

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2018070275

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on September 18, 2018, in Culver City.

Claimant was represented by her mother and father.<sup>1</sup>

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency).

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted on September 18, 2018.

ISSUE

The parties agreed that the issue presented for decision is: Should WRC be required to pay for mileage related to transportation provided by Claimant's brother during the time he is paid as the provider of claimant's personal assistance service hours?

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<sup>1</sup> Claimant and her family members are identified by titles to protect their privacy.

## EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-9; Claimant's exhibits A and B.

Testimonial: Lisa Basiri, Fair Hearing Coordinator; and claimant's mother and father.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a conserved 28-year-old woman. Her mother is her limited conservator. Claimant is eligible for regional center services based on a diagnosis of mild intellectual disability. She lives with her parents and older brother in the family home.

2. Pursuant to claimant's individual program plan (IPP) dated January 19, 2017, and an IPP Progress Report dated February 15, 2018, claimant and her family receive services funded by Service Agency including, but not limited to, 21 hours per month of respite services and 84 hours per month of personal assistance services. Claimant's brother is the provider of both the respite and the personal assistance services.

3. In May 2018, claimant's parents requested that Service Agency provide funding for an additional 54 hours per month of personal assistance services to be provided by claimant's brother. Claimant's mother and Hillary Kessler, WRC Program Manager, exchanged emails regarding the request. In an email dated May 18, 2018, claimant's mother explained the intended use of the additional 54 hours of personal assistance services as follows:

[Claimant's brother's] duties with these hours will be to provide transportation to and from various places that

[claimant] would like to go and enjoy, along with her friends. He would be responsible for making sure the girls are safe, not alone, and if they are alone, they can take care of themselves. For example, if they go to the movies, he can assist them with seating and concessions, after the girls remain in the auditorium by themselves.

[Claimant's brother] will be [claimant] and her friend or friends [sic] overseer. If they wanted to go to the mall, he would have to chaperone the girls. He will be close and not too far in case they need his assistance. If [claimant] wanted to spend some time over her best friend's home, Tiffany, of course, he would drop her off. [Claimant] knows how to call him with her cell phone, and when she does, he would be available to go get her.

[Claimant] is really more comfortable, and feel [sic] more safe when her brother is there with her and her friends at outings and activities.

(Exh. A.)

4. By a Notice of Proposed Action (NOPA) and a letter, both dated June 1, 2018, Service Agency notified claimant's parents of its decision denying their request for an additional 54 hours per month of personal assistance services to be provided by claimant's brother. The NOPA indicated the reason for the denial was that the original intent of the personal assistance hours was to provide peer support and companionship.

5. On June 29, 2018, claimant's parents filed a fair hearing request, on their daughter's behalf, to appeal Service Agency's denial of their request for an additional 54 hours per month of personal assistance services.

6. On July 16, 2018, Mary E. Rollins of Service Agency held a meeting with claimant and her parents to discuss their appeal of Service Agency's decision denying their request for an additional 54 hours per month of personal assistance services. On July 23, 2018, claimant's mother sent an email to Ms. Rollins, at her request, explaining how the parents intended to use the additional 54 hours of personal assistance services. The mother's July 23, 2018 email to Ms. Rollins gave the same explanation as her May 18, 2018 email to Ms. Kessler, discussed in Finding 3, above.

7. On July 26, 2018, Ms. Rollins sent a letter to claimant's parents informing them that Service Agency would fund an additional 40 hours per month of personal assistance services, with claimant's brother as the provider, for a three-month period starting August 1, 2018. The letter explained: "This is an exception based on [claimant] presently experiencing a great deal of anxiety, some depression and in the midst of a medication review." (Exh. 3.) Further, in the July 26, 2018 letter, Ms. Rollins also wrote: "I must remind you that WRC does not pay for transportation as part of another service. Time that [claimant's brother] is transporting [claimant] may not be billed nor may he bill for mileage. I recommend that you kept records [*sic*] indicating all activities and supports [claimant's brother] provides." (*Id.*)

8. At the start of the hearing, Ms. Basiri, WRC Fair Hearing Coordinator, clarified that WRC was agreeable to funding the additional 54 hours of personal assistance services, with claimant's brother as the provider. Ms. Basiri explained that there is no statute prohibiting claimant's brother from being the provider of claimant's personal assistance services. Ms. Basiri confirmed that claimant's total monthly

personal assistance service hours, funded by WRC, is now 138 hours per month. Therefore, the parties agreed that the only remaining issue in this appeal is whether WRC is required to pay for mileage related to transportation provided by claimant's brother during the time he is paid as the provider of claimant's personal assistance hours. The hearing proceeded on that issue.

#### JANUARY 19, 2017 IPP

9. Pursuant to claimant's January 19, 2017 IPP, claimant received the following services funded by Service Agency: in-home respite through Maxim Healthcare Services (21 hours per month); personal assistance services through 24HR Home Care (84 hours per month); community integration training through Options for Life (23 hours per month); roundtrip transportation to Options for Life (23 hours per month); and counseling services with Barbara Sultan (7 hours per month).

10. According to her January 19, 2017 IPP, claimant continues to live with her parents in the family home and is heavily dependent on them for assistance with completing her day-to-day tasks. She helps out with household chores, e.g., washing the dishes and laundry, but she depends on her parents to regulate her duties because she does not self-manage well. She does not do her own grocery shopping. She can complete light cooking, e.g., use the microwave and make sandwiches, but she needs prompting. Claimant's reading and writing abilities are at a third or fourth grade level. She can look at a menu and select an item, but she gets confused when handling money for the transaction. She can count with single digits but has problems with addition and subtraction. Claimant's parents monitor her to make sure she is showering thoroughly on a daily basis. She can usually select her outfits, but she sometimes struggles with choosing clothing that is weather appropriate. She can brush her own teeth but still benefits from reminders.

11. Claimant's January 19, 2017 IPP states that claimant is ambulatory and has no physical limitations. She is not mobility trained and depends on her mother and father to provide transportation. She requires constant supervision in unsupervised settings. Claimant's mother is the primary provider of transportation. Claimant has an Access pass but needs help with scheduling pick-ups and drop-offs. The January 19, 2017 IPP states that claimant enjoys spending the majority of her time engaged in "fun" activities, such as going to the movies, the park, the swimming pool, and amusement parks, or going shopping.

12. Regarding a "transportation access plan," the January 19, 2017 IPP states that claimant "has the limited ability to ride the bus to a few familiar destinations." (Exh. 8, p. 6.) The IPP planning team concluded that claimant's "community integration and participation could be safe and enhanced through the use of public transportation services," that "generic transportation services are available and accessible," and that claimant "will need mobility training, aides en route, or other supports to access public transportation safely." (*Ibid.*) The IPP planning team concluded that the severity of claimant's disability did not preclude her from safely accessing public transportation. (*Ibid.*)

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#### FEBRUARY 15, 2018 PROGRESS REPORT

13. On February 15, 2018, an annual progress report meeting was conducted by the IPP planning team. Present at this meeting were claimant's WRC service coordinator Lalita Devi Dasi, claimant, claimant's parents, and the director of Options

for Life, which provided claimant's community integration training program. The purpose of the meeting was to review claimant's progress under the January 19, 2017 IPP. The meeting was summarized in a Progress Report dated February 26, 2018 (Progress Report).

14. The Progress Report noted that a special incident report (SIR) was filed on November 17, 2017, reporting that claimant behaved aggressively toward her father. Historically, claimant's aggression had been confined to the family home and was mostly directed at her mother. The Progress Report stated that claimant's behavioral issues are triggered when she cannot get her way. The Progress Report noted that claimant did not have any behavioral incidents while attending Options for Life.

15. As a result of the SIR filed on November 17, 2017, WRC held a clinical staffing meeting on December 13, 2017, as well as additional meetings with WRC psychologist Dr. Kelly, to explore intensive services for claimant. According to the Progress Report, claimant's IPP was amended to include the following new services, supports, or changes:

1. Counseling and diagnostic clarification will take place through Achievable Clinic as [claimant] needs to be in on-going therapy. From there, the interns can derive a good understanding of [claimant's] diagnosis and work closely with her psychiatrist, Dr. Breitbart.
2. A Functional Behavior assessment to be conducted. Speech Language and Education has been identified and the start date is pending.

[¶] . . . [¶]

Options for Life day program including transportation has been terminated per parents request, as [claimant] regains mental health stability.

(Exh. 7.)

16. The Progress Report stated that claimant's parents decided to remove her from Options for Life but plan to have her return once her mental health is stabilized. The Options for Life program director had reported that claimant's attendance and participation in the program had declined. The IPP team discussed the importance of claimant maintaining a structured meaningful day, and that her personal assistance hours could support her while she was out of the program.

17. The Progress Report stated that claimant had made no progress on her goal of making more friends and developing her peer and social relationships. Claimant had been spending the majority of her free time with her boyfriend. Her parents made the decision to end the relationship. Claimant's parents would like to see claimant explore relationships with women her age, including previous relationships that she enjoyed but did not maintain because of her focus on her boyfriend. Claimant indicated she would be open to making new friends and exploring activities. She prefers to not to socialize with individuals who have a visible disability.

18. The Progress Report noted that claimant's parents were scheduling and providing transportation to all of claimant's medical and dental appointments. The Progress Report also noted that claimant received counseling services from Barbara Sultan to address anxiety, stress management, and coping skills. The Progress Report stated that, in March 2018, claimant's counseling would transition to the Achievable Clinic mental health provider interns, with the goal of gathering diagnostic clarification, which could help inform claimant's psychiatrist regarding her medication options.

#### TESTIMONY OF CLAIMANT'S PARENTS

19. Claimant's mother testified claimant prefers to have her brother



accompany her on outings in the community. Claimant is comfortable with her brother, which helps relax her. Claimant's mother testified that claimant is currently having difficulty handling pressure and dealing with her anxiety and depression. Allowing claimant to do activities that she considers fun, such as going to the movies with her friends, calms her down and stabilizes her mental state. When claimant's mother asked claimant about having a new person (not her brother) take her to different places and help her ride the bus, claimant said no and told her mother that she wants to be with people she knows and wants her brother to take her and her friends to the mall.

20. Claimant's parents testified that claimant's brother lives in the family home. Claimant's brother works the nightshift at his job and returns home from work around 8 a.m. Claimant's brother is one year older than claimant. Both parents depend on claimant's brother to help them with claimant, which he has agreed to do. Claimant's parents contend that, because claimant's brother has his own car, there is no need for him and claimant to take public transportation. According to claimant's father, claimant is afraid of riding the bus or using Access. Claimant's family has tried to help claimant get over her fear of buses and public transportation. When claimant started showing signs of depression during her Options for Life program, she would stay on the bus crying and would not get off the bus with the others.

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#### PERSONAL ASSISTANCE SERVICES

21. The California Department of Developmental Services defines "personal assistance services" as services that "are used to help a person with a disability do tasks

that he or she would normally do if there was no disability." (Exh. 5.)

22. Claimant's brother is registered through 24HR Home Care to provide claimant's personal assistance services funded by WRC. 24HR Home Care's program design provides that personal assistance services include, among other services, "Supervision" and "Escort Consumer on running errands, social outings, and doctor appointments via public transportation or the Consumer's vehicle (the Provider is not able to drive but can ride along)." (Exh. 4.) 24HR Home Care's program design specifically states that personal assistance services do not include "Transportation of the Consumer (unless approved by the Regional Center)." (*Ibid.*)

#### WRC SERVICE STANDARD FOR TRANSPORTATION

23. Ms. Basiri testified that transportation is a separate and distinct service from personal assistance services. WRC typically funds transportation for a consumer to travel from home to a specific place at a regularly scheduled time (e.g., a day program). For example, pursuant to claimant's January 19, 2017 IPP, WRC funded claimant's roundtrip transportation from her home to the Options for Life program. (Exh. 8, pp. 14.)

24. WRC's Service Standard for transportation services provides, in part:

Transportation services via commercial companies will only be provided to consumers for whom it has been determined by assessment that commercial transportation is the most appropriate service as the health or safety of the consumer would be in jeopardy if he or she traveled via public transportation sources. Prior to funding commercial transportation it must be determined that there is no other

source of transportation via generic public services or via natural resource systems, paid or unpaid. Regional Center payments for commercial transportation services are limited to:

1. Travel to and from home to the primary, regularly scheduled daytime activity for the consumer.
2. Travel to and from medical or other essential appointments, where these appointments are related to the disability of the consumer, and the failure to keep the appointment would be detrimental to the individual.

(Exh. 6.)

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)<sup>2</sup> A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-8.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, claimant requests funding for transportation that Service Agency has not before

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

agreed to provide, and therefore she has the burden of proving by a preponderance of the evidence that she is entitled to that funding.

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by 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).) If the parties cannot agree on the provision of a service after the IPP process, a hearing officer shall make the decision after a fair hearing. (§ 4646, subd. (g).)

4. In implementing an IPP, a regional center "shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4646, subd. (b).) "Natural supports" are defined as "personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships." (§ 4512, subd. (e).)

5. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(1) and (2).) Regional center funds

"shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

6. The services and supports that may be listed in an IPP include, but are not limited to, personal care, community integration services, community support, daily living skills training, social skills training, travel training, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (§ 4512, subd. (b).)

7. Section 4648.35 provides, in pertinent part:

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.

8. Section 4648.3 provides: "A provider of transportation services to regional center clients for the regional center shall maintain protection against liability for damages for bodily injuries or death and for damage to or destruction of property, which may be incurred by the provider in the course of providing those services. The protection shall be maintained at the level established by the regional center to which the transportation services are provided."

9. In this case, WRC is not required to pay for mileage related to

transportation provided by claimant's brother while he is providing claimant's personal assistance services. Claimant's brother is registered with 24HR Home Care, whose program design for personal assistance services specifically excludes transportation unless approved by the regional center. The program design for 24HR Home Care contemplates that a personal assistance service provider will use a mode of public transportation, and not the provider's or consumer's personal vehicle, when escorting the consumer on errands or social outings. Further, requiring WRC to pay for mileage for transportation provided by claimant's brother would not conform with WRC's service standards. Claimant is not currently attending any regularly scheduled activity with a fixed time and location for pick-up and drop-off, as required by the WRC service standards for transportation. Claimant has an Access card and her brother can assist her with scheduling pick-ups and drop-offs. Claimant's brother can also accompany his sister when using Access transportation services. The preponderance of the evidence did not establish that claimant is unable to safely access and utilize public transportation that is available to her. Claimant's appeal shall be denied.

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## ORDER

Claimant's appeal is denied. Westside Regional Center is not required to pay for mileage related to transportation provided by Claimant's brother during the time he is paid as the provider of claimant's personal assistance service hours.

DATED:

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ERLINDA G. SHRENGER  
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.