

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER

Service Agency.

OAH No. 2014120669

DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on February 24, 2015, in Napa, California.

G. Jack Bengé, Attorney at Law, represented North Bay Regional Center (NBRC).

There was no appearance by, or on behalf of, Claimant.

The record closed on February 24, 2015.

ISSUE

Is NBRC required to pay for the cost of engine and suspension repairs to the van that Claimant uses for transportation?

FACTUAL FINDINGS

1. Claimant executed a request for a fair hearing which she filed with NBRC on approximately December 16, 2014.
2. The hearing on Claimant's appeal was initially scheduled for January 5, 2015, and a notice of hearing was sent to the address listed on the fair hearing request

for Claimant and her mother. The hearing date was subsequently continued at the request of NBRC; it was re-set for February 24, 2015, and was re-noticed for that date.

3. The fair hearing request challenges NBRC's determination to deny Claimant's request to pay for engine and suspension repairs for the van Claimant uses for transportation. The van is equipped with a wheel chair lift that is necessary to permit Claimant to use the van.

4. On the noticed hearing date of February 24, 2015, neither Claimant nor anyone on her behalf, appeared. Accordingly, no evidence in support of the appeal was presented.

#### NBRC'S EVIDENCE

5. Claimant is a 23-year-old woman who qualifies for Lanterman Act<sup>1</sup> services as a result of her Cerebral Palsy and numerous related disabilities. She graduated from high school in 2010, and began studies at Solano Community College. She is now a student at the University of California, Davis. Claimant is non-ambulatory and uses a wheelchair for mobility.

6. In November 2014, Claimant submitted to NBRC an estimate in the amount of \$1,357.32, for the cost of repairs to the van's engine and suspension system. In a Notice of Action (NOA) dated November 11, 2014, NBRC advised Claimant that it

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<sup>1</sup>The Lanterman Developmental Disabilities Services Act (Act) is found at Welfare and Institutions Code section 4500 et. seq. All code references are to the Welfare and Institutions Code, unless otherwise indicated.

could not pay for these repairs to the van because the repairs "are unrelated to services or equipment needed for the alleviation of the client's developmental disability."<sup>2</sup>

7. Claimant's Individual Program Plan (IPP),<sup>3</sup> dated June 26, 2012, identifies her current social and educational and needs, and states that her mother will assist her with enrollment, course selection, note taking and transportation to and from her college classes. Deanna Heibel, the Associate Director of Client services, testified that a parent of a disabled child has the same care responsibilities as the parent of a child without disabilities, and here that obligation is to provide transportation.

8. Claimant's mother uses the van to transport Claimant to her college campus for classes. However, in 2012, as part of Claimant's IPP, NBRC paid \$2,073.25 to Mobility Systems, for maintenance and repairs to the wheelchair lift. Heibel testified NBRC also paid for an occupational therapist to make sure Claimant was able to use the wheelchair lift safely. Heibel testified that the van itself, without special modifications, is used because of the need for transportation, not because of the disability. Heibel testified that NBRC has a responsibility to pay for van modifications required by

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<sup>2</sup>The denial was based on Welfare and Institutions Code, section 4512, subdivision (b), and the North Bay Regional Center Procedures Manual, Procedure Memo 2301, section I, subdivision D, which provides: "Common items and services that are part of everyday living for all people are not purchased by North Bay Regional Center."

<sup>3</sup>The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer to implement her goals and objectives. (Welf. & Inst. Code §§ 4646, 4646.5, 4512, subd. (b).)

Claimant's disability, but this responsibility does not extend to repairs related to the operation of the van. Based on this distinction, NBRC issued the NOA denying Claimant's request to pay for van maintenance.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Act . The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. Pursuant to section 4512, subdivision (b), the Act states:

"Services and supports for persons with developmental 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. . . . Services and supports listed in the individual program plan may include . . . adaptive equipment and supplies.

3. In this case, the IPP provides that NBRC will pay for maintenance of the wheelchair lift that has been installed in the van for Claimant's benefit.

(Finding 8.) The wheel chair lift is “adaptive equipment” as contemplated by section 4512, and for which NBRC is responsible. (Findings 3 and 8.) However, repairs to the van itself are another matter.

4. When making determinations regarding the provision of services, a regional center shall consider “. . . the family’s responsibility for providing similar services and support for a minor child without disabilities. . .” (Welf. & Inst. Code §4646.4, subdivision (a)(4).) Even though the van at issue has been specially adapted to accommodate Claimant’s wheelchair, its use for transportation is the type of “service or support” that would be required for a person without a disability. (Legal Conclusion 3, Finding 7.) While NBRC has an obligation to pay for costs directly associated with the wheelchair lift, this obligation does not extend to repairs to the van itself. (Finding 8.)

## ORDER

Claimant’s appeal is denied.

DATED: March 5, 2015

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KIRK E. MILLER

Administrative Law Judge

Office of Administrative Hearings