

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014010896

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 10, 2014, in San Bernardino.

Leigh-Ann Pierce, Consumer Services Representative, represented Inland Regional Center (IRC).

Claimant's mother represented claimant.

The matter was submitted on March 10, 2014.

ISSUE

Should IRC be required to fund an increase in Applied Benefit Analysis (ABA) service hours for claimant from 12 hours to 24 hours per month?

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a thirty-three year-old male who is a consumer of regional center services on the basis of autism. He lives with his mother.

2. Claimant's mother requested a fair hearing to contest IRC's decision to not fund 24 hours of ABA service hours per month recommended by claimant's provider, Hope Counseling and Family Therapy, Inc. (Hope).

Current ABA Services

3. Claimant currently receives 12 hours of ABA services through Hope based on an October 9, 2013, assessment by Jamie L. Juarez, Executive Director and Clinical Supervisor at Hope.

4. Ms. Juarez performed an assessment of claimant based on a referral from IRC. Two assessment reports dated October 9, 2013, were submitted at the hearing. In the first assessment, Ms. Juarez recommended that 24 ABA service hours be provided to claimant. After receiving the first assessment report, Nalleli Trejo, claimant's Consumer Services Coordinator (CSC), sent Hope an e-mail dated November 20, 2013, and asked that Ms. Juarez prepare a second assessment report and reduce the 24 ABA hours to 12 hours. Both Hope reports are substantially the same except that, in the second assessment, Ms. Juarez changed the social interaction goal to a safety goal, she changed the benchmark dates, and she reduced the ABA hours from 24 to 12 hours per month.

5. Ms. Trejo's November 20, 2013, e-mail stated, in part, as follows:

Actually, I will need some change to be made to the report in order for it to be appropriate for [claimant]. The reason he is being referred to Hope is due to behavioral issues. The goal for money management is inappropriate. Also, the wording needs to be appropriate for an adult consumer. I know you work with mainly children so your template is geared towards kids but in this case it needs to be adjusted for an adult. The start of the report describes the behaviors that his mother reports she is having with him. The goals aren't geared towards those behaviors. There is one communication goal towards using alternative forms of communication (but this isn't addressed as a behavioral issue). A goal for appropriate boundaries and a goal for social interaction. [sic] Which appears to be an overlapping goals. From the description appear very similar in nature. [sic] A goal for money management, which is not related to his behavioral issues and a goal for compliance with requests. [sic] Per my supervisor, we are also limited to 12 hours of behavioral management per adult per month. We are unable to provide 24 hours. I'd like to get him started as soon as possible but need changes to be made to the report so that it better suits [claimant's] behavioral needs. I have also made his mother aware that changes need to be made. Thank you for all your help.

Claimant's Individual Program Plan

6. Pursuant to claimant's Individual Program Plan (IPP) dated December 20, 2013, IRC agreed to refer claimant to Hope to assess claimant's behavioral challenges. The IPP detailed claimant's behavioral challenges, including that he is non-compliant with his mother's requests; he has difficulty communicating because he will perseverate on ideas or desires and will interrupt conversations; and he gets very angry and frustrated when he is unable to communicate.

7. After this IPP, IRC referred claimant to Hope and Ms. Juarez completed her assessments. Ms. Juarez referenced that claimant's mother had concerns with claimant's social skills, communication, wandering off, and non-compliance. Ms. Juarez also noted that claimant's mother would like claimant to be able to function more independently in society and obtain a job. Ms. Juarez identified specific goals in both reports, described the ABA techniques that would be employed, and she identified the parent involvement needed to achieve these goals.

8. In Ms. Juarez's original October 9, 2013, assessment, the following goals with benchmark dates were identified:

Compliance with Requests

Under this goal category, [claimant] will comply with requests. Short term benchmark dates are identified as February 2014 through December 2014.

Appropriate Boundaries

Under this goal category, [claimant] will understand and respect other people's personal space and have appropriate boundaries. Short term benchmark dates are identified as February 2014 through December 2014.

Social Interactions

Under this category, [claimant] will be able to maintain eye contact and stay engaged in appropriate conversation while interacting with another person. Short term benchmark dates are identified as February 2014 through December 2014.

Practical Skills

Under this category, [claimant] will be able to identify and understand the value of money. Short term benchmark dates are identified as February 2014 through December 2014.

Communication

Under this category, [claimant] will utilize alternative forms of communication such as: letter board, writing, and typing to supplement his verbal communication. Short term benchmark dates are identified as February 2014 through December 2014.

9. The second October 9, 2013 report set the following goals:

Compliance with Requests

[Claimant] will comply with requests. Short term benchmark dates are identified as March 2014 through December 2014.

Appropriate Boundaries

Under this category, [claimant] will understand and respect other people's personal space and have appropriate boundaries. Short term benchmark dates are identified as March 2014 through December 2014.

Safety

Under this category, [claimant] will be able to remain where he is told so that his safety will be maintained. Short term benchmark dates are identified as March 2014 through December 2014.

Practical Living Skills

Under this category, [claimant] will be able to identify and understand the value of money so that he is able to function more independently in society and obtain a job. Short term benchmark dates are identified as March 2014 through December 2014.

Communication

Under this category, [claimant] will utilize alternative forms of communication such as: letter board, writing, and/or typing, to supplement his verbal communication. Short term benchmark dates are identified as March 2014 through December 2014

Request for Additional Behavior Services

10. IRC called Tamara Hathaway as a witness. Ms. Hathaway is the Program Manager at IRC. According to Ms. Hathaway, it has been difficult to ascertain from claimant's mother what claimant's problematic behaviors were. Ms. Hathaway said that Hope did the assessment to try to discern what behaviors claimant was exhibiting. Although Hope originally recommended 24 hours of ABA service per month, IRC recommended 12 hours per month because the 24 hours were not justified. Ms. Hathaway felt that there was a lack of evidence justifying the need for 24 hours. She said the 12 hours was authorized in order to see what was going on in the home.

Ms. Hathaway added that neither assessment described what claimant's mother's involvement would be. According to Ms. Hathaway, the assessment reports didn't state specifically how the behavior and the tools will work hand in hand to work through claimant's behaviors.

Ms. Hathaway also felt that Hope's identification of money management as a goal was not appropriate because money management is not a behavior.¹

On cross-examination, Ms. Hathaway acknowledged that there is no policy that limits ABA hours for adult consumers to 12 hours per month. She noted that 12 hours was identified because this is the amount of ABA hours most adults receive. She commented that Hope did not oppose recommending the 12 hours.

11. IRC also called Ms. Trejo as a witness. Ms. Trejo recognized that claimant has behavioral challenges. He refuses to follow instructions; he is noncompliant; he has emotional outbursts; he wanders; and he has obsessive-like behaviors and will call people over and over again. After his IPP, Ms. Trejo said she had a clearer picture of claimant, but that it was hard to get a clear picture of claimant from his mother.

12. Ms. Trejo said that she sent her November 20, 2013 e-mail to Hope after she talked to her supervisor, Ms. Hathaway. Ms. Hathaway agreed with Ms.

¹ Ms. Hathaway did not testify as an expert concerning ABA services. Her opinion is given little weight. It is noted that Mr. Juarez asserted in both October 9th assessments that the ability to "be able to identify and understand the value of money" is a behavior.

Trejo that the assessment did not describe claimant's behaviors and that his behaviors were not accurately recorded. Ms. Trejo also felt that a day program would be more appropriate for claimant. She attempted to refer claimant to a day program, but his mother resisted.

13. Claimant's mother testified. She believes that claimant needs a minimum of 24 hours of ABA service hours as Ms. Juarez initially recommended. She stated that claimant's behaviors are very bad. She noted that claimant is non-compliant with requests she makes, and that she is concerned for his safety because he wanders. Claimant also has difficulties with respecting the boundaries of others. Due to his problem behaviors, claimant was previously terminated from a day program. His mother is now reluctant to have him enroll in a day program because claimant does not tolerate change very well, and she wants to ensure the environment is safe for him.

14. Claimant's mother feels that claimant needs ABA services because of his troubling behaviors. She argued that IRC demanded, improperly, that Hope reduce the hours from 24 to 12, as documented in the e-mail Ms. Trejo sent. Claimant's mother testified that Hope staff member Allyson Kalfopoulos, who also received the email from Ms. Trejo, told her that Hope was required to amend the report after she received Ms. Trejo's email. Claimant's mother also argued that there is no policy that limits the number of ABA service hours to 12 hours, as asserted by Ms. Trejo in her e-mail.

Evaluation

15. The weight of the evidence established that claimant requires 24 hours of ABA services each month to assist in addressing his behavioral issues at home. Claimant is non-compliant with requests, he engages in inappropriate social interactions, and he wanders.

IRC improperly required that Hope reduce the recommended ABA hours from 24 to 12 hours per month; Hope reduced the recommended hours in response. This reduction was based on the incorrect assertion that adult consumers are limited to 12 hours of ABA services per month. There is nothing in the Lanterman Act, or in the record of this proceeding, to support this position. Since the hours were reduced due to IRC's incorrect assertion, and claimant has a clearly demonstrated need for such services, Ms. Juarez's original recommendation that claimant receive 24 hours of ABA services is accepted.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, the Legislature accepted the responsibility to provide for the needs of developmentally disabled individuals. It

recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. “Services and Supports for persons with disabilities” means:

Specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. (Welf. & Inst. Code, § 4512, subd. (b).)

3. 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.”

4. 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.”

5. Claimant has the burden of proof by a preponderance of the evidence to demonstrate that he requires at least 24 hours of ABA services each month. (Evid. Code, §§ 115, 500.)

6. Claimant demonstrated that he requires 24 hours monthly of ABA services to assist in addressing his behavioral problems.

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ORDER

Claimant's appeal is granted. IRC shall authorize 24 hours of ABA service hours for claimant.

DATED: March 24, 2014

_____/s/_____
ABRAHAM M. LEVY
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.