

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT,

and

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2020080275

DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 10, 2020.

Candace J. Hein, J.D., Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency). Claimant did not appear but was represented by her Mother and Father.¹

Oral and documentary evidence was received. The record was held open through September 11, 2020, so that each party could submit an additional document.

¹ Such titles will be used to preserve Claimant's privacy.

Claimant timely filed her further document, which is received as exhibit J. Service Agency timely filed a copy of service standards, received as exhibit 8.

Thereafter, the ALJ determined that some of Claimant's exhibits were not fully uploaded prior to the hearing. He therefore issued an order re-opening the record so that a short hearing could be held to clarify the state of the record. That hearing took place on October 15, 2020. Thereafter, the record was again closed and the matter submitted for decision on that date.

ISSUE PRESENTED

The issue in this case is whether the Service Agency should fund transportation for Claimant to go to various activities, 12 days per month.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant is a 29-year-old woman who receives services from WRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.² She is eligible for

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

services due to her Mild Intellectual Disability, which is related to her Downs Syndrome.

2. On July 21, 2020, WRC issued a Notice of Proposed Action (NOPA) which denied reimbursement for 12 days per month round trip transportation services on Access services for various extracurricular activities. It further denied five days per month round trip transportation to Born to Act Players (BTAP). (Ex. 2, p. 8.)³

3. On July 28, 2020, Claimant executed and submitted a Fair Hearing Request (FHR), and she designated her mother to represent her. In the FHR Claimant sought reimbursement for round trip Access or private auto driver for (first) 12 days per month various extracurricular activities and (second) for five days per month to BTAP. (Ex. 2, p. 6.) Attached to the FHR is a spread sheet, titled "2019- Work & Activity Summary-Dates." Three categories of activities are set out on the spreadsheet. Above a section titled "2019-Additional Career Opportunities: Filming-Performances-Speaking -Etc." a handwritten notation is found, stating: "* Note: these are the extracurricular activities I'm asking for." (*Id.*, p. 7.)

4. This proceeding ensued, all jurisdictional requirements having been met. It should be noted that during the hearing, WRC stated that it would continue to fund the BTAP classes and transportation to them. Thus, that issue raised in the NOPA and FHR was eliminated from the case.

³ The Service Agency exhibits are numbered. Their page numbers run consecutively through the exhibits. Thus, exhibit 2 comprises pages 5 through 10. Where the internal pagination of a document conflicts with the page numbering applied by WRC to its exhibits, the latter will be cited.

Claimant's Background and Activities

5. Claimant lives with her parents, in Manhattan Beach, California. She would like to move out when she turns 30, in mid-2021. She independently performs self-care tasks such as dressing, bathing, grooming and toileting. She can cook simple meals, and she completes light cleaning chores around the house. Claimant receives SSI benefits and Mother receives IHSS payments to assist Claimant.

6. Claimant leads a busy and active life, much of her activities being devoted to entertaining, and to advocating for people with disabilities. Until the Covid-19 pandemic, she was employed four days per week as a receptionist and office assistant at a foundation which promotes the interests of the entertainment industry.⁴ That employment was in the Westwood area of Los Angeles, approximately 19 miles from Claimant's home. (Ex. 5, Factual Finding 5.)

7. Claimant was attending the Performing Arts Studio West (PASW) program every Friday, as she has done for years, learning acting and singing. Due to the pandemic, she is attending the program remotely. (Ex. 6, p. 51.) Claimant goes to BATP in the San Fernando Valley on Saturdays. Although that enterprise is not a vendor, WRC has funded the program by reimbursing Mother for the costs, and it has supported transportation there.

8. Claimant hopes to work in the entertainment industry as an actress, and she has already garnered experience. She has appeared in television shows and film, as well as commercials and public service announcements. She has interviewed celebrities

⁴ Her employer has maintained Claimant's pay, at least as of the time of the hearing.

as a media correspondent. She also advocates for other people with disabilities, serving as a spokesperson and board member for organizations that bring attention and assistance to disabled people, including Special Olympics, and Best Buddies International. As an example of her activities, shortly before the hearing, Claimant went to Bakersfield to participate in filming a public service announcement for the State of California.

9. Claimant engages in other activities, such as swimming in the Special Olympics. She recently learned to ride a bike. She enjoys activities with her family, which includes three siblings.

Claimant's Transportation Needs

10. Claimant measures her transportation needs by the amount of events, classes, and performances she attends each month. She also includes her work as a receptionist as an event requiring transportation. In this case, her appeal is focused on transportation to activities other than her work in Westwood or to BTAP classes.

11. While the pandemic has curtailed some of Claimant's transportation needs—to go to her job and PSAW—she still goes to some events, auditions, and other activities. According to a chart generated by Mother, Claimant was involved in 57 such events from the beginning of 2020 through early September 2020, averaging seven events per month. (Ex. F-1.) Those events were categorized as "Additional Career Opportunities: Filming, Performances, Speaking, etc." Approximately two-thirds of the 57 total events were categorized as speaking engagements or appearances to represent organizations, including Best Buddies and Special Olympics. Eighteen of the 57 events discussed were classified as "acting/correspondent/performances."

12. Claimant's class attendance averaged seven days per month, typically four days per month for PASW, and three to five days per month for BTAP. Thus, even while not working as a receptionist, Claimant remained busy, her events and classes averaging 14 events per month.

13. Mother charted Claimant's mileage for 2019, showing that Claimant travelled nearly 19,000 miles that year, averaging over 1,657 miles per month. That amount did not include all of Claimant's total mileage. For example, the figure did not include travel for social activities or everyday activities like shopping or doctor's appointments.

14. In 2019, the monthly mileage for the work commute was approximately 448 miles, and trips to the San Fernando Valley to participate in BTAP was typically 240 miles. Thus, the work commute was approximately one-quarter of the monthly average in 2019. (Ex. F-2.)

Prior Decisions

15. Previously, there have been two Fair Hearings that have encompassed issues raised in this proceeding.

16. In February 2019, ALJ David Rosenman issued a decision after a fair hearing between Claimant and the Service Agency (Rosenman Decision). In that first matter, Claimant sought the full cost of dependable transportation by a third party, to and from work, or alternatively, reimbursement to Claimant's parents for the work commute. Further, Claimant sought full payment for transportation to her many events, either paid to a third party, or by reimbursement to Claimant's parents.

17. The Rosenman Decision found that in 2016, Claimant's Individual Program Plan (IPP) concluded that Claimant's community integration and participation could be enhanced through the use of public transportation services, and that generic transportation services were available. It was also determined at that time that Claimant would need mobility training, aides en route, or other supports to access public transport safely. (Ex. 4, p. 18.)

18. The Rosenman Decision ordered WRC to fund transportation for Claimant's work commute at the rate of \$29.45 per day for a maximum of \$690 per month. WRC was also ordered to conduct and complete a transportation assessment. WRC was further ordered to fund for Claimant's special events at the rate of \$2.75 per trip, for a maximum of 23 days per year. (Ex. 4, p. 26.)

19. On February 7, 2020, ALJ Jennifer M. Russell conducted a fair hearing between Claimant and WRC (Russell Decision). The issues presented in the Russell Decision were (1) whether WRC should continue to fund non-private transportation for Claimant's work commute or should it begin funding a private mode of transportation for the work commute, and (2) whether WRC should continue to reimburse for mileage costs at the rate of \$2.75 per round trip or if it should be required to reimburse mileage costs at a rate of 800 miles per month.

20. The Russell Decision was in favor of WRC, as it concluded that WRC was barred from paying for private transportation for Claimant to participate in her non-employment activities by section 4648.5. Judge Russell ordered WRC to continue funding a non-private mode of transportation, at a rate of \$29.45 per day, four days per week, and to reimburse mileage costs incurred in connection with extracurricular activities at the rate of \$2.75 per day, for 23 days per year. (Ex. 5, p. 44.)

The Activities at Issue

21. Much of the case turns on how Claimant's non-employment or school activities are characterized. The Service Agency deems the activities to be social-recreational activities or extracurricular activities. Claimant asserts that the activities amount to on-the-job training, or as a type of resume and contact building effort. Thus, Claimant asserts, if she appears at an event, or appears on television, that increases her skills and allows for the chance that she will come to the attention of others who might place her in a role or other position consonant with Claimant's long-term career goals.

22. The characterization placed on the activities by the Service Agency is the more accurate one. None of these activities listed on the attachment to the FHR are vendored services, a key issue in given the restrictions on transportation services. They are different from Claimant's employment, in part, because there is no evidence that Claimant is paid for many of the activities, and there is not the same structure as there is in Claimant's receptionist job. While the activities have an educational or training component, again, they are not provided by a vendor. That the activities may lead to other opportunities, whether paid or not, does not put them into the realm of services that are recognized by the Lanterman Act.

23. To the extent that the activities are a type of on-the-job training, Claimant is no different than any other person who would be an entertainer, dancer, musician, script or screen writer. Others similarly situated must go to auditions, and get work, paid or unpaid, that might improve their skills; to "hone their chops" as musicians sometimes say, while exposing their abilities to the marketplace. Others with aspirations like Claimant's must make the rounds of industry-related events, including parties, film openings, or concerts, hoping to make a connection that will lead to

paying work. Everyone one of those similarly situated people need transportation to such auditions, meetings, or industry-related events, musicians often burdened with taking instruments or other gear to events.

Other Matters

24. The Russell Decision notes that there were problems, because of Claimant's busy schedule, in completing the transportation assessment, and mobility training. Myriam Garcia, Program Manager, testified that Claimant's busy schedule had indeed conflicted with efforts to perform the transportation assessment and mobility training. Ms. Garcia also noted that WRC will not pay for private transportation for volunteer work

25. Claimant's mother is very concerned about Claimant's safety if Claimant uses public or other non-private transportation. She points to an incident that occurred when an Access driver placed his hand on Claimant, raising a legitimate concern. Safety training may be available to Claimant, if her schedule would allow it.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

General Rules Applicable to Resolving Service Disputes

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of

services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

3. The California Legislature enacted the Lanterman Act “to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.)

4. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

5. Regional centers must develop and implement IPP’s, which shall identify services and supports “on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of . . . the cost-effectiveness of each option” (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1), (2).) The IPP must be updated at least every three years. (§4646.5)

6. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible. (§ 4646; *ARC v. DDS, supra*, 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646; 4646.5, subd. (a)(1), (2) and (4); 4512, subd. (b), and 4648, subd. (a)(6)(E).)

7. Section 4512, subdivision (b), of the Lanterman Act states in part:

"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. . . . The determination of which services and supports are necessary 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy, . . . education, . . . behavior training and behavior modification programs, . . . respite, . . . social skills training, . . . *transportation services necessary to ensure delivery of services to persons with developmental disabilities. . . .*

(Emphasis added.)

8. Services provided must be cost effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many people and families.

9. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the disabled individual or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

10. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible" In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family, and an adult person with developmental disabilities to live as independently in the community as possible. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

11. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies." (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer's needs, it is plain that assessments must be made so that services can be properly provided in a cost-efficient manner.

12. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (2), 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, each regional center is to assist consumers and families

with services and supports that “maximize opportunities and choices for living, working, learning, and recreating in the community.”

13. Reliance on a fixed policy “is inconsistent with the Act’s stated purpose of providing services ‘sufficiently complete to meet the needs of each person with developmental disabilities.’ (§ 4501.)” (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer will be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at 388.)

14. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (Code § 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), and 4791).

15. Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those services and supports should foster “the developmental potential of the person and be directed toward the achievement of the most independent, productive and normal lives possible.” (Subd. (b)(1).) There is also a right to dignity, privacy and humane care. (Subd. (b)(2).) The person also has the right to make choices, including where and with whom they live, and the pursuit of their personal future. (Subd. (b)(10).)

Other Laws Applicable to this Case

16. Section 4512, subdivision (b), quoted in Legal Conclusion 7, provides one of the rules pertaining to transportation services. The emphasized part of the statute

provides that “transportation services [are those] necessary to ensure delivery of services to persons with developmental disabilities.”

17. Section 4648.5, subdivision (a)(2), suspends funding for social recreation activities, except for those activities vendored as community-based day programs.

18. Section 4648.35 provides:

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.

Dispositive Conclusions of Law

19. At bottom, Claimant is not seeking transportation to services provided to her by either the Service Agency or a generic provider, and thus her request clashes with the provision of section 4512, subdivision (b), quoted above. The activities tend to be "extracurricular," and are not employment. They are not on the job training in the usual sense; she is not acting as an apprentice in a supervised situation, as a new barber or cosmetologist would do in a hair salon or barbershop.

20. It appears that Claimant could learn to use public transportation for some of her activities, as indicated in her 2016 IPP. (Factual Finding 17.) It also appears that she has not modified her busy schedule to make time for the evaluation and training process that was set in motion by the Rosenman Decision.

21. Based on all the foregoing, Claimant's appeal must be denied.

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ORDER

Claimant's appeal is denied. The Service Agency shall continue to comply with the orders set out in the Rosenman and Russell Decisions.

DATE:

JOSEPH D. MONTOYA

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.