

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

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

HARBOR REGIONAL CENTER,

Service Agency

OAH No. 2020010728

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 18, 2020, in Torrance, California.

Latrina Fanin, Manager of Rights and Quality Assurance, appeared for Harbor Regional Center (HRC or Service Agency). Claimant's father and conservator represented claimant, who was not present. Claimant's mother was present.¹

¹ Claimant's and family members' names are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 18, 2020.

ISSUE

Whether the Service Agency is required under the Lanterman Act to provide one-on-one protective supervision for claimant while she travels to and from and attends the College to Career (C2C) program at West Los Angeles College (WLAC).

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 15; claimant's exhibits B, C, D, F through J, L through P.

Testimony: Bjoern Petersen; claimant's father and guardian.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 22-year-old conserved woman, is an eligible consumer of HRC based on her diagnosis of autism spectrum disorder (ASD). Claimant has also been diagnosed with borderline intellectual functioning, language impairment, and attention deficit hyperactivity disorder (ADHD). (Ex. C.)

2. At claimant's most recent Individual Person-centered Plan (IPP)² meeting on November 26, 2019, her parents requested that HRC fund a one-to-one aide during her participation in the C2C Program at WLAC, and while she rides Access, a county paratransit service, to and from the program.

3. By a notice of proposed action letter dated December 11, 2019, Lisa Donald, claimant's service coordinator, notified claimant's parents that the Service Agency declined to fund the one-to-one aide. Ms. Donald wrote that:

we were unable to identify a need for [claimant] to have a 1:1 aide in an academic setting. Because [claimant] has yet to take full advantage of both [Department of Rehabilitation (DOR)]- and West Los Angeles College [Disabled Students Program and Services (DSPS)]-support services to further assess and support her needs, because of the absence of documentation indicating she requires 1:1 assistance in that setting, and because Harbor Regional Center is considered the payer of last resort, we are denying your request

2 For each regional center client, the Lanterman Act requires a person-centered "individual program plan," or "IPP." (Welf. & Inst. Code, § 4646.) HRC, rather than using the Lanterman Act term to describe the consumer's plan, refers to an "Individual Person-centered Plan," also abbreviated as "IPP." For purposes of this matter, the HRC terminology is deemed to be interchangeable with the Lanterman Act terminology.

(Ex. 2.) Ms. Donald cited, in support of the denial of funding, HRC's General Standards service policy and Welfare and Institutions Code sections 4512, subdivision (b), and 4659, subdivision (a)(1), as authority for its denial.

4. Claimant's father filed a Fair Hearing Request dated December 24, 2019. He wrote that claimant "was accepted because she demonstrated the C2C required level of independence," but that she had additional safety needs in a community setting, and DOR and WLAC would not fund an aide. (Ex. 1.)

Services Claimant Receives

5. According to claimant's most recent IPP, dated November 26, 2019, claimant resides at home with her parents; she has an older sister who lives elsewhere. She requires moderate prompting, reminding, and supervision for most of her self-care tasks. Claimant is talkative, friendly, organized, and responsible. Her parents want her to gain independent skills, attend college, learn a trade, and be able to provide for herself. The IPP states:

[Claimant] lacks safety and stranger awareness. She is very naïve and trusting and may get taken advantage of. She gets distracted and loses focus at home and in the community. . . . [She] has given personal information to unknown people such as through scam telephone calls. {She} receives 262 hours per month of IHSS with Protective Supervision. [She] is receiving approximately \$920 per month of SSI and she has medi-cal [*sic*]. . . . [¶] Parents report that they are overwhelmed with having to supervise [claimant] at all times. . . . Parents can't trust her to stay

home by herself. Parents report that she gets stuck in her thoughts often and she doesn't remember what she was doing or where she is. . . . Also, if parents don't tell her to eat or drink, she will not ask for food or a drink.

(Ex. 3, p. 2.)

6. HRC currently funds 90 hours of quarterly respite, provided by Cambrian Home Care, and funds for Access coupons so claimant can travel to and from WLAC safely. HRC also authorized funding for an Independent Living Skills (ILS) assessment, to gauge claimant's level of independence and of managing daily living activities. (Ex. 5, p. 11.) The ILS assessment has not yet been completed.

Service Claimant Has Requested

7. Claimant's IPP recites that claimant was recently accepted to the C2C program at WLAC and that her parents were requesting a one-on-one aide. "Parents feel that [claimant] needs prompting in class to stay on task and remain focused. She will need someone to help her navigate the campus [and] . . . needs someone with her for safety on campus as [claimant] will get distracted, lose focus, and get lost. . . . [She] does not have stranger or safety awareness. Parents would also like the aide to accompany her on Access to and from school." (Ex. 3, p. 7.)

8. Claimant's school psychologist for eight years, Janet Broady Allen, submitted a declaration dated February 3, 2020. Ms. Allen declared that she is a licensed educational psychologist, and that in her opinion claimant needs "protective supervision for her safety; prompting, reminding, focusing support; and direct modeling of tasks." (Ex. F.) Claimant's IEP's reflect that claimant had an aide or other close supervision at school. (Exs. G, H.) Her exit IEP recommended that she have adult

shadowing in college, and expressed the concern that she would regress if she were not appropriately supported. (Ex. J.)

9. C2C is a specialized two-to-four-year program leading to an Associate of Arts degree; the program provides opportunities to obtain vocational experience so students are marketable after completion of the program. The program's brochure states that, to qualify for the program, a person must be at least 18 years old, have identification, be a client of a regional center or DOR, be able to provide transportation, understand program materials independently, and respond to questions. All the students in claimant's classes have a regional center diagnosis, and all teachers in the program are skilled at instructing individuals with developmental disabilities.

10. Bjoern Petersen, a client service manager in the Children's Department at HRC and Ms. Donald's supervisor, testified that HRC denied claimant's request because claimant was able to attend the C2C program independently, and because C2C's program coordinator did not respond to HRC's attempts, in December 2019 and January 2020, to obtain information necessary to assess claimant's needs. On December 4, 2019, Ms. Donald gathered information about the C2C program's services and expectations, and about generic supports, i.e., DOR and WLAC's DSPS. She reviewed brochures and researched C2C on the internet, but no one at C2C returns her calls. Mr. Petersen testified that "the main barrier" to funding a one-to-one protective aide for claimant is HRC's inability to reach anyone at C2C to discuss claimant's needs and progress in the program.

11. HRC has a Service Policy that identified general standards for funding services. Those standards include a determination by HRC that the services will accomplish all or part of the consumer's IPP, a condition claimant has not met here due to C2C's failure to communicate with HRC. The Service Policy is consistent with the

Lanterman Act requirement that regional centers provide services to families based on an assessment of need. To perform that assessment, the regional center must obtain information from service providers and community partners with knowledge of the consumer's needs and the benefits the consumer derives from the services provided. (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) In this case, a one-to-one aide may not be appropriate, since the C2C program materials state that students in the program are expected to function independently. But without a discussion with C2C about claimant's participation in the program, HRC cannot make an informed determination of claimant's need for an aide in the context of the goals set forth in her IPP.

12. Mr. Petersen testified that HRC has determined that appropriate services for claimant include an ILS assessment and Applied Behavioral Analysis (ABA) services. Claimant is not currently receiving ABA services; she is eligible to receive funding for ABA services through her father's private insurance. Claimant lacks safety and stranger awareness. Mr. Petersen, who has a master's degree in psychology, testified that ABA services would be appropriate to address this deficit as would an ILS assessment and, if warranted, ILS services. A one-to-one aide, on the other hand, is typically provided by school districts to manage behaviors, or to provide instructional support and adaptive skills. The aide could also assist with prompting, reminding, and focusing the consumer, and for protective supervision, but that is appropriate in a school setting, not necessarily in college. Even at claimant's school district, claimant's one-to-one aide faded to a one-to-three aide. Also, an aide does not help the consumer cope with anxiety, integrate in the community, or develop independence skills. ABA services do. Finally, in contrast to a one-to-one aide, ABA is an evidence-based approach, which helps the regional center evaluate the effectiveness of the service.

13. Mr. Petersen testified that HRC has not received any progress reports from C2C. Claimant's father has reported to HRC that claimant has been attending the program since January 6, 2020, without an aide. She appears to be happy with the program, manages to attend classes and navigate the campus, has been using Access, and has not engaged in maladaptive behaviors.

14. The DOR developed an Independent Plan for Employment (IPE) for claimant, describing services to be provided to claimant by WLAC and DOR. The IPE also recommended that claimant receive "tailored day services through HRC." (Ex. 9, p. 6.) HRC did not review the IPE before denying claimant's request for an aide, because the IPE was not provided to HRC until after claimant's IPP meeting, and HRC was not invited to participate in the DOR planning process. Mr. Petersen finds value in the IPE, but argued that HRC is still obligated to obtain feedback from the service provider, C2C, in order to fully assess claimant's needs. He also testified that, though some regional centers offer tailored day services, HRC does not. Because HRC was not invited to participate in the December 2019 IPE, it could not discuss with the participants at the IPE the services it was prepared to provide.

15. Claimant's father testified that his daughter needs an aide for safety and to help her focus on daily activities, such as remembering to zip up her pants and go to the restroom before class. She does not need an aide to provide educational support, which is provided by WLAC. Claimant's father argued that HRC should provide an aide to address claimant's safety needs identified in the IPP, and as tailored day services recommended in the DOR's IPE.

16. Claimant's father believes claimant must have an aide to help her focus on tasks at hand, so she can succeed in the program. Without an aide, claimant's father argued, claimant will fail her exams and will regress. He offered in evidence a

pop quiz claimant took while at WLCA to show that claimant's concentration waivers; she answered only 10 of the 25 questions on the quiz, because she was not prompted. The single pop quiz, while relevant, is not, however, sufficient to allow HRC to assess claimant's needs and progress.

17. Claimant's father testified that C2C's program director always answers his email inquiries, even though she has not responded to HRC's inquiries. She has informed claimant's father that many students in the C2C program have aides provided by regional centers. As to claimant's progress, claimant's father is uncertain whether claimant has taken any other quizzes, and testified that she has missed only one or two classes since she began attending WLAC. Mr. Petersen testified that HRC cannot rely solely on a parent report to assess the effectiveness of a program. If it were warranted by progress reports from C2C, HRC might consider funding an aide, though that would be unusual, but HRC must first have the information necessary to assess claimant's service needs in light of her IPP.

DISCUSSION

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)³ An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of her request for funding a one-to-one aide to accompany her while she travels to and from

³ Further statutory references are to the Welfare and Institutions Code.

and participates in the C2C program at WLAC. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, she bears the burden of proving she is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove her case by a preponderance of the evidence. (Evid. Code, § 115.)

The Lanterman Act

3. The Lanterman Act acknowledges the state's responsibility to provide services 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 lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. 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. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. 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. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to “find innovative and economical methods of achieving the objectives” of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or “generic resource.” Regional centers are required to “. . . identify and pursue all possible sources of funding. . . .” (§ 4659, subd. (a).) The IPP process “shall ensure . . . [u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a)(2).) But if a service specified in a client’s IPP is not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

Services for Claimant

6. The Lanterman Act defines “services and supports” to include “community integration services,” ABA services, and ILS. (§ 4512, subd. (b).)

7. The Service Agency denied funding based on a lack of information sufficient to establish that the requested services are appropriate means to effectuate the goals set forth in claimant’s IPP, especially in light of the availability of an ILS assessment and the availability of a generic source of funding for ABA services, i.e., claimant’s father’s insurance carrier. (Factual Findings 3, 6, 10-14.)

8. Claimant did not establish that HRC must fund a one-on-one aide for claimant while she participates in the C2C program. The Service Agency reasonably expects that knowledgeable persons in the C2C program will make themselves available to discuss claimant’s service needs and her progress. Until that happens, HRC cannot assess whether an aide is appropriate under claimant’s IPP. Moreover, the ILS assessment will have some bearing on helping claimant achieve her IPP goals. And no

evidence was submitted on behalf of claimant to demonstrate any reason not to pursue an ABA assessment, which might result in services tailored to address claimant's parents' concerns.

LEGAL CONCLUSION

The evidence did not establish that the Service Agency is required under the Lanterman Act to provide one-on-one protective supervision for claimant while she travels to and from and attends the C2C program at WLAC.

ORDER

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN
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.