

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

W.B.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013080779

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on November 12, 2013, in Torrance, California.

Santiago Zepeda-Ortiz, Program Manager, and Gigi Thompson represented the Harbor Regional Center (HRC or regional center or Service Agency).

J.B., Claimant's mother, and T.S., Claimant's co-conservator, represented Claimant W.B.¹

The matter was submitted on November 12, 2013.

ISSUE

The question in this matter is whether the Service Agency should fund for three hours per week of Independent Living Services (ILS) for Claimant in his home.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-10; Claimant's exhibits A-K.

Testimonial: Claudia DeMarco, HRC Associate Director; Claimant's mother, J.B., and Claimant's co-conservator, T.S.

¹ Initials have been used to protect the family's privacy.

FACTUAL FINDINGS

1. Claimant is a 19-year-old male who qualifies for regional center services based on a diagnosis of mild mental retardation and Down syndrome.

2. During the 2012-2013 school year, Claimant attended the Pathways Program through UCLA. HRC provided supported living services to Claimant for a portion of the school year because he needed additional support. HRC terminated these services when Claimant completed the UCLA program and returned home. In May 2013, Claimant's mother requested that Claimant continue to receive ILS services at home. By letter dated August 9, 2013, HRC denied the request. The stated reason for the decision was that HRC thought that ILS would be a duplication of services, because Claimant attends a school transition program. HRC also noted that it was required to seek out all supports that are available and appropriate to meet Claimant's needs before it purchased services, and cited Welfare and Institutions Code section 4648.55.

3. Claimant's parents disagreed with HRC's decision and timely filed the instant fair hearing request.

4. Claimant's most recent Individual Family Service Plan (IFSP), dated March 5, 2013, noted that he still requires adult supervision, although he desires to be independent. The IFSP also noted that Claimant has "low danger awareness when in the community" and "he may wander away when in the community, if not supervised," and cited an incident where Claimant was lost for about 14 hours because he got on the wrong bus. The IFSP's "Desired Outcomes" include that Claimant "will learn to complete his self-care and manage money independently."

5. Claimant currently attends an adult transition program through Torrance Unified School District (TUSD). His schedule includes 30 minutes per week of cooking instruction, approximately two and three-quarter hours per week of community based instruction, and money management training.

6. Claudia DeMarco (DeMarco), HRC Associate Director, testified at the hearing. DeMarco was involved in the decision to deny ILS to Claimant. DeMarco opined that TUSD is providing a very comprehensive program for Claimant which includes varied, comprehensive goals. She explained that HRC's agreement to fund supported living services while Claimant attended UCLA last year was an exception because HRC wanted to ensure Claimant's success, and the school district was not able to provide additional supports. DeMarco further explained that the school district is responsible to provide transition services and education for Claimant, and that HRC is prohibited from purchasing services where the school district is receiving federal funds for that purpose. DeMarco concluded by noting that Claimant's family is responsible for reinforcing and practicing independent living skills with Claimant at home.

7. Claimant's co-conservator, T.S., testified at the hearing. She explained that HRC's denial of ILS was based on several factual errors and incorrect assumptions.

Although Claimant's current program appears to offer independent living skills training, in reality, Claimant is not receiving the training he needs. For example, although Claimant is scheduled to attend cooking instruction for two and a half hours per week, during that time Claimant attends classes at Southern California Regional Center (SCROC). Thus, he is only present for 30 minutes of cooking instruction, during which he is involved in serving food, but not meal preparation. It is very important for Claimant to learn meal preparation in order to maintain his health, and he is currently not receiving any instruction in that area. Claimant is also scheduled for 2.75 hours of community based instruction per week, during which time he is supposed to learn how to use public transportation such as the bus. Since August, he has only been on approximately four outings, to places such as the mall, Ikea, the theater, and the transit office. He is shuttled to these outings, and thus is not learning how to access public transportation. Claimant's family is particularly concerned because he recently had an incident where he took the wrong bus and was lost in an undesirable neighborhood in Los Angeles for 14 hours. Claimant wound up walking along the on-ramp to a very busy freeway, putting him in great danger. Claimant's family was eventually picked up by the police. Regarding money management, Claimant's current program includes giving him a five dollar weekly allowance, which is insufficient to teach him how to manage his finances. It does not address functional money management, such as teaching Claimant how to assess purchasing groceries, personal care, or household items. Claimant's family is currently paying out-of-pocket for him to receive three hours per week of ILS. He is learning important life skills such as when to re-order necessary medications, and other skills which are not duplicated in school. Claimant has shown great progress with the parent-funded ILS. Claimant's family wants him to not only maintain the skills he learned during the UCLA program, but also to acquire and expand his skills. During Claimant's most recent Individual Education Plan (IEP), dated November 5, 2013, at which HRC was present, Claimant's teacher expressed concern that the independent living skills he learned through the UCLA program are extinguishable, and need to be reinforced. (Ex. E.) Claimant's parents are actively involved in all of his activities to reinforce the skills that he learns, but they need additional help in teaching him new skills. T.S. pointed out that HRC had previously funded ILS training when Claimant was at UCLA, and there he received a lot more school-sponsored ILS training than he does in his current program. As established by the evidence and T.S.'s testimony, HRC also mischaracterized Claimant as only needing minor prompts to accomplish tasks. When Claimant's family visited him at UCLA, they observed that he put soap into the dryer when doing laundry, and he only cleaned when his roommates helped him. In sum, although the school program includes certain independent living goals, they are not being addressed or met.

8. Claimant's mother, J.B., also testified at the hearing. She currently is, and has worked as, a speech pathologist for 25 years with a public school district, and understands the school district's perspective. She opined that the school district has a limited number of hours in which to accomplish Claimant's goals, and that their standards are inadequate. She reiterated that when Claimant attended UCLA and received five to six hours per week of group ILS, HRC funded an additional three hours per week of one-to-one ILS because Claimant needed it. Claimant's mother emphasized that his family is trying to provide an environment to maintain and develop independent living skills, but for acquiring new skills, they need professional help. They have observed that the learning process is much more

effective when a professional gives the initial instruction, and his parents follow through. She also noted that Claimant needs more help considering he nearly had a fatal incident (being lost for 14 hours and walking along a busy freeway on-ramp) when on his own. Claimant has several medical conditions, high cholesterol, thyroid, and skin issues, which require that he eat a healthy diet. As such, Claimant needs to learn how to cook proper meals.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal and reverse HRC's decision to deny independent living services, as set forth in Factual Findings 1 through 8, and Legal Conclusions 2 through 5.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[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." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Welfare and Institutions Code section 4648.55 provides, in relevant part:

(a) A regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the individual program plan (IPP) planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption pursuant to subdivision (d). If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator,

may attend the individualized education program (IEP) planning team meeting.

[¶] . . . [¶]

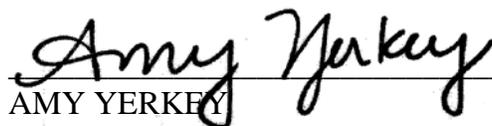
(d) An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption.

5. Given the foregoing, Claimant's appeal must be granted. The evidence supports granting an exemption under Section 4648.55, subdivision (d), because it established that Claimant needs more independent living skills training than is currently being provided through the school district. The ILS training that Claimant receives from the school district is not appropriate to meet his needs, as stated in Claimant's IFSP, and as demonstrated through the testimonial and documentary evidence.

ORDER

Claimant W.B.'s appeal is granted. Harbor Regional Center shall provide Claimant with three hours per week of independent living services.

DATED: November 25, 2013



AMY YERKEY
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.