

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Nos. 2012031044

CRESCENT H.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings (OAH), on July 23, 2012, in Torrance, California. Crescent H. (Claimant) was represented by Marianne Bowers, Claimant's authorized representative.¹ Claimant's mother, DeDe H. (mother) was also present. Harbor Regional Center (HRC or Service Agency) was represented by its Manager of Rights Assurance, Gigi Thompson.

Oral and documentary evidence was received. The record was left open in order for the parties to submit closing briefs. Claimant's closing brief was received and marked as exhibit 14 and HRC's closing brief was received and marked as exhibit T. The matter was submitted for decision on August 20, 2012.

ISSUE

The parties agreed that the issue to be decided is:

Should the Service Agency be allowed to reduce Claimant's Applied Behavior Analysis (ABA or Intensive Behavior Intervention (IBI)) hours from 12 hours per week of direct ABA therapy to 5 hours per week?

¹ Claimant's last name, and the names of her family members, are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is an 11-year-old female client of the Service Agency, diagnosed with seizure disorder, autism, and mental retardation. She resides with her parents and siblings.
2. Claimant is currently enrolled in a special day class at a public school (District). She receives 30 hours per week of direct ABA therapy funded by the District. The therapy is provided by CUSP and began June 2012.
3. Claimant is entering the seventh grade. She has a 1:1 aide at school.
4. Claimant's Fair Hearing Request was filed on March 13, 2012, three months before the District began funding 30 hours per week of direct ABA.
5. HRC began funding IBI for Claimant in 2004 and ABA in 2008, the later of which was provided by the entity named "Support and Treatment for Autism and Related Disorders" (STAR). Since December 2008, HRC has been funding 12 hours per week of 1:1 direct ABA through STAR.
6. In October 2009, HRC proposed discontinuing funding for ABA and proposed funding a parent training program instead. That proposal was not allowed based on the decision rendered in OAH case number 2009080933.
7. In September 2011, STAR recommended reducing Claimant's ABA from 12 hours per week to 5 hours per week. STAR recommended that Claimant's parents become more involved in training Claimant.
8. While Claimant has made progress with IBI and ABA therapy over the last seven years, it has been very slow. This is evidenced by the fact that Claimant's private insurance denied her request to fund ABA therapy based on a lack of progress over the past several years.
9. While mother does have the ability to train Claimant, it was established that as a parent, she is not always objective. That is, out of love, she sometimes performs the task for Claimant or uses too many prompts. It was not established that mother is competent at this time to take over the complete responsibility of training Claimant
10. STAR clinical director Faye Carter (Carter) opined that continuing to provide ABA to Claimant at 12 hours per week is not the best option. She believes that it is a "quality of life issue" and that Claimant would benefit from being with her peers more than merely doing ABA drills with a 1:1 instructor. Carter believes that Claimant would benefit more by attending "Mychal's

Place” (MP). Carter did express concern that a 3:1 ratio of staff to attendees may not be sufficient to meet Claimant’s needs. She recommended that a 1:1 support person, for a transitional period, be considered if Claimant attends MP.

11. The issue of Claimant attending MP was not initially discussed in HRC’s letter dated March 6, 2012, wherein HRC informed Claimant of the proposed reduction in funding for ABA.

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 Evid Code §§ 115 & 500.) Thus, in attempting to reduce the number of service hours funded for ABA therapy, HRC bears the burden of proving by a preponderance of the evidence that the reduction of hours is necessary because the present level of funding for ABA is not effective in meeting the goals stated in Claimant’s individual program plan (IPP).²
2. HRC did prove by a preponderance of the evidence that a reduction in the number of ABA therapy hours is warranted at this time.
3. 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.
(Emphasis added.)

4. Welfare and Institutions Code section 4646 provides, in part:

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

² HRC uses the designation IFSP instead of IPP. However, any subsequent references to IPPs apply to HRC’s IFSPs.

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.
(Emphasis added.)

5. 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 .

[¶] . . . [¶]

(4) 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 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.

(Emphasis added.)

6. 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." (Emphasis added.)

7. 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. Since beginning work with STAR in November 2008, Claimant has made progress with her ABA therapy, but it has been very slow.
8. Claimant presently receives a total of 42 hours per week of ABA therapy. While Claimant's school district may later reduce the level of funding for ABA it provides, the current level is what is relevant. That is, the school district presently funds 30 hours per week and HRC funds 12 hours per week. A reduction of seven hours per week equates to approximately 17 percent. While significant, it is not a level of reduction that is unreasonable, especially given that her progress with ABA has been very slow in general. Also, given the long period of time Claimant has received behavioral training, and the very

slow progress that has resulted, there appears to be little risk in attempting a new approach as HRC and STAR suggest. However, it is noted that HRC has not provided a written offer to Claimant regarding MP. Mother also raised some issues regarding whether or not Claimant would “fit in” at MP. While her concerns may ultimately result in MP not being appropriate for Claimant, after this long period of time with only IBI and ABA being utilized, and based on Ms. Carter’s opinion, an attempt at a different method is warranted.

ORDER

Harbor Regional Center may reduce funding from 12 hours per week of direct ABA to 5 hours per week of direct ABA after 60 days have passed from the date of this decision. In the interim, Harbor Regional Center shall immediately present a written offer concerning funding for Claimant to attend Mychal’s Place. If Claimant is dissatisfied with Harbor Regional Center’s offer regarding Mychal’s Place, she may file a Fair Hearing Request.

DATED: September ____, 2012

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Any appeal from the decision must be made to a court of competent jurisdiction.

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