

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2020080200

DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 15, 2020, by telephone and video conference.

Claimant was not present, but was represented by Kevin Michele Finkelstein, Attorney at Law. Claimant's mother (Mother), was present.¹

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (Service Agency or HRC).

¹ Claimant and his mother are identified by titles to protect their privacy.

Oral and documentary evidence was received. The record was left open until September 18, 2020, for HRC to submit the completed Respite Needs Assessment Tool. The Respite Needs Assessment Tool was timely received, marked for identification as Exhibit 14, and admitted into evidence. Before the record closed, Claimant submitted a response to Exhibit 14, which was marked for identification as Exhibit J, and admitted into evidence. The record was closed, and the matter was submitted for decision on September 18, 2020.

ISSUES

1. Did HRC improperly deny Claimant an additional 12 hours per week of in-home respite services² (respite)?
2. Did HRC improperly deny Claimant 21 days of out-of-home respite?
3. Did HRC improperly deny Claimant an additional 40 hours per week of COVID-19 respite hours to fund a 1:1 aide to assist Claimant with distance learning?
4. Did HRC improperly deny funding for mental health therapy for Mother?

² In-home respite services consist of non-medical care and supervision provided in the individual's home to assist in maintaining the individual at home. Respite services are intended to attend to the person's basic self-help needs and other activities of daily living. They may include interaction, socialization, and continuation of daily routines ordinarily performed by family members.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-14; Claimant's exhibits A-J.

Testimonial: Bjoern Petersen, Client Services Manager, HRC; Claimant's Mother.

FACTUAL FINDINGS

Background Facts

1. Claimant is a 15-year-old regional center client whose eligibility for services is based upon a diagnosis of Autism Spectrum Disorder (ASD). He resides with Mother, who is his sole caregiver. Claimant is non-verbal, has a sensory processing disorder, and has Lennox-Gastaut syndrome, a rare, severe disorder characterized by recurrent seizures. He is dependent on prompts and requires assistance with the majority of activities of daily living. He is very active, has no sense of danger, and requires close supervision at all times. Claimant and Mother do not have any friends or family living nearby who can assist in providing care and supervision for Claimant.

2. Claimant received services through the North Los Angeles County Regional Center (NLACRC) prior to becoming a client of HRC in May 2020. He receives In-Home Supportive Services (IHSS) and Mother is his IHSS provider. The money Mother is paid is needed for their costs of living. Claimant receives Medi-Cal benefits and Supplemental Security Income (SSI).

3. Claimant attends special education classes through the Los Angeles Unified School District (District), but due to the COVID-19 pandemic, in-person classes are not being held. He has an Individualized Education Program (IEP). The most recent

IEP was prepared on June 18, 2020. Claimant is currently seeking funding from the District for a 1:1 aide.

4. Claimant's previous Individual Person-Centered Plan (IPP) was prepared on July 3, 2019, by NLACRC. At that time, NLACRC approved funding for respite care and for 21 hours of out-of-home respite. Claimant did not utilize any of the out-of-home respite hours approved by NLACRC.

Claimant's Requests to HRC

5. HRC funds 12 hours of respite per week for Claimant. HRC also funds 10 hours of COVID-19 respite per week for him due to the pandemic. Claimant requested that HRC fund an additional 24 hours of respite per week.³ Claimant also requested that HRC fund an additional 40 hours per week of COVID-19 respite. This would be used to fund a 1:1 aide to assist Claimant with his distance learning during the pandemic. In addition, Claimant requested that HRC fund 21 days of out of home respite.

6. Mother also requested that HRC fund mental health therapy for her. She is anxious, suffers from back problems, and is exhausted from lack of sleep and from caring for the extraordinary needs of her medically fragile child. Mother asserted that she needs time to care for herself in order to recharge and be the best parent to Claimant.

³ Mother originally sought an additional 12 hours of respite per week for Claimant, but subsequently decided an additional 24 hours of respite per week is needed.

Services Funded for Claimant

7. After Claimant and Mother moved to the HRC catchment area, HRC conducted an IPP meeting for Claimant on July 9, 2020. On July 14, 2020, HRC performed a needs assessment utilizing HRC's Respite Needs Assessment Tool (Assessment Tool). As part of HRC's assessment process, HRC considers self-care, behavioral, medical, and family support needs. HRC then assigns a point value ranging from 1 (low need) to 4 (exceptional need) for each of these categories and arrives at a total score which determines the number of respite hours that will be funded.

8. On the Assessment Tool, HRC rated Claimant's needs as 3/high for self-care; 3/high for behavioral; 4/exceptional for medical; and 2-3/intermediate-high for family support. This resulted in a total score of 12 to 13 points. A score of 11 to 12 points equates to a high level of need for respite hours, ranging from 31 to 40 respite hours per month. A score of 13 to 16 points equates to an exceptional level of need for respite hours, ranging from 41 plus hours per month.

9. Based on the needs assessment, HRC currently funds 48 hours per month (144 hours per quarter) of LVN respite and 25 hours per week of LVN personal assistance for Claimant provided by vendor Cambrian Homecare. Those hours are provided to allow Mother time to take care of her needs while Claimant is supervised. Personal assistance can also be used to take Claimant out into the community. HRC currently funds for an additional 10 hours per week of COVID-19 LVN respite services due to Claimant being home from school as a result of the pandemic. These hours also provide Mother with a break from Claimant's needs for constant care and supervision. These services equate to 7.9 hours per day.

10. Claimant also receives funding for IHSS Protective Supervision in the amount of 190 hours per month, which equates to 6.3 hours per day. Mother has chosen to provide care and supervision to Claimant as his IHSS provider due to pressing financial needs. However, IHSS hours may be used to pay for a caregiver other than Mother.

11. Services provided by HRC and IHSS equate to a total of 14.2 hours per day. Accordingly, only 9.8 hours each day are not covered by HRC and IHSS.

12. Claimant is likely to be eligible for Applied Behavioral Analysis (ABA) hours. HRC will make this determination once an assessment has been completed.

13. With regard to the request for 21 days of out-of-home respite, HRC would allow Mother to utilize some of the current in-home respite hours towards an out-of-home respite option. When available, out-of-home respite is provided through a licensed home and handled through HRC's Living Options Committee. This process requires diligent pre-planning due to limited availability of out-of-home placement options. HRC would allow Mother to set aside respite hours on a quarterly basis to use for out-of-home respite. If out-of-home respite is pre-planned, HRC would ensure the 21 days are covered for Claimant.

14. Mother seeks HRC funding for her own mental health therapy. Regional centers may fund services specifically aimed at supporting family members who do not have a developmental disability. However, funding mental health therapy for a parent who does not have a developmental disability would be unusual. Mother's mental health therapy would not be a specialized service directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation of an individual with a developmental disability. Therefore, it is not the

type of service recognized within the kinds of services and supports provided by a regional center. Moreover, Mother did not establish that she has explored generic resources for mental health services.

Notice of Proposed Action and Fair Hearing Request

15. On July 23, 2020, HRC issued a Notice of Proposed Action denying Claimant's request for an additional 24 hours of respite per week; an additional 40 hours per week of COVID-19 respite hours to be used for a 1:1 aide to assist Claimant with distance learning during the pandemic; 21 days of out of home respite; and funding for mental health services for Mother.

16. HRC's determination was based on its assessment of Claimant's needs, the level of services currently provided, the fact that Mother is not a regional center client, and the availability of generic resources.

17. Mother filed a timely fair hearing request and this hearing followed.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of an additional 24 hours per week of in-home respite services; 21 days of out-of-home respite; an additional 40 hours per week of COVID-19 respite hours to fund a 1:1 aide to assist Claimant with distance learning; and funding for mental health therapy for Mother is denied. (Factual Findings 1 through 17; Legal Conclusions 2 through 14.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing

following the Service Agency's denial of Claimant's requests, and therefore, jurisdiction for this appeal was established.

3. 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].) In a case where a party is seeking funding for services or items not previously approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for an increase in in-home respite hours, out of home respite, COVID-19 respite hours, and mental health services for Mother, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet his needs. Claimant has failed to meet his burden.

4. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, e.g., Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

5. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in

exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

6(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

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

[T]he 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, subdivision (a) provides:

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.

9. Claimant has not presented sufficient evidence at this time to establish that requiring HRC to fund the services sought would be a cost-effective use of public resources. Services currently provided by HRC and IHSS equate to a total of 14.2 hours per day. Only 9.8 hours each day are not already covered. The evidence presented does not establish that an increase in respite hours is warranted at this time. (Factual Findings 1-17.)

10. Given the foregoing, the Service Agency's denial of Claimant's requests is appropriate.

11. When making determinations to acquire services and supports for its consumers the service agency must conform to its purchase of service guidelines. (Welf. & Inst. Code § 4646.4, subd. (a)(1).) Pursuant to the Lanterman Act, the California Department of Developmental Services reviews the guidelines "to ensure compliance

with statute and regulation” prior to promulgation of the guidelines. (Welf. & Inst. Code § 4434, subd. (d).) The guidelines are deserving of deference because they reflect the service agency’s expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, guidelines the service agency promulgates must account for its consumers’ individual needs when making eligibility determinations for particular services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

12. As part of the IPP process, HRC appropriately considered the specific characteristics of Claimant’s developmental challenges in several domains, including Claimant’s self-care, behavioral, medical, and family support needs, and properly determined the number of hours of respite services per month needed to alleviate the constant demands and responsibility of caring for Claimant. In making that determination, HRC complied with the standards and requirements set out in its Respite Needs Assessment Tool.

13. Mother also requested that HRC fund mental health therapy services for her. Although regional centers provide funding for certain services specifically aimed at supporting family members who do not have a developmental disability, funding for therapy services for a parent or caregiver who does not have a developmental disability is not the kind of service and support provided by a regional center. It is not "a specialized service directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, and normal lives." (Welf. & Inst. Code § 4512, subd. (b).) Additionally, even if consideration for funding this type of family support were made, all generic resources are required to be explored before the regional center can provide funding.

(Welf. & Inst. Code § 4646.4.) Mother did not present evidence establishing that generic resources are unavailable to fund mental health services for her.

14. Claimant has not established by a preponderance of evidence that cause exists to order HRC to fund an additional 24 hours per week of in-home respite services; 21 days of out-of-home respite; an additional 40 hours per week of COVID-19 respite hours to fund a 1:1 aide to assist Claimant with distance learning; or mental health therapy for Mother, as set forth in Factual Findings 1 through 17 and Legal Conclusions 1 through 13.

ORDER

Claimant's appeal is denied.

DATE:

LAURIE R. PEARLMAN
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.