

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER

OAH No. 2014070629

DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on October 9, 2014, and November 17, 2014, in Torrance, California. Claimant was represented by his parents.¹ Harbor Regional Center (HRC or Service Agency) was represented by Gigi Thompson, Rights Assurance Manager.

Oral and documentary evidence was received. The record was left open until December 1 to enable the parties' to file written briefs. HRC's closing statement was received on December 1, 2014, and was marked as Exhibit V for identification. Claimant's Response to HRC's Position Paper was received on December 1, 2014, and was marked as Exhibit 50 for identification. Neither brief was admitted into evidence. The record was closed, and the matter was submitted for decision on December 1, 2014.

ISSUE

The parties agreed that the issues to be decided are:

1. Shall HRC be required to maintain the current level of behavioral supports in-home and at Social Vocational Services (Claimant's adult program)?

¹ Claimant's name is omitted throughout this Decision and family titles are used to protect his privacy.

2. Shall HRC be allowed to implement the fade-out plan recommended by provider Behavior and Education, Inc., as outlined in the decision letter dated July 3, 2014?

FACTUAL FINDINGS

1. Claimant is a 25-year-old male client of HRC, who is eligible for regional center services based upon a diagnosis of Mild Intellectual Disability. He lives with his parents and twin sister. Parents' goals for Claimant are to be as independent as possible with his daily living skills and personal hygiene routine, to have greater safety awareness in the community, and to continue to participate in employment and volunteer opportunities at his day program.

Social Vocational Services' Day Program

2. Since March 12, 2012, HRC has been funding Claimant's receipt of services at an adult day program, Social Vocational Services (SVS) in Torrance. He attends five days per week, for five-and-a-half hours per day. SVS-Torrance, termed an "Inclusion Center," is a social, recreational, and vocational day program for developmentally-disabled individuals. Attendees select clubs, which schedule activities for them. Claimant has successfully participated in the work club, cooking club, pool club, art club, bike club, bowling club, and computer club at SVS-Torrance.

3. Claimant exhibited problem behaviors at SVS, including non-compliance, physical and verbal aggression towards staff and other consumers, and eloping. SVS-Torrance does not have a behavioral component as part of its program. Claimant's parents were concerned that SVS staff were not documenting these behaviors.

Functional Behavior Assessment- May 2013

4. On May 8, 2013, Daniel Shabani, Ph.D., a board certified behavior analyst (BCBA) with the Shabani Institute, completed a Functional Behavior Assessment (FBA) of Complainant. Dr. Shabani noted non-compliant behaviors and recommended that behavioral strategies be introduced, with intense training and supervision provided by a BCBA. He recommended that the behavior plan be monitored and modified as necessary, based on the data. Dr. Shabani stated that the behavior plan would be most effective if all individuals who have significant contact with Claimant (e.g. parents, caregivers and day program staff) consistently follow the outlined procedures. (Exh. 30.)

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Behavior and Education, Inc.

5. On July 15, 2013, HRC began funding a vendor, Behavior and Education, Inc. (BAE), to provide focused behavior intervention services (BIS) at Claimant's day program, and in the home, for 12 hours per month, on a short-term basis. HRC does not typically fund an outside vendor to provide behavioral intervention at a day program. Generally, individuals who need such support would be placed in a day program that already has a behavioral component built into the program. However, Claimant's parents liked the setting, staff, services, other clients, and activities at SVS-Torrance, and wanted their son to remain there. Therefore, HRC made an exception to HRC's service model, and provided funding for BAE in order to enrich the day program environment, and to help the day program meet Claimant's needs. It was anticipated that provision of BAE training on a short-term basis would result in a permanently enhanced day program, after BAE's services ended. As a service exception, HRC funding for BAE's services was intended to be short-term, and would be reviewed frequently.

6. On March 24, 2014, SVS-Torrance Program Director, Leo Vasquez, and BAE Behaviorist, Jacob Walsh, BCBA, attended a meeting at HRC with regional center staff to discuss Claimant's progress. Claimant's parents were not in attendance. This is not unusual, as the regional center frequently meets with vendors on a regular basis to discuss the status of a program. Vasquez and Walsh agreed that Claimant's behavior plan was working and that Claimant had made substantial progress. Accordingly, Walsh was asked to develop a plan to gradually decrease the BAE program, and to bring it to an end, if Claimant's progress continued.

IFSP Meeting- July 2014

7a. On July 2, 2014, HRC held an Individual Family Service Plan (IFSP)² meeting with Complainant's parents and Walsh. They discussed the BIS and the trajectory of Claimant's program moving forward. Walsh stated that he had made good progress in training SVS-Torrance staff. Vasquez, and SVS Case Manager, Olivia Pena, had been receiving "specialized training" from Walsh to learn how to manage and sustain the program independently, without BAE's support. Based on HRC's review of progress reports prepared by BAE, and discussions with HRC's Behavior Services Team, HRC concluded that it would implement a fade plan for BIS. BAE concurred. At the meeting, HRC presented a fade-out plan by which BIS would be reduced, as follows:

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² 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.

- 12 hours a month, to continue through August 2, 2014
- 9 hours a month, effective August 3, 2014 - August 31, 2014
- 6 hours a month, effective September 1, 2014 – September 30, 2014
- 3 hours of consultation support a month, effective October 1, 2014, with services anticipated to end on October 31, 2014

7b. The fade-out plan could be adjusted if there were clinical justification and HRC's Behavior Services Team were to agree with the adjustment. The fade-out plan also would not prohibit SVS from requesting consultation from BAE in the future, if they felt circumstances warrant it.

7c. At the July 2, 2014 meeting, Claimant's parents expressed their opposition to implementation of the proposed fade-out plan.

Notice of Proposed Action

8. On July 3, 2014, HRC sent a notice of proposed action, containing this fade-out plan. On July 15, 2014, Claimant's parents filed a timely fair hearing request, and this matter ensued. Walsh has continued to provide BIS for 12 hours per month, consisting of nine hours per month of staff training at SVS, and 3 hours per month of in-home consultation for Complainant's parents. Services are being funded by HRC, as aid paid pending, during the pendency of this matter.

BAE and SVS Concur With Fade-Out Plan

9. Since July 2013, Walsh has worked with Claimant in the home and community, and at SVS-Torrance. Walsh's focus was to train the adult day program staff and Claimant's parents in behavioral management techniques; to increase Claimant's behavioral self-control; and to set up systems for documenting behavior and for communication between SVS staff and Claimant's parents. To achieve these goals, Walsh has been working with Claimant for nearly a year-and-a-half, has trained SVS staff to effectively re-direct his behaviors, and has provided parent consultation to further enhance the training they have received in the past, and to assist them in addressing Claimant's current needs. Walsh's current focus is maintenance of skills, observation, and supporting independence. He expects all program goals to be met by the end of 2014.

10. Vasquez directs the daily operation of the adult day program and oversees Claimant's behavioral services at the site. Vasquez concurs with HRC's plan to fade-out services. Vasquez feels confident that Claimant has benefitted from Walsh's services, and that he and other SVS staff now have the skills to carry out Claimant's behavioral plan and address his behavioral needs. As new staff is hired, Vasquez would be able to train them in these behavior management techniques. If a new behavior arose, or SVS staff were not implementing proper behavior management techniques, Vasquez would follow up with SVS's Regional Director and

with Claimant's HRC Counselor. Currently, Claimant has been making good progress and Vasquez has noted a decrease in the incidence of non-compliance or poor attitude by Claimant.

11. Lesley Rovelo, SVS's Regional Director, testified that she has read Claimant's SVS file, has observed Claimant and SVS staff over time, and has gotten feedback from Vasquez. Rovelo believes that SVS staff "got what was needed from [BAE] and are now "ready to apply the [behavior management] tools" they have been taught and can phase out BAE's services. Rovelo would continue to review Claimant's needs. After the phase-out of BAE, if Claimant were to exhibit new behaviors, or if SVS staff felt that they needed additional support to work with Claimant, Rovelo would revisit the need to bring in an outside behavioral consultant again. Also, Rovelo would consider adding more staff at the Torrance site, or moving Claimant to another SVS location, some of which have a behavioral consultant as part of their program design.

Parents' Testimony and Evidence

12. Claimant's parents assert that HRC should be required to maintain the current level of behavioral supports in Claimant's adult program and in-home until all individuals who have significant contact with Claimant meet and collaboratively determine appropriate behavioral goals and develop a transition plan.

13. Two incidents occurred in 2014 which caused concern. On March 25, 2014, Claimant struck a van driver with a closed fist when the driver insisted on seating a client next to Claimant in the transport van. Claimant got out of the van, ran down the street, and had to be returned to the vehicle by a bystander. On June 11, 2014, Claimant became upset and pushed his way out of the transport van while it was moving slowly. Afterwards, he stated that he was going to kill himself.

14. The June 11, 2014 incident was raised by Claimant's parents at the July 2, 2014 IFSP meeting. They contend that HRC failed to take this occurrence into consideration in recommending the fade-out plan. The parents believe that a new goal and strategy should be developed to address this new behavior.

15. As a result of the March 25, 2014 and June 11, 2014 incidents that occurred while Claimant was in transit, Claimant was transferred from contract transportation to transport provided by SVS.

16. Claimant's parents are also concerned that SVS staff changes negatively impact Claimant's progress. In September, 2014, Pena abruptly left her job as case manager at SVS-Torrance. On the way home from a scheduled fishing trip, Claimant threw a paper at the driver of his van, and then tried to elope when the van stopped at a red light. Claimant told Vasquez that his actions were due to the fact

that he did not have the chance to say goodbye to Pena. At the time of the hearing, SVS-Torrance was still in the process of hiring a new case manager.

17. Claimant's parents expressed concern with a perceived lack of collaboration with them in decision-making by HRC. They are concerned about the amount of staff turnover at SVS-Torrance, and the fact that a new SVS-Torrance Program Manager has not yet been hired. Some of the SVS staff have not yet received training from BAE, and the parents questioned whether Vasquez was equipped to train them, since he is not a professional behaviorist, as is Walsh. The parents contend that Claimant's behaviors have not been fully extinguished yet, and they suggest that BAE services should continue until Claimant has gone four to six months without exhibiting problem behaviors. Claimant's parents propose a more gradual fade-out plan, by which BIS would be decreased by one hour per month, in three-month increments. Once BIS has been reduced to five hours a month, Claimant's parents contend that it should remain at that level for the foreseeable future.

18. Claimant's parents would like to implement new in-home goals and transportation strategies for reducing incidents on the van. They contend that these new goals will necessitate that Walsh observe Claimant on the van, in the community, and at job locations, as compliance issues have developed in these locations. They contend that it is essential that a BCBA monitor and supervise the behavioral intervention plan.

BAE Progress Reports

19. Walsh prepared three progress reports, dated January 15, 2014; May 30, 2014; and September 24, 2014.

20. He identified three goals in the January 2014 progress report. The first goal addressed how SVS staff would provide daily information to the parents as to Claimant's behavior and its context. This first goal was fully met at the time of the progress report. The second goal concerned the use of priming and differential reinforcement by SVS staff, to teach Claimant to independently monitor and track his behavior at the day program. This second goal was fully met at the time of the January 2014 progress report. The third goal was to train SVS staff in behavioral methods and strategies, and in Complainant's behavior plan, and communication plan. Two steps of this third goal remained unmet at the time of the progress report. Walsh recommended that two additional goals be added. The first new goal was to have SVS staff develop and implement club-specific goals related to Claimant's work-readiness. The second new goal was to have SVS staff communicate Claimant's progress on work-readiness goals to his parents on a weekly basis.

21. It was HRC's understanding that the primary focus of the BAE program would be to provide training to key SVS staff in order to address Claimant's

needs and learn the behavioral strategies and techniques needed to redirect Claimant so as to avoid potential behaviors. After receipt of Walsh's January 15, 2014 progress report, HRC became aware that the behavior program that had been implemented by BAE was not focused on Claimant and his behaviors. Although there was some focus on training staff on behavioral methods and strategies, the remaining steps in the third goal, and both new goals, were primarily focused on providing and refining communication tools between the program and Claimant's parents.

22. After HRC received Walsh's January 15, 2014 progress report, there was a meeting between HRC and its vendors to review the goals and the direction of the program. Walsh shifted his focus from training individual staff throughout the adult day program, to focusing on "training the trainers" (Vasquez and Pena), and staff working with Claimant in the community.

23. The May 30, 2014 progress report shows that, during this January through May 2014 reporting period, Claimant met all expectations with regard to his behavior, he followed directions, stayed calm, and remained on task. Two behavior escalations occurred in February 2014, while Claimant was off-site, in the community. No other behavior escalations were noted. In March and April 2014, Claimant was compliant and stayed calm and on task, 95 percent and 98 percent of the time, respectively. On those few occasions when he was not immediately compliant, he complied slowly or with complaints.

24. Walsh's latest progress report was dated September 24, 2014. The training goal had been met. Complainant was compliant 100 percent of the time during this period at SVS, except in July 2014. Five percent of the time in July, Complainant was either slow to comply, or complied with complaints. The June 2014 behavior escalation was noted. The communication goal was fully met in four areas. Two of the remaining areas were 77 percent completed. BCBA Guidelines consider goals met at 80 percent. Walsh felt that he had completed all the goals that were identified in the FBA. Aside from training Vasquez in a few details about completing a communication log, all program goals had been met, and the program had been completed.

LEGAL CONCLUSIONS

1. 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 Evidence Code sections 115 and 500.) Thus, in attempting to decrease Claimant's current level of behavioral supports and implement the proposed fade plan, HRC bears the burden of proving by a preponderance of the evidence that the change in services is appropriate to meet Claimant's needs, and the goals stated in Claimant's IFSP. HRC has met its burden.

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2. 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.

3. Welfare and Institutions Code section 4646, subdivision (a), provides:

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.

4. 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.

[¶] . . . [¶]

(5) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The individual program plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

5. 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.

[¶] . . . [¶]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is

satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.”

6. Pursuant to the Lanterman Act, an IPP must include a statement of the consumer's goals and objectives, based on the consumer's needs and preferences. Services provided a consumer must be effective in meeting the consumer's IPP goals, and there must be reasonable progress toward objectives.

7. According to Claimant's December 2013 IFSP, the purpose of having BAE provide BIS at his day program and in-home was to decrease Claimant's aggressive, non-compliant, and elopement behaviors. Claimant has made excellent progress in achieving these goals. The evidence established that the BIS provided by BAE have been effective in meeting Claimant's IFSP goals and objectives. After more than 14 months of BIS, Claimant has met nearly all identified program goals, and his targeted behaviors have markedly decreased. Given his progress, HRC, BAE, and SVS have determined that Claimant's needs can be met with implementation of the fade plan. No other expert has opined otherwise. Consequently, the proposed fade plan is appropriate to meet Claimant's needs.

8. The Lanterman Act requires that services be provided based on current needs, at the level necessary to meet those needs. Welfare and Institutions Code section 4686.2 provides that services should be discontinued when all treatment goals and objectives have been met. Claimant's identified needs have been met, as have treatment goals and objectives. SVS staff has been trained. SVS's program director received specialized training in order to provide on-going training to his staff to implement Claimant's behavioral plan, as needed. The family has received additional consultation to further enhance the training they have received in the past, and to assist them in addressing Claimant's current needs.

9. Claimant's parents propose a more gradual fade-out plan (i.e., decreasing BIS by one hour a month, in three month increments.) Once BIS has been reduced to five hours a month, Claimant's parents contend that it should remain at that level for the foreseeable future. Their proposal is not supported by expert testimony or clinical recommendation. While Claimant's parents are concerned about Claimant's possible regression due to SVS's staffing issues, and the fact that Vasquez is not a behaviorist, these concerns were not sufficient to establish that the fade-out plan would be detrimental to Claimant's progress.

10. Cause does not exist to require HRC to maintain the current level of behavioral supports for Claimant at SVS or in-home. (Factual Findings 1 through 24; Legal Conclusions 1 through 9.)

11. Cause exists to find that HRC may implement the fade-out plan recommended by BAE. (Factual Findings 1 through 24; Legal Conclusions 1 through 9.)

ORDERS

1. Harbor Regional Center is not required to maintain the current level of behavioral supports at Claimant's adult day program or in-home.

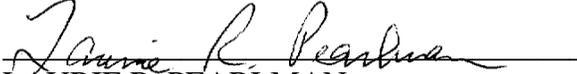
2. HRC may implement a fade-out plan of BIS by BAE, as follows:

- 12 hours a month, to continue through December 31, 2014
- 9 hours a month, effective January 1, 2015 – January 31, 2015
- 6 hours a month, effective February 1, 2015 – February 28, 2015
- 3 hours of consultation support a month, effective March 1, 2015
- Services are anticipated to end on March 31, 2015

3. This fade-out plan may be adjusted if there is clinical justification, and if HRC's Behavior Services Team agrees with the adjustment. The fade-out plan does not prohibit SVS from requesting consultation from BAE in the future, if they feel circumstances warrant it.

4. Claimant's appeal is denied.

DATED: December 15, 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.