

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018041075

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on June 6, 2018, in Los Angeles, California. Claimant was represented by his mother and authorized representative.¹ South Central Los Angeles Regional Center (Service Agency or SCLARC) was represented by its Fair Hearing Manager, Karmell Walker.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on June 6, 2018.

¹ Names are omitted throughout this Decision to protect the parties' privacy.

ISSUE

Should the Service Agency be required to purchase a vehicle for Claimant's parent?

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EVIDENCE

Documentary: Service Agency exhibits 1-10; Claimant's exhibits A - F.

Testimonial: Rocio Rodriguez, Service Coordinator; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 10-year-old male client of SCLARC who lives with his mother. He qualifies for regional center services under a diagnosis of Autism Spectrum Disorder.

2. According to Claimant's most recent Individual Program Plan (IPP), Claimant's disruptive behavior interferes with his social participation. He becomes easily anxious. He experiences outbursts consisting of crying or yelling. When he is agitated or frustrated, he will pace back and forth, and he sometimes hits himself in the face. However, "[p]hysical aggression never occurs. . . . Intentional destruction of property never occurs. Running/wandering away never occurs." (Exhibit 5, p. 9.)

3. Since Claimant qualified for regional center services in 2017, SCLARC has not funded any services for Claimant.

4. Claimant attends a public elementary school and receives special education services.

5. Claimant's mother has been a very involved and dedicated caregiver for Claimant. She has obtained services for Claimant, and she drives him to and from his various therapies and services. She has taken a six-week behavior intervention course, but she has not yet obtained in-home behavior intervention services through Claimant's medical insurance provider.

6. In April 2018, Claimant's mother advised SCLARC that the vehicle she used to transport Claimant was no longer working and that she did not have the funds to repair it or to purchase a new vehicle. She requested that SCLARC provide her funding to purchase a new vehicle.

7A. On April 12, 2018, the Service Agency sent Claimant's mother a Notice of Proposed Action (NOPA) informing her that it was denying her request to purchase a vehicle. The NOPA stated, in pertinent part:

[SCLARC's] Purchase of Service (POS) Funding Standards state that services and supports purchased by SCLARC must address the needs or problems associated with the individual's developmental disability. Additionally, generic, community resources must be explored prior to the provision of funding by the Regional Center. It is recommended that you contact the School District to inquire about transporting [Claimant] to and from school. You may also apply for ACCESS Transportation Services for transportation through the local community.

Your request for SCLARC to fund a new vehicle for your family is not a service or support directed at

alleviating [Claimant's] disability. Therefore, your request is being denied at this time. However, we are providing you with a list of generic resources that may be able to assist you in meeting these needs below.

(Exhibit 2.)

7B. The generic resources listed by SCLARC in its NOPA included: United Way 2-1-1; Make-A-Wish Greater Los Angeles; Catholic Charities; Cathedral of our Lady of the Angels Charities Program; and ACCESS Transportation Services.

8. Claimant's mother filed a fair hearing request on April 23, 2018.

9A. Claimant's mother testified credibly at the fair hearing. She noted that she is not asking for a luxury vehicle, but a reliable vehicle with air conditioning to drive Claimant to his appointments.

9B. Claimant's mother acknowledged that her cousin lent her his vehicle to drive to the fair hearing. However, when he cannot lend her his vehicle, she has no other means of transportation. She admitted that she could ask friends to drive her and Claimant to appointments, but she "do[es] not want to impose on anybody especially with [Claimant's] behavior, because they don't understand." She has received rides from a friend previously, but Claimant becomes uncomfortable and acts out, sometimes kicking the driver. Claimant's mother pointed out that, on long car rides, Claimant will scream, open the door, and try to get out of the vehicle. However, she admitted that this would occur in her vehicle as well. Nevertheless, she insisted that if SCLRC purchased a vehicle for her, "there can be modifications" and that she "do[es] not know what to do besides [using] a child lock."

9C. Claimant's mother observed that Claimant is uncomfortable using public transportation and ACCESS transportation and that he becomes very stressed and engages in self-stimulating behavior on the long drives. She also noted that, when she and Claimant used ACCESS previously, other passengers seemed bothered by Claimant's maladaptive behaviors.

9D. Claimant's mother has contacted the generic resources provided by SCLARC in the NOPA, but none of the organizations can fund or help her finance a vehicle.

9E. Claimant's mother would like SCLARC to make an "exception for [her] son."

10. SCLARC has suggested two options to assist Claimant in taking public transportation. The first option is for SCLARC to fund a personal assistant to help Claimant when he takes public transportation. However, Claimant's mother has not agreed to that option because she does not "feel comfortable" and she does not "know how the service works." The second option is for Claimant to receive Applied Behavioral Analysis (ABA) services to address maladaptive behaviors which make his transportation difficult and for SCLARC to fund co-payments. Claimant's mother has submitted an ABA funding request to Claimant's insurance provider, and he is on a wait list. She was unaware that she could contact Claimant's service coordinator to assist with the delay in obtaining ABA services.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of funding to purchase a vehicle for Claimant's mother is denied. (Factual Findings 1 through 10; Legal Conclusions 2 through 7.)

2. 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 and 500.) In seeking Service Agency funding for purchase of a vehicle, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Claimant has not met his burden.

3. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a)); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a)); “foster the developmental potential of the person” (Welf. & Inst. Code, § 4502, subd. (b)(1); and “maximize opportunities and choices for living, working, learning and recreating in the community” (Welf. & Inst. Code, § 4640.7, subd. (a)).

4. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).) Additionally, when purchasing services and supports, service agencies are required to ensure the “utilization of generic services and supports when appropriate,” and the “consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities.” (Welf. & Inst. Code §, 4646.4, subd. (a)(2) and (4).)

5. As defined in Welfare and Institutions Code section 4512, subdivision (b):

“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, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . adaptive equipment and supplies, . . . behavior training and behavior modification programs, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities.

6. Welfare and Institutions Code section 4648.35 provides for purchase of transportation services from a vendor in certain instances as follows:

At the time of development, review, or modification of a consumer's individual program plan (IPP) or individualized family service plan (IFSP), all of the following shall apply to a regional center:

(a) A regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.

(b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.

(c) A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor.

(d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child. (Emphasis added.)

7A. The Service Agency may be required to fund a minor child's transportation services in certain instances, as set forth in Welfare and Institutions Code section 4648.35, subdivision (d). However, the Service Agency must "fund the least expensive transportation modality that meets the consumer's needs" (Welf. & Inst. Code, § 4648.35, subd. (b)), and must also strive to utilize generic services and supports when appropriate and to consider the family's responsibility for providing similar services and supports for a minor child without disabilities. (Welf. & Inst. Code, § 4646.4, subd. (a)(2) and (4).)

7B. In this case, transportation is something that a parent must provide for a minor child without disabilities, and SCLARC was correct in first looking to

Claimant's parent to provide this support. However, given Claimant's mother's current lack of a vehicle, SCLARC sought to assist Claimant in obtaining transportation, and it appropriately looked to generic resources to address this need. Purchase of a vehicle for Claimant's mother is not a service required by the provisions of the Lanterman Act.

7C. Although generic resources are available, Claimant's maladaptive behaviors make use of those generic resources difficult. Consequently, SCLARC has suggested services envisioned by the Lanterman Act for addressing Claimant's behaviors in order to allow him to use public transportation or ACCESS.

7D. Given the foregoing, the Service Agency is not required to purchase a vehicle for Claimant's mother.

ORDER

South Central Los Angeles Regional Center's denial of funding to purchase a vehicle for Claimant's mother is upheld. Claimant's appeal is denied.

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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.

DATED:

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings