

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH Case No. 2016100348

DECISION

This matter came on regularly for hearing before Joy Redmon, Administrative Law Judge, Office of Administrative Hearings, on December 20, 2016, in Sacramento, California.

Claimant's Mother and Father¹ represented Claimant.

Robin Black, legal services manager, represented Alta California Regional Center (ACRC).

Oral and documentary evidence was received at the hearing. The record was closed and the matter submitted for decision on December 20, 2016.

ISSUE

Must ACRC reimburse claimant for mileage from his school-based program to Advance Kids and from Advance Kids to home, from the date parents requested transportation services through the date of hearing?

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¹ Names are not being used for claimant or mother and father to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a five-year-old boy eligible for regional center services based on a diagnosis of Autism.

2. Claimant lives with his parents, older brother, and younger sister. Claimant has significant behavioral issues including aggression and he requires constant supervision, including while traveling in a car. Parents use a three-point harness car seat for safety because claimant can unbuckle himself in a booster and has previously eloped. He also hits and kicks the back of the seat in front of him while traveling.

3. Claimant is eligible for special education services through his school district of residence, Folsom Cordova. He attends a school-based special day class program five days per week. Following school, from 1:30 p.m. through 5:00 p.m. each school day, claimant receives applied behavioral analysis (ABA) services at Advance Kids. Advance Kids is located outside Folsom Cordova's jurisdictional boundaries. The ABA services are funded by Kaiser. Claimant is eligible for round-trip transportation services to and from school from Folsom Cordova as part of his individualized education program (IEP). Parents requested Folsom Cordova transport claimant from his school program to Advance Kids and from Advance Kids to home daily. On July 29, 2016, Folsom Cordova sent parents a prior written notice² rejecting their request for transportation to and from Advance Kids.

4. On September 15, 2016, claimant's father sent an email to Dianne Kelley, claimant's service coordinator at ACRC requesting, among other things, daily transportation from school to Advance Kids and from Advance Kids home. Parents provided written documentation confirming they both work full-time outside the home and are unable to transport claimant between school and Advance Kids. Ms. Kelley consulted with her supervisor, Maria Byrne, regarding the requests but did not initially respond to father. On

² Prior written notice must be given when a local education agency refuses to initiate or change the identification, evaluation, or educational placement of the child or provision of a free appropriate public education to the child (including a request for services). (34 CFR § 300.503(a)(ii).)

September 27, 2016, a representative from Senator Jim Nielson's office contacted Ms. Kelley inquiring about a response to father's September 15th email. Later that day, Ms. Kelley sent an email response to claimant's parents. It states in relevant part:

Considering your belief that [claimant] would be better served at home rather than a center based program and the need for an adult to be present, we would like for you to consider daycare assistance. If you are agreeable to explore this option, we can start the daycare process. Once approved, [claimant's] daycare provider could be the responsible adult in the home after school. That would remedy the transportation issue as well as the need for an adult to be present.

The matter was not resolved to the family's satisfaction and claimant filed a fair hearing request on October 7, 2016. As of the time of hearing, claimant remains in his school-based and Advance Kids program.

5. Claimant's current Individual Program Plan (IPP), dated December 15, 2015, and amended August 15, 2016, contains goals for claimant to continue to live with his family; to maintain good physical, mental, and dental health; and for his parents to acquire basic ABA principles for parenting and learn how to apply the techniques in multiple environments. He has objectives incorporating components of his ABA services.

6. Parent's privately hired licensed daycare provider Georgie Balmediano to provide before school care and to transport claimant between school and Advance Kids. Ms. Balmediano charges \$90 per week (\$360 monthly). Claimant spends approximately five hours per week before school with Ms. Balmediano and it takes her approximately one hour to 90 minutes per day for the round trip transportation. Ms. Balmediano testified that she charges a flat rate of \$90 for up to 21 hours per week. She does not charge separately for transportation.

7. At hearing, mother testified that she has been off work on medical leave since approximately the end of September. She stated that she is unable to transport claimant due to medical appointments and self-care needs. Her driving was not medically

restricted. She anticipates returning to work in early January.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative “fair hearing” determining the parties’ rights and obligations, if any, is available under the Lanterman Act. (Welf. & Inst. Code, § 4710-4716.) Claimant requested a fair hearing to appeal ACRC’s denial of reimbursement for transportation services. The standard of proof in this case is preponderance of the evidence because no statute or regulation (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Claimant is asserting the right to reimbursement; therefore, he bears the burden of proof in this administrative hearing. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act gives regional centers, such as ACRC, a critical role in coordinating and delivering services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPP’s, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647 & 4648.)

4. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives. The statute defines services and supports for persons with developmental disabilities as “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.” Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process to systematically review the services and supports consumers receive to ensure that generic services and supports are used whenever appropriate.

5. Welfare and Institutions Code section 4648.35, subdivision (b), provides that 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. Subdivision (d) states that transportation services shall only be funded for a minor child living in the family residence if the family provides, “sufficient written documentation to the regional center that it is unable to provide transportation for the child.”

6. Even if transportation services are necessary to meet IPP goals, regional centers are not necessarily responsible for paying for the service. Welfare and Institutions Code section 4648, subdivision (a)(8,) mandates that regional center funds not be used to supplant the budget of any agency which has legal responsibility to serve all members of the general public and is receiving public funds for providing those services (such as school districts). Welfare and Institutions Code section 4659, subdivision (a)(1) and (2), require regional centers to identify and pursue all possible funding sources for consumers, including governmental and private.

7. The evidence established that during the time period at issue in this case (from the time of request through hearing), claimant required transportation services from his school-based program to Advance Kids to meet multiple IPP goals. The evidence did not establish that claimant required transportation from Advance Kids to home as parents picked him up each day.

8. ACRC asserted that the transportation issue was eliminated because claimant is scheduled to move to a home-based ABA program in January and transportation is unnecessary. That may be true; however, from September when the request was made to the time of hearing, claimant has not transitioned and is transported daily between his school and Advance Kids. ACRC argued that pending the transition it was incumbent on parents to fund transportation. ACRC presented no legal authority supporting the position that a consumer is required to fund an otherwise necessary service during the transition to

another program eliminating the service need.

9. Next, ACRC asserts that it is not required to reimburse claimant for transportation because parents did not exhaust other funding options, namely the school district and private insurance. ACRC notes that parents did not file for an administrative due process hearing against Folsom Cordova after the district sent a prior written notice to parents refusing to fund transportation services from school to Advance Care. ACRC provided no legal authority requiring a family to file a due process hearing request against their local school district for this option to be deemed exhausted. Alternatively, Ms. Kelley asserted that parents could take claimant's IEP to the school district within which Advance Kids is located and mother works. If that school district accepts claimant, it will be responsible for providing transportation services because the services will be provided within that district's geographic boundaries. That argument was unpersuasive. ACRC provided no legal authority establishing that another school district is required or willing to accept claimant. No legal authority was presented requiring a consumer to enroll outside of their home school district to fund services. The school district funding option is deemed exhausted in this case.

10. ACRC also argued that parents did not request transportation funding from Kaiser, the ABA program's funding source for claimant. While that is true, in this case the evidence did not support a finding that such a request was necessary. Ms. Byrne has worked at ACRC for over 17 years and has been a client services manager for over 13. She conceded on cross examination that she is unaware of Kaiser or any other medical insurance plan paying for transportation to and from insurance-funded ABA services. Additionally, Welfare and Institutions Code section 4659, subdivision (a), requires regional centers to "identify and pursue all possible sources of funding for consumers receiving regional center services." Ms. Kelly helped parents request services from Folsom Cordova but did not suggest or assist them to request Kaiser fund the transportation services. In light of Ms. Byrne's experience, it was likely not a viable option. The evidence established that parents exhausted all available funding options for transportation.

11. To be eligible for reimbursement, however, parents must establish that they provided "sufficient written documentation to the regional center that [they are] unable to

provide transportation for the child,” and that they incurred an expense for which they are requesting reimbursement. The evidence did not establish either in this case.

12. Parents initially informed ACRC that neither parent could transport claimant because they both worked full-time outside of the home. At hearing, however, mother testified that from late September (approximately a week after the request was made) through the time of hearing she has been on medical leave and not working. That fact was not provided to ACRC as part of its consideration regarding transportation. Mother was reluctant to disclose her medical condition to ACRC, which was understandable. That disclosure would not have been necessary to meet her burden of proof had she provided any medical evidence supporting her claim that she could not transport claimant due to her medical condition. Moreover, she disclosed that her physician did not restrict her driving.

13. Even had parents established that they could not transport claimant during the time at issue in this case, the evidence did not establish that they paid for transportation for which they seek reimbursement. Ms. Balmediano testified that she does not charge separately for transportation. She watches claimant for approximately one hour prior to him leaving for school each day. She testified that she charges the same flat rate for all children cared for up to 21 hours per week. Therefore, the evidence established that the amount paid to Ms. Balmediano was the same whether she transported claimant or not. Therefore, parents did not meet their burden establishing they paid for the services for which they seek reimbursement.

ORDER

Claimant’s mileage reimbursement request for transportation from his school-based program to Advance Kids is DENIED.

Dated: December 22, 2016

Joy Redmon
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)