

**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. 2019090740

DECISION

Deena R. Ghaly, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 31, 2019, in Pomona, California.

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant's mother (Mother) represented Claimant, who was present for the hearing.¹

¹ Claimant's and family members' names are omitted to protect their privacy.

ISSUE

Should the Service Agency fund modifications to a van Mother intends to purchase to transport Claimant?

FACTUAL FINDINGS

Background

1. Claimant, a 10-year-old girl, is an eligible SGPRC consumer based on her diagnoses of moderate intellectual disability and cerebral palsy. She is non-ambulatory, uses braces on both legs, and must rely on others for all personnel care, including toileting.

2. a. Mother is a single parent and Claimant's full-time caretaker, including taking her to all medical appointments and therapies. Mother testified at the hearing and stated that she currently uses her own vehicle, a 2009 Honda van, to transport Claimant. Transporting Claimant involves lifting her into the van, then sliding her inward on the van's seat. Mother must then fold and lift the wheelchair into the back of the van. Mother reverses the process when returning Claimant home.

b. According to Mother, as Claimant grows older, transporting her is becoming increasingly difficult. Claimant currently weighs nearly a hundred pounds and stands over four feet tall. Mother is often alone when taking her to appointments and outings. Lifting Claimant is difficult for Mother, who has begun to experience back pain. Mother is also concerned that the pushing and pulling necessary to situate Claimant in, and remove her from, the van will re-injure Claimant's hip, which was injured in the past and required painful hip surgery.

3. Mother's van has no special equipment to assist with transporting Claimant. Mother has obtained two estimates for converting a van to add such equipment. The first, from Aero Mobility, is \$17,500 and includes installing a lower floor, manual fold-out ramp, manual wheelchair tie down system, and related equipment. (Exh. 8.) The second, from Ability Center, is \$21,000 for the same modifications. (Exh. 9.)

4. Mother believes a converted van is necessary to properly care for Claimant to not only assist with transporting Claimant, but to provide an area of relative privacy and comfort where Mother can change Claimant's diaper and clean her when they are in transit. Mother maintained that Claimant is too big for standard changing tables in public restrooms. If Mother had access to a converted van, the furthest back seat could fold down, creating a cushioned and somewhat private area to place Claimant where Mother can clean her and change her diaper.

Request for SGPRC Funding

5. Mother has requested that SGPRC fund a van conversion. Mother readily concedes that her current vehicle cannot be converted; however, if SGPRC agrees to fund the conversion, Mother intends to purchase another van that can be converted. Mother does not want to purchase a new van without assurance that SGPRC will fund its conversion. Mother maintained that her current van is mechanically sound and, with the assistance of a niece who owns a nearby mechanic shop, she is able to keep it in roadworthy shape. But for her problems moving Claimant in and out of it, the current vehicle meets the family's needs.

6. a. SGPRC's Exceptional Service Review Committee reviewed the request and denied it. By Notice of Proposed Action (NOPA) dated August 29, 2019, the ESRC

denied Mother's request to fund a van conversion because transportation alternatives are available through Medi-Cal benefits and Access, a government-provided service.

b. The ESRC's decision also cited SGPRC's Purchase of Service policy (POS), which states in part,

The regional center may purchase medical, dental, equipment, and supplies for either children or adults if the following criteria are met:

1. The needed treatment or equipment is associated with, or has resulted from a developmental disability, developmental delay or established risk condition; AND
2. The requested treatment and equipment is deemed to be medically necessary; AND
3. The regional center consultants or clinician have reviewed and approved the need for such treatment or equipment; AND
4. The individual is not eligible for Medi-Cal, California Children's Service, private insurance or another third-party payer coverage or these funding resources have denied the necessary equipment in services in writing and the regional center has determined that an appeal of the denial is not warranted.

(Capitalized text in original.)

c. The ESRC also cited Welfare and Institutions Code section 4646.4, subdivision (a), in support of its decision, which provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: (1) Conformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] . . . [and] (2) Utilization of generic services and supports when appropriate.

7. a. Claimant's service coordinator, Felicia Romero, testified at the hearing and stated that she had initially reviewed and denied Mother's van conversion request, citing the availability of public transportation sources. Ms. Romero's supervisor and SGPCR's family services manager, Edith Abarb, also testified and concurred with Ms. Romero.

b. Mother stated that she has used both the Medi-Cal and Access transports and they are not sufficient for all Claimant's needs. Both require advanced notice. They cannot be used to take Claimant for an impromptu visit to the park or the movies or to pick up Claimant from school if she becomes ill before the school day ends, as often happens. Additionally, these services only allow one companion with the consumer unless space is available and that cannot be established in advance; on those occasions when Mother had someone willing to assist her, there can be no guarantee that the companion can join them. Finally, these public services cannot

provide the privacy and convenience of a family vehicle for Mother to clean and change Claimant while they are away from home.

Claimant's Individual Program Plan

8. a. As with all regional center consumers, Claimant had Individualized Program Plans (IPP) prepared. IPPs set out the services and supports consumers and their family need and want. Claimant's most recent IPP is dated August 8, 2017 and the most recent IPP Progress Report is dated October 17, 2018.

b. The IPP acknowledges that Claimant is non-ambulatory and in need of constant supervision and assistance with all self-care. It also states that Claimant enjoys being around others and going on outings. (Exh. 3, p. 2.) Regarding transportation, the IPP provides that "transportation within the community is a parental responsibility." (*Id.* at p. 8.)

c. Among the desired outcomes listed in the IPP are that Claimant experience less pain (Exh. 3, pp. 10-11) and that Mother receive the resources necessary to allow Claimant to continue to live at home (*Id.* at p.15.)

LEGAL CONCLUSIONS

Lanterman Act

1. a. The Lanterman Developmental Disabilities Service Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)² recognizes a public responsibility to provide services and supports for individuals with developmental disabilities.

b. Under the Lanterman Act, qualifying individuals (consumers) have the right to services and supports to help them achieve the most independent and normalized lives possible. Regional Centers are principally responsible for coordinating those services. (§§ 4500.5, subd. (d), 4512, subd. (b), 4620 et seq.)

c. Services and supports should be flexible and individually tailored to the consumer and the consumer's family. (§ 4648, subd. (a)(2).) They must also be cost-effective. Regional centers may not fund duplicate services that are available through another publicly funded agency or "generic resource." If a service specified in a client's IPP is not provided by a generic source, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

2. The Lanterman Act further provides for an administrative fair hearing to determine the respective rights and obligations of the consumer and the regional center when there is a dispute. (§§ 4700-4716.) In administrative proceedings, the moving party – here, the claimant - has the burden of proof. (See *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052; *Hughes v. Board of Architectural*

² Further statutory references are to the Welfare and Institutions Code unless otherwise designated.

Examiners (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

Claimant's Needs for Suitable Transportation

3. Mother has established that generic resources are insufficient to meet Claimant's transportation needs. Public transportation has its place, particularly for short, planned trips. Taking into consideration Claimant's needs, Mother's responsibility for meeting those needs as a single parent, and the desired outcomes set out in the IPP, however, public transportation cannot substitute for the convenience, privacy, and ready availability of a personal vehicle. (Factual Findings 1,2, 4, 7b, and 8 and Legal Conclusion 1.)

SGPRC's POS Policy

4. a. In denying Mother's request for a van conversion, SGPRC cited its POS policy for purchasing medical and dental equipment. Under this policy, requests must be deemed medically necessary, along with other requirements, before they can be authorized. (Factual Finding 6b.) When purchasing services and supports, regional centers are required to follow their POS policies. (§§ 4434, subd. (d).)

b. Here, though, it was not established that a van conversion, an adaptation for Claimant's transportation needs, is necessarily "medical equipment." On the contrary, Mother established that the van conversion is to meet multiple transportation needs, albeit including to medical appointments. Even in that case, transportation may be a necessary component of securing medical services but is not, in itself, medical treatment.

c. The ability to safely transport Claimant implicates many aspects of Claimant's life beyond medical treatment. Claimant needs and wants to be part of the community. Mother wants to take her out without risking injuring Claimant or herself. These are circumstances beyond the scope of the POS cited by SGPRC and within the objectives of the Lanterman Act and Claimant's IPP.

ORDER

1. Claimant's appeal is granted.
2. Upon Mother's presentation of proof that she has purchased a van suitable for conversion, SGPRC shall pay \$17,500 for the purchase and installation of equipment to convert the van as set out in the Aero Mobility estimate. (Exh. 8.)

DATE:

DEENA R. GHALY
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.