

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

In the Matter of:

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DDS No. CS0008564

OAH No. 2023080227

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 28, 2023 by videoconference.

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

Claimant's Mother (Mother) who is his conservator and Mother's friend and advocate Julissa Pineda, represented Claimant. Claimant was not present for the hearing.

A Spanish language interpreter translated the proceedings.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 28, 2023.

ISSUES

1. Must HRC conduct a new psychological evaluation of Claimant?
2. Must HRC provide Claimant private or specialized transportation to and from medical appointments?

EVIDENCE RELIED UPON

Exhibits: 1-14 and A, C, D and E.

SUMMARY

Claimant requests funding for private or specialized transportation to medical appointments and a new psychological evaluation to determine whether Claimant has Autism Spectrum Disorder (ASD). HRC denied his requests because it asserts that generic resources are available to assist him with transportation for medical appointments and a new psychological evaluation is not needed but may be available from generic resources. For the reasons set forth below, Claimant's appeal for a new psychological evaluation is denied because available generic resources have not been exhausted and a new psychological evaluation is not necessary for Claimant to receive HRC services because he has already established eligibility. Claimant's request for

transportation assistance for medical appointments is denied in part based upon the evidence provided. However, a mobility assessment is ordered to further evaluate Claimant's need for specialized or private transportation which may not be covered by generic resources. The HRC is ordered to conduct the mobility evaluation and notify Claimant of its determination within 30 days of this decision.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a conserved 23-year-old developmentally disabled male eligible for HRC services based upon his diagnosis of Intellectual Disability (mild). Claimant also has diagnoses of Arthritis, Ankylosing Spondylitis and Schizophrenia. His mother is also concerned that he may have ASD.

2. Claimant requested HRC fund his transportation for medical appointments and a new psychological evaluation to rule out ASD. On June 23, 2023, HRC denied the requests. Claimant filed an appeal. All jurisdictional requirements have been met for this matter to proceed. Claimant is not participating in a Self Determination Plan (SDP).

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 and works full-time. 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 qualifies for 280.17 hours per month of In-Home Support Services (IHSS), 140 hours of personal assistance, and 30 hours of respite each month.

Claimant's Services and Supports

5. Claimant's Individual Program Plan (IPP) dated June 1, 2023 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 30 hours per month of respite, 140 hours per month of personal assistance, an Independent Living Skills (ILS) assessment, Get Safe safety and sexuality training, a behavioral services referral, and service coordination.

Request for Funding

6. Claimant requests funding for private transportation to and from medical appointments because of the long wait times associated with Access Services (Access), his behavior and mental health issues and his and his mother's experiences as passengers in an Access vehicle during an accident in November 2022 that resulted in

injuries to Claimant and his mother. Claimant has recovered from his injuries and was released by his physician in February of 2023. (Ex. A.) However, Claimant and his mother are fearful and reluctant to resume transportation with Access. There was no evidence that Claimant ever completed a mobility assessment to determine his ability to successfully use public transportation.

7. HRC denied Claimant's request based upon the availability and failure to exhaust generic resources including medical insurance and Access. HRC also reasoned that the risk of vehicle accidents is inherent to vehicle transportation and can occur with any mode of private or specialized transportation just as with Access.

8. HRC's Service Policy regarding "Transportation and Mobility Services" provides in relevant part:

Whenever feasible, [HRC] expects adults with a developmental disability who receive support for transportation to utilize public transportation or paratransit services (e.g. Access Service).

[HRC] may purchase transportation services under the following circumstances:

*The adult is not eligible to receive transportation services through the public school; and

*There has been a mobility assessment to determine the person's ability to travel (or be trained to travel) via:

Paratransit; or

Public transportation; or

Walking; or

Biking; or

Driving; and

*The purchase is for mobility/destination training and or use of the least restrictive/most independent option; or

*The mobility assessment indicates that the person cannot be trained to safely utilize any of the five options set forth above to access specific services identified in his or her IFSP/IPP and therefore specialized transportation services are required.

(Ex. 12.)

9. Claimant requested a new psychological evaluation to rule out ASD. HRC denied the request because it reasoned that the evaluation was unnecessary and generic resources were available. Claimant has been evaluated by HRC's psychologists in 2009, 2012 and 2016, and each time he was diagnosed with Intellectual Disability and is currently eligible for HRC services pursuant to that diagnosis. The evaluators did not find evidence of ASD and a diagnosis of ASD is not necessary for Claimant to receive services addressing his needs. In the May 4, 2012 assessment by Armando de Armas, Ph.D., the assessor wrote: "[a]t no time during the clinical interview or testing was there an indication of autistic spectrum disorder and no concerns about such were expressed by [Claimant's] parents or the referral source." (Ex. 9.)

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 "diagnosis," "evaluation," and "travel 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).) Code section 4646.5, subdivision (a)(7)(A) also provides for the development of a transportation access plan as part of a Consumer's IPP.

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, the preponderance of the evidence established that Claimant is already a consumer of HRC's services pursuant to his eligible diagnosis of Intellectual Disability and the addition of any other diagnoses is not necessary. Once Claimant is deemed eligible for services, the regional center is required to provide him with an IPP and appropriate services and supports pursuant to the provisions of the Code and applicable interpreting regulations. Furthermore, Claimant has been evaluated by HRC's psychologists on at least three occasions and ASD was not found. Additionally,

Claimant has access to generic resources such as medical insurance that have not been exhausted if he wants to further explore an ASD diagnosis. On this record, there is no evidence to support the need for a new psychological evaluation funding by HRC.

10. With respect to the request for specialized or private transportation, Claimant has not provided sufficient evidence he requires such transportation and that his needs cannot be met through generic resources such as Access. According to the HRC Policy, a mobility assessment is a preliminary step to determining that Claimant would require such services. There was no evidence that Claimant has been offered or completed such an assessment. Absent such an assessment or other evidence, there is insufficient evidence on this record, to require HRC to provide private or specialized transportation. However, there is sufficient evidence to order that a mobility assessment be offered to Claimant so that his request and need for such transportation may be fully explored in accordance with HRC's purchase of service policy and that the IPP team meet and develop a transportation access plan for Claimant.

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ORDER

1. Claimant's appeal is denied.
2. Harbor Regional Center shall conduct a mobility assessment, make a determination of Claimant's need, and notify claimant of its determination within 30 days of the date of this decision.

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.