

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MARIA G.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012060455

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 12, 2012, in Alhambra, California.

Veronica Ramirez, Fair Hearings Coordinator, represented the Eastern Los Angeles Regional Center (ELARC or Service Agency).

Claimant Maria G. was represented by her mother (Mother), who is also her authorized representative. Claimant did not attend the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on July 12, 2012.

ISSUE

Whether ELARC must continue funding private vendor transportation through Round Trip Transportation for Claimant.

FACTUAL FINDINGS

1. Claimant is a 37 year old woman born May 21, 1975. She is eligible for regional center services based upon her diagnosis of Moderate Mental Retardation resulting from Down Syndrome. Claimant lives with Mother and a younger brother in East Los Angeles.

2. Claimant participates in a sheltered work program at the Lincoln Training Center in Los Angeles. Claimant enjoys her work at the Lincoln Training Center and looks forward to her time there. For the last ten years, she has received curb to curb transportation, funded by ELARC, from Round Trip Transportation, a private transportation company that provides curb to curb transportation for the disabled. Mother has developed confidence in the drivers and Claimant has been safely transported to and from Lincoln Training Center by the same two drivers for several years.

3. Claimant is very friendly and loving. Although she likes to talk and socialize, her speech is of limited intelligibility. Mother fears that strangers will take advantage of Claimant because of her limited cognitive ability. Her family supervises her at all times.

4. Claimant knows her way around her community, but is always accompanied by a family member when she is away from home. She is permitted to walk from her home to her sister's house, four houses away, while her Mother and sister watch her.

5. On May 7, 2012, ELARC sent Claimant a Notice of Proposed Action advising Claimant that it would terminate her transportation services because transportation was available through Access, a county funded transit service, which is a generic resource. ELARC offered Claimant six months to transition from Round Trip

Transportation to Access. Mother was not comfortable with Access and declined to apply for Access. Mother does not believe that Claimant will be safe on Access.

6. Access provides curb to curb transportation service for the disabled. Access conducts an assessment of each applicant to determine her transportation needs. If Access determines that an applicant needs an attendant to accompany her during the ride, Access will provide an attendant for the applicant at no cost to the applicant. Access operates every day of the week by appointment. Access provides transportation services similar to those provided by Round Trip Transportation.

7. On May 25, 2012, Claimant appealed ELARC's decision and requested a hearing.

8. Claimant's Individual Program Plan (IPP) dated May 17, 2012 sets forth the following desired outcomes/goals:

- (1) Claimant will continue to live under the guidance of her family in the least restrictive environment.
- (2) Claimant will continue to work at the Lincoln Training Center.
- (3) Claimant will continue to live healthy and document her annual check ups.
- (4) Claimant will continue to behave as best as she can in most situations and express herself appropriately.
- (5) Claimant will continue to be safe in the community under the guidance of her family.
- (6) Claimant will continue to socialize with her family in the least restrictive environment.
- (7) Claimant will be transported safely to and from work.

9. In addition to transportation, ELARC provides Claimant with 16 hours per month of respite care and a five day per week, full day work activity program at Lincoln training center.

LEGAL CONCLUSIONS

1. ELARC contends that under Welfare and Institutions Code section 4646.4, subdivision (2), it must transition Claimant from private transportation services to Access, a generic resource, because Claimant's IPP objectives and needs can be met by generic resources. Claimant contends that it is necessary for her to continue using private services of the vendor that she has used for 10 years because she is comfortable with the drivers, they are familiar with her needs and her mother believes she is safe with the assigned drivers. For the reasons set forth below, Claimant's appeal is denied.

2. The burden of proof is on ELARC as the party seeking to change the status quo. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

3. The Lanterman Act¹ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "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

¹ The Lanterman Developmental Disabilities Service Act, Welfare and Institutions Code section 4500, et. seq.

to lead more independent and productive lives in the community.” Under the Lanterman Act, regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “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.” (Welf. & Inst. Code, § 4512, subd. (b).) “Services and supports may include adaptive equipment and supplies...travel training, transportation services necessary to ensure delivery of services to individuals with developmental disabilities...” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (*Ibid.*)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6. Welfare and Institutions Code section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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 pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.

7. The ELARC transportation purchase of service (POS) guidelines provide, in relevant part:

Adult individuals may qualify for consideration to receive specialized transportation funding when all other generic and natural transportation and sources have been explored with the individual/family and determined not to be available. ELARC will fund and use the least restrictive and least expensive transportation modality that meets the consumer's needs as documented in the IFSP/IPP.

8. The transportation provided by Round Trip Transportation is the type of "specialized services and supports or special adaptations of generic services" contemplated by the Welfare and Institutions Code section 4512, subdivision (b). However, ELARC established by a preponderance of the evidence that although Claimant requires transportation to her work program at the Lincoln Training Center, her needs and the outcomes/goals of her IPP can be met by use of the generic resources that are available from Access. While use of Access will require a transition for Claimant, the evidence at hearing established that although Round Trip Transportation was

preferred by Claimant's mother, Claimant's IPP outcomes and objectives will be met by the generic resources available through Access.

9. Based upon factual findings 1 through 9 and Legal conclusions 1 through 8, ELARC proved by a preponderance of the evidence that Claimant's needs can be addressed through generic resources. Accordingly, ELARC need not continue funding transportation through private vendor Round Trip Transportation.

ORDER

Claimants' appeal is denied. ELARC may discontinue funding of transportation by Round Trip Transportation.

DATED: July 30, 2012

_____/s/____

GLYNDA B.GOMEZ

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.