

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

OAH No. 2013110670

HUNTER R.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on March 11, 2014, in Torrance, California. Hunter R. (claimant) was represented by Phillip Van Allsburg, Attorney-at-Law. Her maternal grandmother Diane B.¹ (grandmother) was present. Harbor Regional Center (Service Agency or HRC) was represented by Gigi Thompson, Rights Assurance Manager.

Oral and documentary evidence was received. The record was left open until March 28, 2014, to allow claimant to submit a closing brief and to allow HRC to file a response. Claimant's brief was received and was marked as Exhibit P for identification and admitted into evidence. HRC's response was received and was marked as Exhibit 20 for identification and admitted into evidence. The record was closed, and the matter was submitted for decision on March 28, 2014.

ISSUE

Should NLACRC be required to continue funding parent training services for claimant's grandmother?

¹ Claimant's and her family's surnames are omitted, and family titles are used throughout this Decision, in order to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 15-year-old (born 3/24/99) female client of the Service Agency who qualifies for regional center services under a diagnosis of Autism and Intellectual Disability in the moderate to severe range. She was diagnosed with agenesis of the corpus callosum² and hydrocephalus at birth. She has optic nerve hypoplasia and strabismus, as well as thyroid and adrenal insufficiency and a seizure disorder. She lives with her maternal grandmother, who is her legal guardian.

2. Claimant began receiving behavioral services in October 2000, through Steve Kaufman and Associates. These services continued until May 2001. In September 2009, behavioral services were re-initiated and were provided by Family Behavioral Services (FBS) through January 2010.

3. On July 31, 2012, a Functional Behavioral Assessment (FBA) was completed to assess claimant's needs in the home. The FBA was conducted by Rebecca Edgecumbe³, who identified two target behaviors: screaming behavior (consisting of non-verbal screaming or yelling) and non-compliance behavior (such as not engaging in a requested task, while verbally objecting to the request, yelling or screaming, and stomping her feet.) Ms. Edgecumbe noted that it is essential that grandmother "be an active participant in [behavioral services] to ensure that she acquires the recommended skills and strategies to address [claimant's] behavior, as well as to teach her new skills."

4. At claimant's Individual Family Service Plan (IFSP)⁴ meeting on November 28, 2012, HRC concluded that claimant and her grandmother would benefit from behavioral support, in the form of parent training, to address needs within the home. In December 2012, behavioral services were initiated to provide parent training. HRC agreed to fund ten hours per month for four months of parent training for grandmother to learn strategies to address these problematic behaviors through vendor Support and Treatment of Related Disorders (STAR.) Claimant was already receiving support from STAR through the school district. The plan was for grandmother to assist with, and practice teaching, self-help skills to claimant and for grandmother to redirect claimant's maladaptive behaviors by providing appropriate motivators and reinforcers.

5. On April 4, 2013, claimant's IFSP meeting was held. The IFSP included the goal of improving claimant's independent self-help skills to enable her to function more independently in her home. It was also noted that claimant "has a hard time with goodbyes

² Agenesis of the corpus callosum is a complete or partial absence of the band of white matter connecting the two hemispheres in the brain.

³ Ms. Edgecumbe is identified as Rebecca Asdel on certain documents.

⁴ HRC uses the designation IFSP instead of Individualized Program Plan (IPP), to which the Lanterman Act refers. However, any references to IPPs apply to HRC's IFSPs.

and these usually elicit tantrum behavior.” In April 2013, HRC consulted with STAR supervisor Mayu Fujiwara, who stated that after 40 hours of training, claimant continued to display inappropriate behaviors and that grandmother continued to need support in the home. HRC extended funding of the parent training for an additional four months, to run through August 31, 2013.

6. On August 1, 2013, HRC informed grandmother that ABA services would not continue beyond August. When grandmother notified HRC Counselor Cindy Fuentes that she was not in agreement with terminating the program, Ms. Fuentes set up a meeting with claimant’s therapists from STAR and with STAR’s Clinical Director, Faye Carter to assess claimant’s needs. In addition, in order to assist case management with service planning for claimant, on August 23, 2013, Jenna Mattingly, a behaviorist from HRC, observed claimant within the home during an ABA session. Claimant’s therapist from STAR, Dr. Carter, and claimant’s grandmother were also present. Ms. Mattingly noted that claimant did not engage in any maladaptive behaviors during the observation and that both STAR and her grandmother reported that such behavior had significantly decreased over the past several months and that claimant is able to be redirected. Although, Ms. Mattingly noted that the team may want to consider the appropriateness of continued ABA services for claimant and her grandmother, HRC determined that there were a few self-help tasks to be worked on and a few techniques that still needed to be addressed and extended funding for the program for an additional two months, to run through October 31, 2013.

7. HRC’s policies are approved by the California Department of Developmental Services. Its service policy regarding “Parent Training in Behavior Management” provides that, “When parent training in behavior management is provided, it should not exceed 40 hours over a period of 6 months.” (Exhibit 18.) This is a recommendation, but cases are looked at individually, based on a consumer’s level of need. In this case, claimant received over 100 hours over a period of nine months.

8. On November 1, 2013, HRC sent a letter to claimant’s grandmother informing her that claimant’s parent training program would terminate as of November 30, 2013. The letter noted that grandmother had received over 100 hours of parent training and HRC is “confident” that claimant’s grandmother has “learned the techniques necessary to help Hunter in her day to day activities.” The Service Agency’s decision to terminate services was based on claimant’s progress and the August 23, 2013 observation of claimant in her home by Ms. Mattingly.

9. On November 12, 2013, grandmother filed a timely Fair Hearing Request and this appeal ensued.

10. Dr. Carter testified at the hearing. She holds a Bachelor’s degree, a Master’s degree and a Ph.D. in Special Education. Dr. Carter recommended that HRC continue funding parent training for claimant’s grandmother. STAR provided progress reports quarterly or bi-annually to HRC, which showed that claimant demonstrated progress on identified goals. STAR’s most recent progress report covered the period from September

2013 through November 2013. (Exhibit 6.) Goal One was for claimant to learn and utilize negotiation strategy when denied access to a preferred item, activity or person, instead of engaging in maladaptive behaviors. Goal Two was for claimant to identify family members, community helpers/teachers, and strangers. Goal Three was for claimant to participate in the shopping routine. Goal Four was for claimant to create and manage her own schedule. Goal five was for claimant to participate in simple cooking tasks. Goal six was for claimant to complete the bathroom routine independently. And Goal Seven was for claimant to use coping strategies and functional communication in lieu of engaging in maladaptive, non-compliant behaviors. Each goal was to be met 80 percent of the time. As grandmother gained skills, and claimant “made a lot of progress,” STAR expanded claimant’s goals. Dr. Carter acknowledged that all new goals must be presented and approved by HRC before they are implemented, but she was “not aware” whether new goals instituted for claimant had been approved by HRC. The number 4 is the highest progress rating given to a caregiver, denoting “Caregiver implementing outside of session across multiple environments/routine.” Grandmother received the highest progress rating on goals one, two and six. Nine months after services began, Dr. Carter saw a “night and day difference.” Claimant’s “behaviors had dissipated significantly” and there was “tangible improvement.” Her “verbal protesting is relatively minimal” and her “behaviors are pretty well-managed.” Nevertheless, as of November 2013, Dr. Carter contended that claimant still continued to need and benefit from the services STAR provided. She has not seen claimant since November 2013, but claimant’s parent training services have continued pending the fair hearing process.

11. HRC Program Manager Adriana Taboada testified at the hearing. Prior to adding goals, a consultation must first take place with the Behavioral Services Review Team. After that, a vendor may seek Service Agency authorization to add these goals. This process was not followed by STAR for three of the seven goals identified for claimant on STAR’s most recent progress report, which covered the period from September 2013 through November 2013. (Exhibit 6.) Specifically, goals three, four and five on that progress report had not been authorized. These included participating in a shopping routine, creating and managing a schedule, and participating in simple cooking tasks. By November 30, 2013, Claimant’s grandmother had achieved the highest rating for the goals which had been approved for claimant (learn and utilize negotiation strategy; identify family members, community helpers/teachers, and strangers; complete the bathroom routine independently; and use coping strategies and functional communication, rather than maladaptive, non-compliant behaviors.)

12. Ms. Mattingly, a Board Certified Behavioral Analyst, testified at the hearing. In May 2013, she met with STAR employee Mayu Fujiwara after receiving the March 1, 2013 progress report, covering the period from December 2012 through February 2013. (Exhibit 9.) Ms. Mattingly expressed her concern that three of the goals in that report had not been previously authorized by HRC and did not seem suitable for claimant. These included creating a simple e-mail, answering the telephone and engaging in conversational exchanges. The initial intent was to provide a parent training program to give grandmother greater competence in dealing with her granddaughter and to enable her to teach claimant new skills. These three goals were not developmentally appropriate, were specific skills for

claimant to learn and were for behavior outside of the scope of the original assessment. Nevertheless, STAR did not delete these three goals and they appeared in STAR's June 1, 2013 progress report for claimant, which covered the period from March 2013 through May 2013. (Exhibit 8.) Two problem behaviors had initially been identified for claimant—screaming and non-compliance. When Ms. Mattingly observed claimant within the home during an ABA session on August 23, 2013, she did not see either behavior exhibited by claimant and grandmother did not report these behaviors to be either frequent or intense when they did occur. The goals of the ABA program have been accomplished and it is appropriate to terminate the parent training. There is no basis to support continued ABA given the lack of “interfering behavior.” Grandmother has now demonstrated a 75 to 80 percent mastery of all goals and is capable of continuing to teach claimant new skills in the least restrictive environment, without an in-home aide present in the home. Following Ms. Mattingly's observation of claimant within the home during the August 23, 2013 ABA session, she concluded that, “Given claimant's age, services should focus on increasing her adaptive living skills so that she is able to function more independently in her home. The team will need to determine the best services and supports to accomplish this goal.” (Exhibit 19.)

13. Claimant's grandmother testified at the hearing. Claimant has always lived with her and she has been her guardian since 2004. Grandmother had originally requested that HRC provide ABA services for her granddaughter, but she accepted parent training after HRC employees came to her home and explained that parent training was all that could be offered. Having STAR therapists in her home on a weekly basis is “very invasive” and she does want to end parent training at some point, but she sees it as a “necessary intrusion into the home” because she “wants to help [her granddaughter] manage.”

14. The totality of the evidence established that the two problem behaviors initially identified when parent training began (screaming and non-compliance) have significantly diminished and are neither frequent nor intense.

LEGAL CONCLUSIONS

1. Cause exists to deny claimant's appeal of the Service Agency's termination of funding for claimant's parent training program. (Factual Findings 1 through 14.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.)

3. In proposing to discontinue claimant's previously-funded parent training program, HRC bears the burden of proving by a preponderance of the evidence that the change in services is necessary. The Service Agency has met its burden of proof.

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

(a.); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (Welf. & Inst. Code, § 4502, subd. (a).); and “maximize opportunities and choices for living, working, learning and recreating in the community” (Welf. & Inst. Code, § 4640.7, subd. (a).).

5. A service agency “shall give highest preference to those services and supports . . . that allow all consumers to interact with persons without disabilities in positive, meaningful ways.” (Welf. & Inst. Code, § 4648, subd. (a)(1).)

6. Pursuant to Welfare and Institutions Code section 4512, subdivision (b), the “services and supports” which may be provided to a consumer include “training, education, . . . behavior training and behavior modification programs, . . . [and] social skills training. . . .”

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 provides, in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It 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.

9. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

10. 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.

11. Welfare and Institutions Code section 4686.2, subdivision (b)(1), states that regional centers shall "only purchase ABA services or intensive behavioral services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions."

12. Welfare and Institutions Code section 4686.2, subdivision (b)(4), states that regional centers shall "discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer's treatment goals and objectives . . . are achieved."

13. Welfare and Institutions Code section 4647, subdivision (a), states that service coordination shall include “monitoring implementation of the [IFSP] to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

14. Welfare and Institutions Code section 4686.2, subdivision (d)(1), defines “applied behavioral analysis” as “the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.”

15. HRC has established, by a preponderance of the evidence, that it is appropriate to terminate the parent training program. The service agency presented evidence sufficient to establish that the approved goals of the ABA program have been accomplished. The two problem behaviors identified when the parent training program began (screaming and non-compliance) have significantly diminished and are neither frequent nor intense. Sufficient evidence was presented to establish that grandmother has now demonstrated a 75 to 80 percent mastery of all approved goals and is capable of continuing to teach claimant new skills in the least restrictive environment, without an in-home aide present in the home. Additional goals were subsequently added to claimant’s parent training program by STAR. These goals (creating a simple e-mail, answering the telephone and engaging in conversational exchanges) had not been authorized by HRC, may not be developmentally appropriate for claimant, and fall outside of the scope of the original assessment. However, claimant’s IFSP goals include the general objective of improving claimant’s independent self-help skills so that she is able to function more independently in her home. (Exhibit 4, p. 3.) The Behavioral Services Team should meet in April or May 2014 to determine the best services and supports to accomplish this goal.

ORDERS

1. Harbor Regional Center’s denial of continued funding for claimant’s parent training program is upheld. Claimant’s appeal is denied.

2. The Behavioral Services Team shall meet by May 30, 2014, to determine the best services and supports to accomplish the IFSP goal of improving claimant’s independent self-help skills to enable her to function more independently in her home.

DATED: April 11, 2014

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.