

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A. H.,

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2014010447

DECISION

Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on February 21, 2014, in Los Angeles, California.

Claimant was represented by her parents. Gigi Thompson, Rights Assurance Manager, represented Harbor Regional Center (regional center).

Evidence was received and the matter was submitted for decision on February 21, 2014.

ISSUE

Should the regional center's decision to reduce insurance co-pay funding for claimant's applied behavioral analysis (ABA) service be affirmed?

FACTUAL FINDINGS

1. Claimant is a three-year-old boy who is a regional center consumer based on a diagnoses of autism. He has cognitive, social/emotional and adaptive delays. He also suffers from gross motor deficits.

2. Claimant attends Woodruff Elementary School in the Bellflower Unified School District where he has been found eligible for special education services. He is in school five

hours a day, five days a week. He receives speech and language services from the school district but does not receive behavioral services.

3. Claimant is receiving ABA services through Easter Seals. This service is funded by the family's primary insurance, Kaiser Permanente. Funding was originally approved through Kaiser for 30 hours per week. However, claimant's ABA hours were reduced to the current level of 10 hours per week.

4. In early 2013, claimant requested that the regional center provide funding for the family's required co-pay. The regional center agreed to provide the insurance co-pay in July 2013. Easter Seals began providing the ABA services in August and the regional center funded the family's co-pay for 10 hours per week of ABA (three sessions).

5. On December 23, 2013, Isabel Cuevas, claimant's counselor, met with the Executive Director and the Program Manager for HRC. During this meeting, this group decided to reduce claimant's co-pay funding from three sessions a week to two sessions per week.

6. On December 30, 2013, Ms. Cuevas informed claimant's mother by telephone of the regional center's decision to reduce the level of co-pay funding. During this telephone conversation, claimant's mother informed Ms. Cuevas she disagreed with this proposed reduction because claimant's behaviors and communication skills have worsened.

7. On January 7, 2014, the Program Manager, the Client's Rights Manager and Sabrina Spadavecchia, claimant's new counselor, met to discuss whether to send a "decision letter." This group decided against sending claimant a decision letter and directed Ms. Spadavecchia to personally deliver a Fair Hearing Request (in Spanish) form to claimant's mother. The Fair Hearing Request form was delivered on January 9, 2014, which was immediately completed and signed by claimant's mother.

8. The regional center did not send a Notice of Proposed Action or decision letter that would have explained the basis of its decision to reduce the co-pay funding.

9. At the hearing, the regional center submitted a "position paper" (Exhibit 1) delineating certain facts, citing various regulations and statutes of the Lanterman Act, and setting forth a detailed analysis and conclusion in support of its decision to reduce co-pay funding.

10. Claimant's parents do not speak English, and although they received Exhibit 1 prior to the hearing, they did not understand the contents of the document until the undersigned directed the hearing interpreter to verbally translate the document for claimant's parents.

11. (a) At the hearing, Barbara Maeser, Program Manager for the regional center, testified that she was not at the meeting when the decision was made to reduce the co-pay funding, and she was not completely clear as to the reasons for the decision.

(b) Ms. Maeser is not certified as a behavior analyst but she has experience reviewing behavioral progress reports. She testified that there was no formal meeting with claimant's parents before the revisions of the December 23, 2013 Individual Family Service Plan (IFSP). She also stated that the Easter Seals Progress Report notes that claimant has elopement issues. However, this concern is not stated in the IFSP. Ms. Maeser opined that claimant's counselor should have discussed the elopement issue with claimant's parents, but apparently did not do so.

(c) According to Ms. Maeser, the school district did not offer behavioral services. Further, the services that were provided weren't sufficient to meet claimant's needs. Ms. Maeser stated that there needs to be a clarification of goals to be addressed by the school district and the regional center. Finally, Ms. Maeser testified that claimant's parents could have been helped by their regional center counselor who could have attended and advocated for the family at claimant's Individualized Education Program meeting at the school. In addition, the regional center provides parents with free legal advice from a special education attorney to help families navigate through the special education process.

LEGAL CONCLUSIONS

1. In 1977, the California Legislature enacted the Lanterman Developmental Disabilities Services Act (the Lanterman Act) "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (See, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.). Under the Lanterman Act, the State of California has accepted responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4501.)

Legal Conclusions Regarding Notice of Action

2. Welfare and Institutions Code section 4710, subdivision (a), states in pertinent part "Adequate notice shall be sent to an applicant or recipient and the authorized representative, if any, by certified mail at least 30 days of the any of the following actions: (1) The agency makes a decision without the mutual consent of the service recipient or authorized representative to reduce, terminate, or change services set forth in the individual program plan." In this case, the regional center did not comply with section 4710, subdivision (a), based on the following:

- (a) The regional center made the decision to reduce co-pay funding on December 23, 2013, and informed claimant's mother by telephone of the reduction of services on December 30, 2013.

- (b) On January 9, 2014, pursuant to a regional center directive, claimant's new counselor personally delivered a Fair Hearing Request to claimant's mother, who completed and signed the form on the spot.
- (c) The first written notice (position paper) setting forth the basis for the co-pay reduction was received by the family a few days before the hearing. This document, which contained a complex analysis of the issue to be resolved in the hearing, was in English with no attached translation.
- (d) Upon the undersigned's determination that claimant's parents did not understand the contents of the position paper, he ordered the hearing interpreter to translate the document before beginning the hearing.

3. Cause exists to overrule the decision of the Harbor Regional Center reducing claimant's funding for insurance co-pay assistance, based on a failure to comply with the notice requirement of Welfare and Institutions Code section 4710, subdivision (a).

Legal Conclusions Regarding Insurance Co-Pay Assistance

4. Welfare and Institutions Code section 4659.1 provides that regional centers may, under certain circumstances, provide insurance co-payment assistance for ABA services. In order for a family to be eligible for this funding, the necessity for this service must be addressed in a consumer's Individual Program Plan (IPP) or in the IFSP.

5. There is no dispute that claimant is eligible for co-pay funding. The regional center contends that claimant's co-pay assistance should be reduced because many of the goals set forth in the Easter Seals Progress Report are educational goals and not regional center goals. The regional center recommended that claimant's family request that the school district hold an IEP in March and invite claimant's counselor to advocate for claimant and to request that the school district provide behavioral services for claimant to address claimant's behaviors such as manding, elopement, tantrums, phonemes and toileting.

6. The regional center did not present sufficient evidence to establish that claimant's funding for insurance co-pay for his approved ABA hours should be reduced. Claimant has significant behavioral problems and he is not currently receiving ABA services from the school district. Further, the record in this case has not been sufficiently developed to affirm the regional center's decision. As noted by Ms. Maeser, claimant's counselor needs to meet claimant's parents to obtain a greater understanding of claimant's current situation and behaviors and to inform the parents that she would be available to advocate for the family at the next IEP meeting. In addition, there must be a clarification of the goals to be addressed by the school district and the goals to be addressed by the regional center. Based on the record of this case, cause exists to overrule the determination of the regional center to reduce funding for insurance co-pay assistance.

ORDER

The decision of the Harbor Regional Center to reduce funding for insurance co-pay assistance to claimant is overruled. Claimant's appeal is granted.

Dated: March 5, 2014


HUMBERTO FLORES
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.