proof to establish it should have ceased reimbursing parents for fees paid to Adaptive BC. As set out in Factual Finding 9, HRC's position is that Adaptive BC is no longer eligible reimbursement because it combined its outdoor program with its community day program. HRC did not demonstrate, however, how combining the two programs negated or removed the social and recreational aspects of the day program. Specifically, HRC did not demonstrate why it could not have continued to pay a portion of the fees from March 1, 2023, through August 31, 2023 based on Adaptive BC's position that the entire program, including its outdoor fitness aspects had been combined. An equally plausible understanding of Mr. Dowdy's recasting of Adaptive BC is that the entire program is of a social/recreational type and therefore can be reimbursed as such, pursuant to HRC's applicable service policy. At a minimum, HRC should have inquired

into whether the program had discontinued social/recreational activities altogether before HRC ceased its partial funding. Without any such evidence, HRC remains liable for the partial reimbursements.

15. Claimant did not establish her rights to be reimbursed by HRC for all fees parents paid to Adaptive BC. Mother acknowledged she did not appeal HRC's decision to decline funding Adaptive BC until she received the May 2023 NOA. As set out in Factual Findings 16 and 17, she made some compelling arguments based on the equities of the circumstances; however, regional centers are required to follow the statutory guidelines and their own service policies when dispensing public funds. In the absence of an appeal of their initial decisions, they have a right and an obligation to maintain their positions subject to any change in the laws. Here, HRC self-corrected its decision not to fund Adaptive BC when the law changed in June 2022. Prior to that, there is no basis to revisit its decision and there is no authority for this forum to disturb it.

16. Additionally, Mother did not establish any emergency conditions warranting reimbursement under Regulation sections 50612 and 54324. Claimant's right and need to be in structured programs after exiting the school system is clear but it does not rise to the type of immediate and acute circumstances Regulation sections 50612 and 54324 are intended to address.

17. The issues of whether HRC has made promised payments to partially reimburse parents for fees they paid to Adaptive BC between June 6, 2022, and February 28, 2023, is not before this forum. The parties are encouraged to work together to determine whether HRC has fully reimbursed parents consistent with its own determination that parents are entitled to payments for this period.

ORDER

1. HRC will reimburse claimant's parents payments they made to Adaptive BC for the portion of its program dedicated to social and recreational programs during the period between February 28, 2023, and August 31, 2023.

2. HRC will not reimburse claimant's parents for other payments parents made to Adaptive BC except to the extent HRC has acknowledged its responsibility to fund the social and recreation portion of Adaptive BC's program for the period of June 6, 2022, through February 28, 2023, and has not tendered those payments to parents.

DATE:

DEENA R. GHALY

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.