

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2016120260

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 5, 2017, in Pomona, California. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC).

Claimant's mother represented claimant, who was present.¹ Claimant's mother had the assistance of a Spanish language interpreter.

ISSUE

Whether SGPRC is required to fund the purchase and installation of a wheelchair lift and other modifications to a van (van conversion) that claimant's mother intends to purchase to transport claimant, who is confined to a wheelchair.

¹ Names are not used in order to protect the privacy of claimant and her family.

FACTUAL FINDINGS

1. Claimant is an unconserved 23-year-old female who qualified for regional center services based on her diagnoses of moderate intellectual disability, cerebral palsy, and seizure disorder. She has also been diagnosed with congenital rubella syndrome, microcephaly and strabismus.

2. Claimant's mother requested that SGPRC fund a van conversion so that claimant's mother would no longer have to lift claimant into and out of her vehicle. Claimant cannot walk and is wheel-chair bound. Claimant's mother intends to replace her current vehicle, a 2007 Toyota Sienna, which has mechanical problems, with a newer model van, and she has requested that SGPRC pay for the cost of converting the van to accommodate claimant. Claimant's mother is not seeking any funds from SGPRC to pay for the van itself.

3. On October 31, 2016, SGRPC issued a Notice of Proposed Action (NOPA) denying claimant's mother's request to fund the van conversion. The NOPA stated that claimant has generic resources available to meet claimant's transportation needs, citing claimant's monthly Supplemental Security Income (SSI) payments and In-Home Support Services (IHSS) benefits as well as the availability of Access Services (Access), a government-funded van service providing curb-to-curb scheduled transport assistance. The NOPA predicated the denial on the SGPRC Purchase of Services Policy as well as on Welfare and Institutions Code section 4646.4, subdivision (2), which states that a regional center must utilize generic resources when appropriate.

4. Claimant timely filed this fair hearing request.

5. Claimant's mother testified at the hearing. Claimant is completely dependent on her mother, her primary caregiver, for all of her care needs, including hygiene, feeding, toileting, and grooming, and requires around-the-clock supervision and care. Claimant is nonverbal but can move her head to signal yes or no. Claimant

cannot walk, has limited movement in her arms and requires the use of a wheelchair. She needs assistance from her mother to navigate her wheelchair when she is out in the community. Claimant's mother uses a Hoyer lift, a mechanical lift provided by California Children's Services, to lift claimant at home. Claimant visits a neurologist and a dentist twice a year and sees her primary care physician on an as needed basis.

6. Claimant lives at home with her mother, the only adult in the house, along with two foster brothers, aged 15 and 16, and one foster sister, aged 8. None of claimant's foster siblings is disabled.

7. Claimant attends the Adult Development Center at Cole Vocational School (Cole Vocational) five days a week for six hours a day, 23 days per month. She is transported to and from school by Inmotion Transit, a transportation vendor funded by SGPRC. Claimant is picked up from her home at 9:30 a.m. and dropped off at home at 4:30 p.m.

8. Claimant's mother testified claimant receives \$530 per month in SSI benefits² and 280 hours per month (\$3,080) of IHSS. Claimant's mother is claimant's IHSS provider. Claimant's medical needs are covered through MediCal. Claimant's mother receives 30 hours per month of respite services. She also receives a total of \$2,205 per month (\$735 per child) for her care of her three foster children. She has no other source of income. Claimant's mother pays \$1,800 monthly towards the mortgage on her home and at least \$500 per month for food for her family. She could not quantify any of her other monthly expenses.

9. Claimant is unable to safely access public transportation due to the severity of her disability, and claimant's mother is responsible for providing claimant's

² The IPP states that claimant received SSI benefits of \$635 per month. No explanation for the discrepancy was provided.

transportation to claimant's medical appointments and all other outings. Claimant currently weighs 130 pounds, and her wheelchair weighs another 50 pounds. With her present vehicle, claimant's mother must lift claimant into and out of the vehicle's seat by herself. She has no one to assist her. Claimant's mother believes she burst an ovary as a result of lifting claimant, and her doctor has instructed her not to lift anything more than 20 to 25 pounds. Claimant's mother is worried that if she continues to lift claimant into the van she will injure herself and no one would then be available to take care of claimant.

10. Claimant's mother explained that the generic resources proposed by SGPRC are insufficient to meet claimant's transport needs. With regard to the Access transport service, claimant's mother has used the service a number of times and has found the service to be unreliable and difficult to coordinate with claimant's appointments. Access also is unable to provide transportation in emergency situations, and the service does not allow claimant's foster siblings to accompany claimant and claimant's mother in the van. As a result, the service cannot be used for family outings or when no one is available to take care of the other children, one of whom who is too young to stay by herself. The situation becomes particularly difficult if claimant's foster siblings are home on school vacation or if any of the children or claimant is home sick.

11. Claimant's mother does not believe that claimant's monthly SSI payment is enough to cover the cost of a van conversion. She also does not want to use claimant's IHSS benefits to hire an individual to assist with claimant's transport needs or to take care of claimant if claimant cannot accompany the rest of the family because those benefits are necessary to support the family financially.

12. According to claimant's mother, her current vehicle is not suitable for conversion. She intends to convert a newer van in better condition, but she has yet to decide on the model or when she will actually purchase the van. Her choice of vehicle is

not dependent on whether SGPRC agrees to fund the van conversion. She also has not determined how much a van conversion will cost for the particular van she purchases. Although she received one quote for a van conversion for a 2017 Toyota Sienna van in the amount of \$27,769 (Exhibit A), she is not sure she wants to purchase that particular vehicle and the quote does not make clear if it is applicable to any other vans or models.

13. Claimant's mother's difficulties in transporting claimant were noted in claimant's most recent Individual Program Plan (IPP), dated January 24, 2017. The IPP states in relevant part:

Mother reported that as of recent, they are unable to go out as a family, due to mother having difficulty carrying [claimant] in and out of the vehicle. Mother had previously requested a van ramp/lift, due to mother becoming injured. Mother reported that her ovary had burst, and was instructed by physician to not lift anything above 20 lbs. SC presented at Exceptional Service Review on 07/13/2016, and the request was denied. A Noticed [*sic*] of Proposed Action was mailed out to mother on 10/27/2016. Mother submitted an appeal and is currently awaiting a Mediation/Hearing date. As a consequence of mother's injury, she estimated they go out as a family 1-2 times per month. They enjoy going out to family gatherings and the beach. (Exhibit 8 at p. 3.)

However, the IPP does not address how to deal with claimant's mother's stated difficulties with transporting claimant and her siblings. Nor does the IPP identify any goals, desired outcomes or tasks with respect to the mother's desire to include claimant

on family outings or consider whether the current frequency of family outings is satisfactory.

14. Daniela Santana, SGPRC's Fair Hearing Manager, argued that, under the Lanterman Developmental Disabilities Services Act (Lanterman Act) and the SGPRC Purchase of Service (POS) Policy, claimant is not entitled to regional center funding for the van conversion because there are generic sources of funding and services claimant's mother can use to assist her with transporting claimant. She asserted that the POS Policy requires that any equipment purchased be "medically necessary" and that it was SGPRC's position that the van conversion was not medically necessary for claimant. Ms. Santana also argued that claimant's mother should use a portion of claimant's monthly SSI payments to pay for the van conversion. Alternatively, Ms. Santana stated that Access is a generic source of transportation services for individuals with disabilities, and though it is not perfect (customers must arrange for pickup times and may have to wait for up to an hour to be picked up), it is equivalent to public transit services available to the public. Ms. Santana also contended that IHSS benefits could be used to pay for someone to assist claimant's mother with lifting claimant to and from the family's vehicle or to assist with claimant's care when claimant's mother had to attend to her other children's transportation needs.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500³ et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a fair hearing to appeal SGPRC's denial of her request that SGPRC fund a van conversion to

³ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

assist claimant's mother in transporting claimant. Jurisdiction in this case was thus established. (Factual Findings 1 through 4.)

2. The party asserting a claim in an administrative proceeding generally has the burden of proof by a preponderance of the evidence. (*McCoy v. Bd. Of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) Where a claimant seeks to establish eligibility for government benefits or services, the burden of proof is on her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162 (disability benefits).) Accordingly, claimant here has the burden of proving by a preponderance of the evidence that she should receive funding from SGPRC for a van conversion.

3. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation 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." (§§ 4502, subd. (a), 4640.7.) These services include adaptive equipment and supplies, vouchers and "transportation services necessary to ensure delivery of services to persons with developmental disabilities." (§ 4512, subd. (a).)

4. Services provided by the regional center must be cost-effective and efficient. (§ 4512, subd. (b).) When considering the purchase of services and supports, the IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate," and consider the family's responsibility for providing similar services and supports for a minor child without disabilities as well as the claimant's other sources of funding. (§ 4646.4, subd. (a).) A regional center shall "fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP. . . ." (§ 4648.35, subd. (b).)

5. The purpose of the Lanterman Act is "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. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) The determination of which services and supports are necessary are made through the IPP process, based on the needs and preferences of claimant and claimant's family, when appropriate, and should include the consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The Lanterman Act contemplates that the services provided to each consumer will be flexible and individually-tailored to meet the needs of the consumer and her family. (§ 4648, subd. (a)(2).)

6(a). Claimant's current IPP is not in compliance with the objectives of the Lanterman Act for the following reasons:

6(b). The IPP fails to address claimant's mother's physical limitations in transporting claimant in the community when claimant is not in school. Given claimant's weight and the weight of her wheelchair, it is unreasonable to expect claimant's mother to be solely responsible for lifting claimant into and out of the family vehicle. As claimant's mother is 52 years old, her need for assistance in lifting claimant will only increase with the passage of time.

6(c). The IPP fails to recognize the preference of claimant's mother that claimant be included in outings with the rest of the family, whether to the beach, visiting relatives or any other group errands or activities. While the IPP notes that the family currently takes two outings a month, it is unclear whether this frequency is acceptable or desirable.

6(d) The IPP fails to propose or to evaluate services or options regarding claimant's transport that are tailored to the needs of claimant and her family. While Access and the use of IHSS hours may theoretically address claimant's needs, both options appear to fall short when considering the specific needs of claimant. For instance, while Access might be used to transport claimant and her mother for claimant's appointments during the times when claimant's foster siblings are at school, the service does not seem to be of any use for family outings or for when claimant's mother cannot leave her other children alone. And although claimant's mother can hire an individual to assist her to lift claimant in and out of the vehicle for family outings, doing so may not be an efficient use of resources as claimant's mother appears not to need any assistance once claimant is safely placed in or removed from the vehicle. Finding an individual for those specific short-term tasks alone may be difficult, particularly so when an errand or outing cannot be scheduled in advance.

6(e). The IPP also fails to address whether claimant's mother has sufficient financial resources to fund a van conversion if that option is deemed necessary to meet the family's goals. Claimant's SSI benefits alone are not enough to pay for the costs of conversion. However, it is unclear how much, if anything, claimant might be able to contribute to the costs of such conversion as the information claimant's mother provided about her family finances at the hearing was vague and general. In addition, it is not known what impact the purchase of a new vehicle will have on the family's finances or what the cost will be of converting that vehicle.

7(a). SGPRC's POS Policy provides that SGPRC may purchase medical equipment for consumers if the equipment is associated with a developmental disability, is medically necessary, is approved by regional center clinicians, and if there is no generic funding source available. (Exhibit 7 at p. 20.) While a van conversion is associated with a developmental disability, claimant did not establish that the

conversion is currently medically necessary as nothing in claimant's medical condition precludes the use of Access or the use of IHSS benefits to hire an individual to assist claimant's mother.

7(b). However, a service policy established by a regional center to generally govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Dept. of Developmental Services, supra*, 38 Cal.3d at 390-393.) Nor may a regional center decide which services and supports it will provide based solely upon a fixed policy. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.)

7(c). The generic resources proposed by SGPRC appear only to partially satisfy claimant's needs. Of equal importance is claimant's need for transportation that enables her to achieve and maintain, as provided for in the Lanterman Act, an "independent, productive, normal life," a goal that may encompass claimant's participation in a variety of family activities outside of the home. At this juncture, claimant's IPP is silent as to whether claimant's participation in family outings will "foster [her] developmental potential" and as to how best to effectuate such outings. Thus, if it is determined that a van conversion is the only means available to enable claimant to join in these outings, the needs of claimant and her family must take precedence over the terms of the SGPRC POS Policy.

8. Any decision on whether SGPRC should fund the van conversion requested by claimant's mother is premature at this time. The IPP currently does not address either claimant's mother's recent inability to lift claimant or her desire that claimant participate in family outings. (Factual Finding 13.) In addition, claimant's mother's need for a van conversion is also hypothetical at this time as she has yet to purchase the van she intends to use to transport claimant and she cannot predict when such purchase will be made. (Factual Finding 12.) Without the foregoing information, claimant's mother

cannot demonstrate by a preponderance of the evidence that SGPRC is required to fund the van conversion. (See *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [the court deemed the matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship].)

ORDER

1. Claimant's appeal is denied. SGPRC may deny funding a van conversion for claimant.

2. Within 60 days of the date of this Decision, SGPRC shall convene an IPP meeting of all members of claimant's planning team to explore claimant's transport needs, including without limitation, the preference of claimant's mother that claimant be included in family outings, claimant's mother's physical limitations in lifting claimant, the family's finances and ability to pay for or contribute to the cost of a van conversion, options that would allow the entire family to go on outings, both planned and unscheduled, and the feasibility of using generic resources in light of claimant's particularized transport needs.

DATE:

CINDY F. FORMAN

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.