

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2022030086

DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 10, 2022.

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or Service Agency). Claimant was represented by his mother. (The names of Claimant and his family are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on May 10, 2022.

ISSUE

Should HRC be required to fund reimbursement for 1:1 support (e.g., college aide or therapist) provided to Claimant while at college (August 2021 through February 2022)?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 - 20, and Claimant's exhibits A - X. The testimonial evidence considered in this case was that of HRC Client Services Manager Erika Castillo and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 22-year-old male client of HRC. He qualifies for regional center services under diagnoses of Autism Spectrum Disorder (ASD) and Moderate Intellectual Disability (ID).
2. Claimant currently lives at home with his mother, father, and younger brother.
3. Claimant has difficulty coping with stress. When he is anxious, he engages in rocking or other self-stimulatory behaviors. He often engages in echolalia and loud vocal self-stimulatory behavior. Claimant communicates his needs in short phrases.

4. Claimant lacks safety awareness, and he requires constant supervision. He tends to wander off when he is out in the community, and he is unable to cross the street safely by himself.

5. Claimant does not maintain appropriate space boundaries with others, and he tends to bump into people when he is out in the community. He will run toward a stranger and try to touch him or her. However, Claimant's parents typically prevent him from engaging in this behavior.

6. Claimant is occasionally aggressive toward his mother, and he will hold her arm tightly, leaving bruises on her arm. Claimant previously would inappropriately touch his mother's breasts, but now rarely engages in inappropriate touching behavior toward his mother. Claimant is defiant and will sometimes try to instigate a fight.

7. Claimant needs frequent reminders and prompts to stay on task.

8. Claimant requires assistance and prompting with hygiene tasks. He is learning to use a trimmer. However, he shaved half of his head three to four times last year, and he also shaved off one of his eyebrows.

9. Claimant's mother is teaching him cooking skills at home. He can cut vegetables and choose spices, with some redirection. He is also able to use the oven with supervision. He does not yet use the stove.

10. Claimant receives 246 hours per month of In-home Supportive Services (IHSS). His mother is his IHSS provider.

11. Claimant's mother has completed her Applied Behavioral Analysis (ABA) credential classes, and she is a Board Certified Behavioral Analyst (BCBA).

12. From November 2020 through February 28, 2022, HRC funded 90 quarterly hours of respite care through Cambrian Homecare. From September 2020 through February 28, 2022, HRC funded ABA services, 10 hours per week of direct intervention and 10 hours per month of supervision and parent training, through Shabani Institute.

13. Claimant's Self Determination Program (SDP) was activated March 1, 2022.

14. During an August 18, 2021 Individualized Program Plan (IPP) meeting, Claimant's day program options were discussed and documented as follows:

[Claimant] obtained a certificate of completion and he exited the school system on July 30, 2021. His mother would like him to participate in a day program and she would like him to obtain part-time employment and work about 2 to 3 hours per day. [Claimant] has shown some interest and motivation to work. [Claimant] will also have the option to participate in a Day Program funded by HRC. He was recommended for four different day programs. . . . His mother may want to create an individualized day program for him once he starts the [SDP. His mother has explored his day program options, however, she is not sure if one of them would be the right program for him.

(Exhibit K, p. Z68.)

//

15. During the August 2021 IPP meeting, Claimant's employment program options were also discussed and documented as follows:

While in school, [Claimant] participated in the Southern California Regional Occupational Center (SCROC) work program before the current pandemic started. He worked in the cafeteria. He would clean the tables, emptying and loading [the] dish washer, help set up the salad bar. He also worked at Marshall's, where he would fold clothing, open boxes, and organize the inventory, among other tasks. He did well at his job in the cafeteria, however, he engaged in loud, repetitive verbal stems [*sic*] when he was working at Marshall's. He was so loud that he was disturbing the customers and he was not able to continue to work at Marshall's for that reason. His mother reported that being around a lot of people and loud noises in that environment may have triggered anxiety for him.

[Claimant] needs frequent reminders and prompts to stay on task. He is physically able to do many things. He cuts vegetables, assists with other cooking tasks, and engages in some gardening tasks. His mother would like him to be able to participate in a job for a least an hour shift per day. She is not sure if he would be able to tolerate more than that. His parents would like [Claimant] to participate in the customized employment program when a spot for him becomes available. This program will be added to his

budget for the [SDP]. We discussed the employment support that can be provided by HRC and the Department of Rehabilitation. [Service Coordinator] explained that HRC can work on helping him get a job and build the skills needed to get a job. However, [Service Coordinator] explained that if he needs a job coach, that will be funded by the Department of Rehabilitation. [Claimant] will be able to take the job preparation classes offered by HRC when he is ready.

(Exhibit K, p. Z68.)

16. The August 2021 IPP also documented:

[Claimant's] mother reported that he recently started a baking/cooking class at Long Beach Community College wherein his mother acts as his 1:1 aid in class. His class started on 8/30/2021. His class takes place part-time in person and part-time online. His mother would like to hire someone to assist him at Long Beach City College as a part of the [SDP.]

(Exhibit K, p. Z68.)

17. Claimant's target outcomes in his August 2021 IPP included: "[Claimant] will meet his goals that will be established in his day program and his customized employment program." The August 2021 IPP did not mention any request by Claimant for HRC funding of Long Beach City College expenses.

18. Beginning in August 2021, Claimant attended a baking class at Long Beach City College (LBCC). His mother acted as his 1:1 aide in class, providing behavioral management/redirection, academic support (i.e., note taking), and lots of guidance, including hands on support, prompting, and checking for understanding. The professor also allowed Claimant to take breaks every 20 minutes. Due to his cognitive deficits, Claimant was unable to understand the books and the instruction, but he was able to learn some of the skills. Although Claimant's mother had informed HRC a few times during the semester that Claimant was participating in the LBCC class, she did not request HRC funding for LBCC expenses until January 2022.

19. On January 27, 2022, Claimant's mother requested HRC fund a 1:1 aide to provide Claimant support in his LBCC baking class 22 hours per week. HRC suggested funding for a caregiver through Cambrian Homecare or 24-Hour Home Care to provide Claimant support at LBCC and enable him to safely navigate through the college campus, but not for academic support. However, Claimant's mother declined these options, noting Claimant would require support from someone trained and experienced at managing his behaviors. She also noted she had consistently been unable to secure respite providers from Cambrian due to pandemic-related staff shortages. Claimant's mother was also unable to secure an ABA therapist through Shabani to serve as Claimant's 1:1 classroom aide. Shabani informed Claimant's mother their policies would not allow them to provide a therapist in the community to support Claimant at LBCC.

20. Claimant's mother noted LBCC's Disabled Students Program and Services (DSPS) was unable to provide 1:1 support to individuals with ASD because DSPS did not have staff trained to do so. At the time Claimant began his class at LBCC, the DSPS classroom aides assisted physically impaired students (e.g., hearing or vision impaired),

but the aides did not break down instruction for developmentally disabled students. However, Claimant's mother was allowed to provide Claimant classroom support. When Claimant's mother requested HRC funding on January 27, 2022, there was insufficient time to secure a new aide for Claimant from any source because LBCC classes were resuming the following week, the first week of February, and any new aide working in the classroom had to be approved by LBCC's DSPS, which takes about two weeks. Claimant's mother planned to continue serving as Claimant's classroom aide and to train the successor aide to work with him.

21. Claimant's mother requested HRC reimbursement for the time she served as Claimant's LBCC classroom aide, beginning August 2021. However, HRC declined to provide Claimant's mother reimbursement for being Claimant's 1:1 aide because her decision to fund/provide that service had been made outside the required IPP process.

22. On February 3, 2022, HRC sent Claimant a Notice of Proposed Action (NOPA), denying the request for funding of Claimant's LBCC expenses including a 1:1 classroom aide. Claimant's mother filed a Fair Hearing Request to appeal the denial.

23. Another IPP meeting was held in March 2022. The March 2022 IPP notes:

[Claimant's mother] wants [Claimant] to continue to participate in the baking class at [LBCC]. She would like him to obtain a baking certificate, which could take a couple more years. She would like him to use the skills he learns in the class at a job in the future. [Claimant] would not be able to successfully participate in the class without having someone there as his 1:1 aide. He requires intensive support. His mother is currently his 1:1 aide. However, she

hopes to find someone else who can act as his aide. Mother currently provides behavioral management/redirection for him in class. She has been implementing strategies suggested by the Shabani Institute. She also provides academic support (i.e. note taking) and lots of guidance, hands on support, redirection, prompting and checking for understanding.

(Exhibit 5, p. A35.)

24. HRC expressed doubts about Claimant's ability to obtain sufficient benefit from a college class as noted in the March 2022 IPP:

Even with extensive support, [Claimant] is likely not able to comprehend a majority of the material learned in the class. HRC does not recommend that [Claimant] participate in a college class at this time due to his limited ability to understand the material which is at a college level. Although there is some benefit as far as skill building, [Claimant] could more efficiently develop his skills in a day program, with Independent Living Skills training and or through a supported employment program.

(Exhibit 5, p. A35.)

//

//

25. HRC previously referred Claimant to several day programs, and in 2022, HRC referred him to Nick's Community. The March 2022 IPP notes:

Claimant was referred to Nick's Community day program with a partial work option on 1/28/2022. He was accepted into the program for full-time participation. Nick's Community was not able to offer [Claimant] a part-time option. [Claimant's mother] is looking for a part-time day program since he is currently enrolled in school.

(Exhibit 5, p. A37.)

26. Once Claimant's SDP was activated on March 1, 2022, he was able to fund his LBCC expenses through his SDP budget.

27. At the fair hearing, HRC reiterated its basis for denying retroactive funding for Claimant's mother to act as his LBCC classroom aide, noting the service was provided outside the IPP process.

28. HRC also noted it could not reimburse Claimant's mother for acting as a classroom aide because she is not vendored to provide services as a 1:1 aide or ABA therapist through HRC, nor is she employed by any agency vendored by HRC. HRC also disagreed that the college setting was a proper setting for Claimant due to his lack of safety awareness and the significant level of support he required. In April 2022, HRC discussed with Claimant's mother Claimant's possible participation in the College to Career (C2C) Program, which is a partnership between LBCC and HRC to provide academic support and independent living skills for participants to live on campus and take college classes. However, HRC determined Claimant did not meet the criteria for

that program, which included participants' ability to safely and independently navigate the college campus.

29. At the fair hearing, Claimant's mother explained she rejected the HRC recommended day programs, except Nick's Community offered in January 2022, because the day programs offered no skill acquisition activities. She approved of Nick's Community day program. However, Nick's Community could offer only a full-time (five days per week) program, and it could not accommodate Claimant's part-time schedule while he attends college two days per week. Claimant's mother plans to enroll him at Nick's Community full-time next year after he completes his college classes.

30. Claimant's mother conceded C2C is not the appropriate program for Claimant since he cannot listen and learn the instruction independently. However, Claimant's mother believes he can successfully complete his college classes with a 1:1 instructional aide to provide support in the classroom and to help him learn complex skills through repetition. Claimant's mother noted, with her support, Claimant successfully completed the LBCC baking course he took in Fall 2021. Claimant's mother would like Claimant to eventually obtain part-time employment, and she believes he needs to acquire a skill to obtain such employment.

31. Claimant's mother contends HRC should provide retroactive funding for her services because Claimant's ability to fund the services through his SDP was delayed 10 months. Claimant's mother took the SDP orientation in June 2021, but through no fault of either party, Claimant's SDP was not activated until March 2022.

//

//

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for this appeal was established.

2. 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].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In seeking funding reimbursement for Claimant's mother's service as a 1:1 classroom aide, Claimant bears the burden of proving by a preponderance of the evidence that the retroactive funding is required. Claimant has failed to meet his burden of proving he is entitled to the funding he seeks.

Relevant Provisions of the Lanterman Act

4. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPP. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

5. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

6. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

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

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the [IPP] 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 [IPP] participants, the effectiveness of each option in meeting the goals stated in the [IPP], and the cost-effectiveness of each option.

8. Welfare and Institutions Code section 4646, subdivision (d), provides:

[IPP's] shall be prepared jointly by the planning team.

Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

9. Welfare and Institutions Code section 4646.4 provides, in pertinent part:

(a) 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. . . , 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.

10. Welfare and Institutions Code section 4648, subdivision (a)(8), provides:

In order to achieve the stated objectives of a consumer's [IPP], the regional center shall conduct activities, including, but not limited to, all of the following: (a) Securing needed services and supports. [¶] . . . [¶] (8) Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Determination of Issue

11. Under the Lanterman Act, the process of creating an IPP requires collaboration of the parties. Pursuant to Welfare and Institutions Code section 4646, subdivision (d), decisions concerning the consumer's services and supports that are included in the consumer's IPP and purchased by the regional center must be made by agreement between the regional center representative and the consumer. In this case, Claimant's mother provided 1:1 aide services to Claimant without first obtaining HRC agreement to fund the services, and she sought reimbursement only after the services had been provided. Claimant cited no legal authority, under the Lanterman Act or its regulations, to require retroactive funding for the 1:1 services his mother provided.

12. Given the foregoing, HRC's denial of reimbursement for Claimant's mother's 1:1 aide services for Claimant's college class was appropriate.

ORDER

Claimant's appeal is denied. Harbor Regional Center's denial of reimbursement for Claimant's 1:1 support while at college (August 2021 through February 2022) is upheld.

DATE:

JULIE CABOS-OWEN

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.