

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

In the Matter of:

H.G.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2012120681

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 22 and 23, 2013, in Torrance.

H.G. (claimant) was not present for the hearing; she was represented by her mother, S.G.¹

Gigi Thompson, Manager, Rights Assurance, represented Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 23, 2012.

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¹ Initials and family titles are used to protect the privacy of claimant and her family.

ISSUES

1. Whether the Service Agency must retroactively fund additional caregiver hours for a time period commencing June 2, 2012, during which time claimant's mother, having suffered a broken wrist, was unable to care for claimant during claimant's physical therapy sessions.^{2,3}
2. Whether the Service Agency must assist claimant's mother in finding replacement caregivers.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 2-30; claimant's exhibits 201-221.

Testimony: D.G. (claimant's father), Sri Moedjono, M.D., Patricia Zalenski, R.N., Ed Swan; S.G. (claimant's mother).

FACTUAL FINDINGS

1. Claimant is a 15-year-old girl who is a consumer of HRC based on her qualifying diagnosis of Canavan's disease, a rare degenerative disorder that results in a condition similar to mental retardation due to developmental and neurological delays, as well as physical problems.
2. ALJ Nafarrete made the following findings, adopted herein, in a Decision issued in OAH No. 2010110781 on June 20, 2011, after a hearing involving claimant and HRC:
 1. . . . Claimant is blind, unable to move or walk, unable to sit up without help, and cannot feed or care for herself. While she can communicate in some manner, claimant is unable to talk. Claimant requires around-the-clock care

² Two other issues raised in claimant's Fair Hearing Request—whether the Service Agency must provide all of the funding for caregiver Nancy Mendez, to be paid through Cambrian Home Care, and whether the Service Agency must fund additional hours for caregivers to provide training to new caregivers—were precluded from consideration at this hearing because they are the subject of a writ proceeding currently pending in *Hannah G. v. The Office of Administrative Hearings and Harbor Regional Center*, Los Angeles County Superior Court, in Case No. BS138612, filed on July 26, 2012.

³ At the close of hearing, claimant amended her Fair Hearing Request to withdraw another issue—whether the Service Agency must have a registered nurse perform an assessment of claimant's current needs.

from a parent or caregiver for all of her daily living needs. Her parents are now separated. She lives at home with her mother during the week and visits her father during the weekends. . . .

2. Due to her disabilities and developmental delays, claimant has been a client of the Harbor Regional Center for a number of years and currently receives occupational therapy and 3,614 hours per year, or approximately 301 hours per month, of homemaker services through Cambrian Homecare (Cambrian). Cambrian employs and pays the caregivers who perform various services and supports for claimant at home and in the community as well as assist her mother in caring for claimant. In addition, claimant receives In-Home Supportive Services (IHSS) from Los Angeles County.

3. With the caregiver hours provided by the Service Agency, IHSS hours, and one-to-one school aide hours, claimant's mother has organized and arranged for 24-hour individual care for her daughter at home and at school. The mother has retained one long-standing full-time caregiver, Vivian Mendez, who cares for claimant for approximately 30 to 40 hours per week at home and is also paid to act as a one-to-one aide for claimant at school. For the remaining hours during the week, claimant's mother has retained other caregivers who have worked in her home for different periods of time. For the most part, the caregivers have been paid by Cambrian and another home care agency.

4. Over the years, claimant and the Service Agency have been involved in a number of fair hearings regarding the number of caregiver hours that should be provided to claimant, the salaries and employment benefits that should be given to the caregivers, the difficulties that claimant's mother has had in retaining caregivers, and the requests for other services for claimant and her family. Decisions in these prior cases include, in part, OAH Case Nos. L-2002090357, L-2004040211, and L-2006020675.

5. More recently, in OAH Case No. 2009091685, dated July 29, 2010, the caregiver service for claimant was changed from respite care to homemaker service care due to amendments to the Lanterman Developmental Disabilities Services Act (Lanterman Act) that, in part, limited respite hours to 90 hours per quarter. Moreover, the Service Agency's proposed action to reduce caregiver hours was, in part, upheld. Claimant's caregiver service hours were reduced by 850 hours from 4,465 hours per year to the current 3,614 hours per year based, in large part, upon the 850 hours of care and services provided to claimant during [the] school year by the school district, a generic resource that a regional center is required to take into consideration in providing services under the Lanterman Act. As noted in the Decision, caregiver hours or funding from

generic resources had increased for claimant, not only from the school district but also from IHSS, while the Service Agency's obligation to provide caregiver hours and funding had remained the same. At the time of the hearing in that Decision, claimant was receiving 283 hours per month of IHSS.

6. In early August 2010, the Service Agency informed claimant that the regional center would begin implementing the Decision in Case No. 2009091685 and authorized Cambrian to provide 336 homemakers service hours for August 2010 but did not agree to "a yearly authorization of the total number of hourly services." On September 29, 2010, the Service Agency prepared a support plan or schedule for the monthly utilization of the 3,614 hours of homemaker services for the next year. The Service Agency's support plan or schedule allowed for the provision of an average of 301 hours per month of homemaker services and did not include 27 hours for the year that were reserved for claimant to use as an "unplanned support need."

3. Claimant currently receives services under her Individual Program Plan (IPP) dated November 13, 2012, and under prior decisions in OAH cases establishing and setting limits on the number of annual or monthly hours of homemaker services through Cambrian Homecare (Cambrian) that the Service Agency must fund.

4. The November 2012 IPP reflects that S.G. "would like additional care hours due to her knee and wrist injuries." S.G. first informed the Service Agency of her broken wrist in an email dated June 21, 2012; a Consumer ID Note entered by Ed Swan, claimant's counselor at HRC, reads: "received email from mother today stating she fractured her wrist on 6/2. She has a cast and was told by her doctor that the treatment will be 8-12 weeks plus rehab. Mother asked that HRC increase [claimant's] care during [her] custody to 24/7 dating back to 6/2/12 because she cannot care for [claimant] by herself." (Ex. 211.) She specifically requested Service Agency authorization for training for feeding therapy, as her broken wrist prevented her from training a new caregiver. The Consumer ID Notes for June 22, 2012, reflect that Swan told also S.G. that:

a decision letter will be forthcoming next week – in response from [sic] mother's email requesting a decision letter and to request medical justification from mother's doctor with a photo that her wrist is fractured/in a cast – per her email. Mother will fax her doctor's note to HRC this afternoon. . . . Mother fractured her wrist on 6/2/12 and is wearing a cast – her second one. Mother is asking for retro hours of 2.5 hours per day of funding to the date of the fracture because she is unable to care for [claimant].

(Ex. 211.) Swan testified that S.G. informed him that she required additional support through August because of her wrist fracture. Subsequent Consumer ID Notes reflect that the Service Agency authorized a caregiver to receive a three-hour feeding training session.

5. Service Agency funding for caregivers for claimant has been limited by OAH decisions; the November 2012 IPP reflects that S.G. has to supplement caregivers' pay "due to the cut of hours per recent OAH judge's decision." (Ex. 3.) For the months of June through August 2012, claimant's hours for caregivers through Cambrian funded by the Service Agency were exhausted. Three of claimant's caregivers are Cambrian employees: Vivian, Nancy, and Andrea. The Service Agency's records reflect that:

a. For June 2012, the Service Agency was required to fund 209 hours for services through Cambrian, that Vivian worked 150.25 hours, leaving a balance of 58.75 hours available, and that S.G. was requesting that Nancy be paid through Cambrian for those 58.75 hours plus an additional 39.25 hours. In June 2012, accounting for hours funded by the school district and IHSS and hours funded through Cambrian, claimant spent 0.9 unfunded hours per day with S.G.

b. For July 2012, the Service Agency was required to fund 2269 hours for services through Cambrian, that Vivian worked 174.25 hours, leaving a balance of 94.75 hours available, and that S.G. was requesting that Nancy be paid through Cambrian for those 94.75 hours plus an additional 3.25 hours. In July 2012, accounting for hours funded by the school district and IHSS and hours funded through Cambrian, claimant spent 2.23 unfunded hours per day with S.G.

c. For August 2012, the Service Agency was required to fund 273 hours for services through Cambrian, that Vivian worked 180.5 hours, leaving a balance of 92.5 hours available, and that S.G. was requesting that Nancy be paid through Cambrian for those 92.5 hours plus an additional 5.5 hours. In August 2012, accounting for hours funded by the school district and IHSS and hours funded through Cambrian, claimant spent 1.83 unfunded hours per day with S.G. (Ex. 30.)

6. The November 2012 IPP reflects that S.G. and the Service Agency agreed that "HRC will continue to provide support and assistance as needed to help locate replacement caregivers." (Ex. 3.)⁴ Consumer ID Notes reflect that Swan, Moedjono, Zalenski and Program Manager Betty Tanius met on December 20, 2012 and discussed, among other things, S.G.'s request for help obtaining backup service providers: "A discussion started about putting in place a back up care giver system. Talk to AED about back up care givers from other companies." (Ex. 17, p. 6; Ex. 211, p. 16.)

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⁴ The IPP process was not completed in November 2012, as the Service Agency was arranging for a reassessment of claimant's needs by a team consisting of Sri Moedjono, M.D., and Patricia Zalenski, R.N. The team assessed claimant in December 2012 and determined that claimant's service needs had not changed.

7. Swan contacted vendors other than Cambrian to provide replacement caregivers in the event claimant's caregivers quit or did not appear for their shifts. He identified two vendors, Maxim Healthcare Services (Maxim) and 24 Hour Homecare, with available caregivers, and informed S.G. of the pertinent contact information.

8. For various reasons, S.G. found Maxim to be impracticable. S.G. has not contacted 24 Hour Homecare; Swan testified that that vendor is still available to provide caregivers for claimant.

9. On June 25, 2012, claimant's mother submitted to HRC a Fair Hearing Request on claimant's behalf. This hearing ensued. Although no formal notice of proposed action had issued, the jurisdictional requirements of the Lanterman Act are deemed satisfied as to the two issues that are the subject of this hearing. Each of those issues was addressed in the November 2012 IPP and subsequent communications between S.G. and the Service Agency.

Retroactive Caregiver Funding

10. When S.G.'s broken wrist prevented her from training caregivers in how to feed claimant, the Service Agency authorized caregiver training by a vendor. S.G. requested additional funding, and then retroactive funding, for caregivers replacing S.G. in assisting in the care of claimant. No authority was cited for the proposition that the Service Agency must provide additional funding, despite the limits on funding having been exhausted during the months in question, not because a vendor was unavailable and claimant's mother had to incur the expense of providing a substitute caregiver,⁵ but because claimant's mother, who is not a vendor, was not available to help the caregiver due to her own wrist injury.

Replacement Caregivers

11. S.G. has requested over the years that the Service Agency assist her in finding replacement caregivers she can call upon in the event a scheduled caregiver is unavailable to work. The Service Agency agreed to do so, as reflected in the November 2012 IPP, and identified two vendors that could provide replacement caregivers. Claimant's mother is dissatisfied with one of those agencies because a replacement caregiver did not appear when scheduled; she has not contacted the other vendor. S.G. testified that it is difficult to find reliable, stable replacement caregivers at the rates of pay offered, and that claimant requires time to adapt to new caregivers. S.G.'s frustration with the unreliability of certain individual caregivers and with the quality of caregivers available at the rate of pay funded by the Service Agency and IHSS is understandable. The Service Agency, however, is not obligated to provide particular individual caregivers; it is obligated to assist S.G. in finding vendors that can send caregivers under the terms of the IPP and at the approved rates of pay. S.G. also testified that

⁵ See, e.g., the September 28, 2012, decision in OAH Case No. 2012080057.

the Service Agency does not contact vendors for replacement caregivers when needed if the funding for the month has been exhausted; she would like the Service Agency to make the contact anyway, as the Service Agency is aware that she herself will pay for additional hours.

LEGAL CONCLUSIONS

1. Cause exists to deny claimant's appeal, as set forth in Factual Findings 1 through 11, and Legal Conclusions 2 through 7.

2. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.⁶) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) S.G. requested a fair hearing to appeal the denial of additional or retroactive funding for homemaker services while S.G. was incapacitated due to a broken wrist, and to appeal the manner in which the Service Agency attempted to fulfill its obligation to assist her in finding replacement caregivers. Jurisdiction in this case was thus established. (Factual Findings 1-11.)

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. Section 4512, subdivision (b), provides that the determination of which services and supports are necessary for each consumer are to be made through the IPP process,

on the basis of the needs and preferences of the consumer, or where 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

5. Section 4512, subdivision (e), defines "natural supports" as "personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships"

6. The Service Agency is not required to fund additional hours of homemaking services provided to claimant while S.G. was incapacitated due to a broken wrist. (Factual Findings 4, 5, 9, 10.)

⁶ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

7. The Service Agency is not required to provide additional funding for locating replacement caregivers; the Service Agency is obliged, however, as set forth in claimant's most recent IPP (Factual Finding 6-9, 11), to assist claimant's mother in identifying vendors who may be able to provide replacement caregivers when needed, even when there are no more funded hours available.

ORDER

The appeal by claimant Hannah G. is denied.

DATED: June 13, 2013


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.