

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. 2017120862

DECISION

Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on April 5, 2018, in Pomona, California.

Aaron Christian, Associate Director of Community Services, represented the San Gabriel/Pomona Regional Center (RC or Service Agency). Claimant¹ was not present, but was represented by her mother (Mother), her authorized representative.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on April 5, 2018.

¹ Party and family titles are used in lieu of names in order to protect Claimant's privacy.

ISSUE

Must the Service Agency reimburse Claimant \$400 per month for the cost of transportation to and from work and school using Uber?²

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EVIDENCE RELIED UPON

In making this Decision, the ALJ relied on Exhibits 1-12 submitted by the RC, Exhibits A-T submitted by Claimant, and the testimony of Aaron Christian, the RC's Associate Director of Community Services; Elisa Herzog, RC Client Advocate; and Claimant's mother.

FINDINGS OF FACT

1. Claimant is a 20-year-old female and a consumer of the Service Agency. Claimant has been diagnosed with mild intellectual disability and Down Syndrome, and is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.³

2. Claimant's resides with Mother in Diamond Bar, California. She requires nearby supervision in unfamiliar settings and has difficulty problem-solving in unexpected situations. Claimant attends Mount San Antonio College (College), a community college in Walnut, California, where she has early morning classes. When

² At hearing, Mother asserted that the \$400 reimbursement sought in the Request for Hearing overstated the actual costs, which have ranged from \$19 to \$280 per month.

³ All statutory references are to the Welfare and Institutions Code.

traveling by public bus, Claimant must travel with an aide. Her College schedule requires that she arrive at the bus stop before sunrise. Claimant is employed, on a part-time basis, at TJ Maxx in Walnut, California. Her work schedule varies from week to week. Claimant resides 3.9 miles from work and 5.9 miles from College.

3. Claimant's most recent Individual Program Plan (IPP) is dated November 9, 2017. (Exhibit 3.) The IPP planning team determined that Claimant will need mobility training, aides en route, or other supports to access public transportation safely. One of the "Desired Outcomes" listed in Claimant's IPP is learning to set up an Uber ride to non-familiar places independently. Supports for that goal include learning to take Uber to and from school and work. (Exhibit 3, p. 12.) During the IPP meeting, Mother requested that the RC fund reimbursement of Claimant's Uber costs on a monthly basis for travel to and from home, school and work.

4. On December 12, 2017, the RC issued a Notice of Proposed Action (NOPA) denying Claimant's request for reimbursement of Uber costs. The RC determined that the intensity of Claimant's care and supervision needs did not necessitate an exemption to the Lanterman Act requirement that generic sources must be identified and utilized to meet Claimant's IPP goals and to promote cost-effectiveness. The RC determined that generic resources could be utilized to provide additional supports and recommended additional mobility training services to enable Claimant to use public transportation independently with the assistance of a vendor. (Exhibit 1.)

5. Claimant submitted a timely Fair Hearing Request dated December 18, 2017, and this matter ensued. (Exhibit 2.)

6. Following issuance of the NOPA, on January 10, 2018, Mother attended an informal meeting with RC representatives to seek a resolution of the denial. At that meeting, and at the administrative hearing, Mother provided the following information:

- A. Claimant received mobility training in fall 2016. However, Claimant was unable to generalize what she had learned in mobility training when encountering new environments or situations. On several occasions, Claimant was unable to problem-solve when using public transportation and became agitated, or returned home without proceeding to school or work.
- B. Claimant has attempted to utilize Access transportation services (Access),⁴ but found it to be unreliable in that it often failed to arrive at all, or did not arrive or drop her off within the requested time frames. Access has a two-hour arrival window; while waiting for Access to arrive, Claimant may become agitated or may be at risk or vulnerable to strangers. Claimant cannot have a “standing order” for pick-up or drop-off by Access at set times because her work schedule changes weekly.
- C. Claimant has been trained to utilize Uber and has successfully used it for round-trip transportation to and from home, school and work for several months. Uber is able to pick Claimant up within three to five minutes.
- D. Walking or riding a bicycle to school and work is not a safe or viable option for Claimant because she is unable to problem-solve in new or unexpected situations and would have to walk or bike in darkness at times.
- E. Claimant has health issues which render her susceptible to viruses. Traveling with groups of people would increase her risk of illness.

⁴ Access is Los Angeles County’s paratransit service for persons with disabilities who cannot ride public fixed-route buses and trains. Access does not follow fixed routes or schedules. Typically, vans, mini-buses or shared taxis are used to transport Access riders.

F. Mother believes that Uber is the most reliable and safe means of public transportation that enables Claimant to access her community while promoting independence.

7. Following the informal meeting with Mother, on January 22, 2018, the RC issued a decision letter. The RC offered to fund for "auto-driver" reimbursement. (Exhibit 12.) The RC completed a cost analysis of Claimant's round trip travel from home to College, five days per week, utilizing the current auto-driver rate of \$6.16 per day. The RC agreed to fund Claimant's travel to and from College in the amount of \$133.98 per month. This service would be authorized and reviewed every year for progress towards Claimant's IPP goals and objectives. Claimant's service coordinator would be in charge of setting up the service and obtaining authorization. In addition, the service would need to be identified in Claimant's IPP.

8. Mother testified that Claimant's transportation costs vary widely from month to month. In January 2018, when Claimant had few classes, she incurred only \$19 per month in Uber costs. In October 2017, she incurred Uber costs of \$280.32. Mother would prefer that the RC reimburse Claimant for her actual costs per month for transportation to and from work, school, and home, rather than a fixed amount of \$133.98 per month.

LEGAL CONCLUSIONS

1. Services are to be provided to regional center consumers in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). 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 may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer 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), 4646, subd. (b), and 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

3. 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 for each consumer 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, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . .

recreation, . . .community integration services, . . .daily living skills training, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities.”

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as 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.) The regional centers’ obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer’s every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and 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 purchased, is made up of the disabled individual, or his or her 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).)

6. 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; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§

4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

7. Section 4648, subdivision (a)(6)(D), provides that "the cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer"

8. Pursuant to section 4648.35, subdivision (b), regional centers must fund "the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP." Subdivision (c) provides that regional centers must fund transportation, when required, "from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs."

9. 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. (*Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

10. Section 4706, subdivision (a), provides the Administrative Law Judge a broad grant of authority to resolve all issues regarding services to a developmentally disabled person.

11. Here, Claimant met her burden of establishing that the Service Agency must fund for transportation services for Claimant which are cost-efficient, meet her safety needs and support her IPP goals.

12. The regional centers are to be guided by the principles, process, and services and support parameters laid out in section 4685. (§ 4646.5, subd.(a)(3).) Section 4685 makes it a clear legislative priority that disabled children remain with their families, and the regional centers are to be innovative so that the goal can be met. (§ 4685, subd. (c)(1).) Although Claimant is an adult, she is still the child of her Mother, and still lives with her. That is not only to Claimant's benefit, it is to the benefit of the state, because Claimant is not housed away from her parent at great expense to the taxpayers. One of the main purposes of the Act is to avoid institutionalization. To that end, regional centers are specifically authorized to utilize "innovative service delivery mechanisms, . . ." (§ 4685, subd. (c)(3).) Section 4651 reiterates the assertion that regional centers should be innovative and economical in realizing the goals set out in a consumer's IPP.

13. The RC has offered to reimburse Claimant's transportation costs to and from home and school in the amount of \$133.98 per month, while allowing her to utilize Uber, her preferred modality of transportation. So long as the RC also allows Claimant to utilize these funds to cover the costs of Uber transportation to and from Claimant's workplace, as well, the Lanterman Act's directive that regional centers be innovative and economical in the practices used to reach the goals set out in Claimant's IPP is met by this offer.

ORDER

1. Claimant's appeal is granted in part, and denied in part.
2. The RC shall provide \$133.98 per month to Claimant, from January 2017 through December 2017, as "Auto-Driver" reimbursement to fund Claimant's costs of travel to and from home, school and work utilizing Uber.
3. The RC shall authorize and review this reimbursement on an annual basis to assess the progress towards Claimant's IPP goals and objectives.

4. Mother and Claimant's service coordinator are directed to work efficiently and cooperatively to obtain any necessary authorization and to set up the "Auto-Driver" reimbursement.

5. The "Auto-Driver" reimbursement, to fund Claimant's costs of travel to and from home, school and work utilizing Uber, shall be identified in Claimant's IPP.

Date:

LAURIE R. PEARLMAN
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.