

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M.S.,

Claimant,

v.

SAN GABRIEL/POMONA

REGIONAL CENTER,

Service Agency.

OAH Case No. 2013060304

DECISION

This matter was heard by Mark Harman, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on July 23, 2013, in Pomona, California.

G. Daniela Martinez, Fair Hearing Program Manager, represented the San Gabriel/Pomona Regional Center (SGPRC or Service Agency). M.S. (Claimant), who was present at the hearing, was represented by his mother (Mother).¹ Mother was assisted by an Arabic-language interpreter. Oral and documentary evidence was received, and the matter submitted for decision at the conclusion of the hearing on July 23, 2013.

The ALJ received an ex parte communication from the Service Agency's representative on July 24, 2013. The ALJ, by Order, reopened the record, gave notice to the parties of the ex parte communication, and allowed Claimant to respond. (See Order, marked for identification as Exhibit 6.) The ALJ, by the same Order, requested the parties provide additional information,

¹ Initials or family titles are used to identify Claimant and his family to preserve their privacy.

analysis, and briefing. The Service Agency presented a letter and records of transportation requests, in two parts, on or about August 20, 2013, which were collectively marked and admitted as Exhibit 7. Claimant provided two letters on August 26, 2013, which were collectively marked and admitted as Exhibit N. The record was closed on August 27, 2013.

ISSUE

Should the Service Agency be required to fund the purchase of a van that has been modified to be accessible for Claimant?

FACTUAL FINDINGS

1. Claimant is five years old and a Service Agency consumer. Claimant has cerebral palsy with spastic quadriplegia, developmental delay, and intractable epilepsy. A 2012 neurological evaluation disclosed diffuse cerebral atrophy. Claimant is nonverbal. He is dependent on a gastrostomy tube (G-tube) and has significant medical problems caused by a spinal deformity. He is wheelchair-bound.

2. Claimant lives with his father, Mother, and older brother. After he was born, his parents brought their family to the United States from Egypt, their native country, seeking asylum. Mother stays at home caring for Claimant, while father is employed outside the home. Claimant is dependent on his parents for all self-help tasks. He attends school and receives special education services, including speech and language consultation. California Children's Services provides occupational and physical therapy services, which take place at school two times per week. Claimant misses these sessions when he is unable to attend school due to his medical problems, such as vomiting, diarrhea, and frequent fevers.

3. In the past year, Claimant's primary doctor, Nithya Kona, D.O., recommended that Claimant's parents obtain a van with a ramp because of his medical condition. Claimant weighs nearly 50 pounds with braces, and his wheelchair weighs about 60 pounds. Mother lately has had increasing difficulty transporting him in her compact vehicle because of the physical

demands of moving him and his wheelchair. Each trip usually involves lifting Claimant and putting him in his wheelchair, lifting him out of the wheelchair to place him into the vehicle, disassembling the wheelchair to form a car seat for him, lifting the leftover wheelchair parts and the many other items, such as the G-tube, which she takes on these trips, placing these items in the back of her vehicle and, finally, placing Claimant on the car seat inside the vehicle. If the weather is bad, the process is even more complicated and taxing on her. Mother believes Claimant is in pain when he is being moved in this manner.

4. Until March 2013, the Service Agency directly provided transportation services for Claimant. The Service Agency's cost to provide direct transportation, comprised of 26 trips between January 25, 2012 and March 9, 2013, was approximately \$1,689.21, or approximately \$65 per trip. The Service Agency discontinued these services when Claimant turned five years of age and he became eligible for ACCESS Paratransit. Mother has used ACCESS Paratransit, a generic agency that provides curb-to-curb transportation for disabled persons, to transport Claimant to routine medical appointments. But ACCESS is not available for emergencies, and Mother believes the service is generally ineffectual to meet many of the family's needs.

5. Claimant has had many medical emergencies. He went to a hospital emergency department on at least three occasions in the past six months. Mother transported Claimant in her vehicle on those occasions. She also transported him to the follow-up office visits and to the medical laboratory over the two days following the emergency. It is impossible to obtain ACCESS transportation on such short notice. Mother also is reluctant to call emergency services in these circumstances. An emergency medical technician (EMT) previously expressed disapproval when Mother called for paramedics to transport him, because, in the EMT's opinion, Claimant had nothing more serious than a fever or nausea.

6. ACCESS also is not available if Claimant is delayed getting ready for school and he misses his ride, so Mother must transport him. Mother also must take Claimant when she is on errands and shopping, since she cannot leave him at home alone. Thus, Claimant and his family

need a van with a ramp that will allow him to remain in his wheelchair while being transported. The evidence demonstrated that such a van is reasonably necessary to meet the family's specific needs. The Service Agency does not dispute the extent of Claimant's medical needs. It agrees Claimant needs reliable, safe, and cost-effective transportation, which a converted van could provide. The Service Agency already offered to purchase equipment and other modifications for a vehicle, thus conceding that generic resources are insufficient, but it refused to consider funding the cost of the van.

7. The cost of a converted van will depend on the model, age, and condition of the vehicle, and the kind of adaptive equipment and modifications to the van. In April 2013, Mother obtained quotes on three vans on the market from MobilityFirst, a large, well-known dealer of conversion vans with a showroom in Pasadena:

	Chassis Price (in	Conversion/Add	Total (with taxes &
Make/Model/(Mileage)	dollars)	Equipment Price	fees)
2006 Dodge Grand Caravan (7,725)	12,000	15,000	28,894
2009 Dodge Grand Caravan (40,300)	15,250	17,000	32,150*
2008 Toyota Sienna (48,249)	18,000	18,500	37,470*

* Includes a \$1,000 regional center discount

8a. Claimant's family apparently has limited financial means and has been living from paycheck to paycheck. Father works as a cashier at a gas station. Claimant has been receiving \$773 per month in social security (SSI) benefits, and approximately 150 hours per month of In-Home Supportive Services (IHSS), to meet some of his personal care and safety needs. Mother is Claimant's IHSS worker.

8b. To purchase a van, the family would sell the father's 1998 Corolla, worth approximately \$3,000, to use as a down payment on a van. They would need financing to pay the rest of the purchase price. The parents, however, have no credit history and no credit. They

applied to three banks for automobile loans, which they would use to purchase a van, but each application was denied. These circumstances brought them to the Service Agency requesting its assistance.

9. The Service Agency did not convene a formal Individual Program Plan (IPP) meeting with Mother to determine Claimant's transportation needs and to develop a plan that included the goals, objectives, and appropriate services and supports. Claimant's most recent IPP dated May 2011 does not mention specific transportation needs. Therefore, an IPP should have been convened so that the parties could jointly work out an agreement. (Welf. & Inst. Code,² § 4646, subd. (b) ["[P]arents . . . shall have an opportunity to actively participate in the development of the plan."].) Instead, there was an informal meeting held after the Service Agency already had served its notice of proposed action (NOPA) on May 21, 2013. The NOPA informed Claimant's parents that it intended to deny their "request for the purchase of a van with a van conversion." The NOPA cited section 4646.4, subdivision (a)(2), which requires the Service Agency to ensure the "[u]tilization of generic services and supports when appropriate" during the development and implementation of Claimant's IPP. Thus, the NOPA's sole assertion presumed that the publicly-funded ACCESS services were sufficient to meet Claimant's transportation needs, a proposition the Service Agency explicitly abandoned at the hearing. The NOPA did not cite section 4646.4, subdivision (a)(4), or other provisions that require, in identifying the consumer's service and support needs, a consideration of the family's financial means, the family's responsibility for providing similar services and supports for a minor child without disabilities, and taking into account the consumer's need for extraordinary care, services, and supports and supervision. Claimant requested a fair hearing to appeal the NOPA.

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

10. At the hearing, the Service Agency for the first time raised “parental responsibility” as a factor in determining whether to fund Claimant’s request. The Service Agency suggested that parents were responsible for providing transportation and Claimant’s parents could use part of his monthly SSI payments to purchase the van. At the hearing, Claimant’s family asserted that it uses SSI to meet Claimant’s ongoing needs. The Service Agency did not ask Claimant’s family to provide a written statement or other documentation to show that they were unable to pay for transportation. It failed to discuss its purchase of service policy, either in the NOPA or in a subsequent letter from Edward Kutik (Kutik), SGPRC Director of Client Services, whereby transportation services may be provided “if the family provides sufficient documentation to demonstrate that they cannot provide or arrange transportation.” (§ 4648.5, subd. (d); SGPRC Purchase of Service Policy, Exh. 5, p. 34.)

11. Kutik’s letter (Exhibit 2) was intended to summarize the parties’ informal meeting held on June 20, 2013, and the basis of SGPRC’s decision. Kutik asserted that services and supports must be cost-effective, but he failed to specify how the purchase of a van was more expensive or less cost-effective than any alternative transportation modality that met Claimant’s needs. Kutik briefly researched the costs of vans with wheelchair equipment. Kutik’s letter disparaged purchasing a vehicle from a retailer because they “have very high prices.” Kutik wrote that he had looked at Craigslist, and found a 2003 van offered at \$10,995, and another 2003 van offered at \$12,500. Kutik did not provide any information about these vans’ makes, models, conditions, or the kinds of equipment installed.

12. Kutik wrote that the Service Agency was “willing to purchase equipment that would allow a van to transport a wheelchair,” but he failed to specify any of the relevant factors that the Service Agency would employ in making this decision, or describe the SGPRC’s process going forward in light of the parents’ present inability to purchase a van. Kutik did not say how SGPRC determined the kinds of equipment and modifications to be purchased. He failed to mention that, normally, the Service Agency would consult with an occupational therapist to

determine Claimant's needs and to recommend the appropriate equipment for him. Kutik failed to offer such an evaluation. There has been no discussion about the amount SGPRC is willing to pay for the equipment and modifications, or whether SGPRC can allocate funds for a van that already has been converted, which could make it unnecessary for Claimant's parents to purchase a pre-conversion van. Although the parents would prefer to purchase a later model vehicle, in good working order, SGPRC offered no view or preference on this issue, or on whether the vehicle or equipment could only be purchased from one of SGPRC's vendors to ensure adherence to SGPRC's quality standards, or whether the parents would have to use cost comparisons by different providers. Thus, Kutik's letter is lacking any kind of a roadmap, or even a starting point, whereby the parents can participate in the planning process. The resources of the Service Agency and the parents, when combined through a collaborative effort, may be able to accomplish the common goal.

LEGAL CONCLUSIONS

1. The Legislature enacted the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., to provide a pattern of services and supports sufficiently complete to meet the needs of each person with a qualifying developmental disability, regardless of age or degree of handicap, and at each stage of life. 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 to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant submitted a fair hearing request to appeal the Service Agency's denial of Claimant's service request. Jurisdiction in this case was thus established.

2. “„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.” (§ 4512, subd. (b).) Services and supports may include “adaptive equipment and supplies,” and “transportation services necessary to ensure delivery of services to persons with developmental disabilities.” (*Ibid.*)

3. Services are to be provided in conformity with the IPP. (§ 4646.) Regional centers are to provide or secure family supports that, in part, respect and support the decisionmaking authority of the family, are flexible and creative in meeting the unique and individual needs of families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be individually tailored to the consumer. (§ 4648, subd. (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same service for all consumers. Regional centers are required to take into account the consumer’s need for extraordinary care, services, and supports and supervision.

4. Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4512, subd. (b), 4685, subd. (c)(3), & 4848, subd. (a)(11).) It is clear that the regional centers’ obligations to other consumers are not controlling in the individual decisionmaking 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 children and families.

5. Section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. In addition, regional centers must consider the family’s responsibility for providing similar services and supports for a minor child without

disabilities in identifying the consumer's service and support needs. The purchase of service policies, however, many not take precedence over the established individual needs of the consumer, which are ultimately paramount.

6. Section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

7. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.) A consumer seeking funding for any new services and supports has the burden to establish by a preponderance of the evidence that the services and supports are necessary and appropriate to meet Claimant's family's needs, as related to his disability. Claimant's parents, thus, bear the burden of proof regarding their request for funding for a converted van. In the present appeal, the Service Agency does not dispute that Claimant's family would benefit from the purchase of a wheelchair-accessible van, but it contends the family has the primary responsibility for the cost of transporting Claimant under routine circumstances, and further, that Claimant may access generic resources, such as ACCESS, for meeting most of his ordinary transportation needs.

8. Section 4648.35 is another provision, which the Service Agency did not cite, that is relevant to transportation services. It provides as follows:

"Effective July 1, 2009, 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: [¶. . . ¶]

"(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. [¶. . . ¶]

“(d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.”

9. No issue was raised and no evidence was presented at the hearing specifically regarding section 4648.35, subdivisions (b) or (d). Claimant’s parents apparently do not have the funds or credit to purchase a van. The Service Agency failed to require the parents to provide written documentation of their inability to provide transportation for Claimant, and it may not rely on the absence of such documentation to deny funding. The issue, however, is not whether the cost of purchasing a modified van, i.e., both the modifications and the vehicle, is the least expensive transportation alternative that meets Claimant’s needs, but whether funding said purchase, in fact, is cost-effective. The evidence has failed to establish this.

10. If Claimant had requested funding for simply modifying a van, this might be a simple case. The evidence demonstrated, and the Service Agency concedes, that Claimant has specific needs that cannot be adequately addressed in all circumstances through ACCESS transportation services. The modification of a van, specifically tailored to Claimant’s needs arising from his disability, is something the Lanterman Act clearly contemplates as a means to enable Claimant, and his family, to approximate the pattern of everyday living of nondisabled persons, and to achieve the goal that services and supports be flexible and cost-effective. The fact that Claimant’s parents cannot afford the van, however, changes the equation. The purchase of a family vehicle, especially in Southern California, is a basic parental responsibility. Claimant’s parents have not established that the cost of purchasing a van, itself, is specifically related to Claimant’s disability. Moreover, it is reasonable to conclude on this record that the cost of funding a vehicle, the adaptive equipment, and the necessary modifications, which far exceeds the cost of alternative means of providing transportation services, is not cost-effective. Although Mother is dissatisfied with the transportation services that have been provided thus

far, there needs to be additional conversation and collaboration between her and the Service Agency before concluding that alternative transportation modalities would be unable to meet most of Claimant's needs.

11. The Service Agency neglected to convene an IPP meeting, a process which is essential in determining Claimant's needs and the appropriate services to meet those needs. An IPP meeting should be scheduled forthwith. The parties need to begin the process for assessing Claimant's needs and for determining the appropriate supports and services. The parties need to discuss all possible transportation alternatives, including reinstating direct transportation services, which they parties believe can meet Claimant's family's needs and are cost-effective. They should explore all funding resources, including public, private, or charitable funding, and employ collaborative and synergistic approaches to assist parents to finance a van. In short, the Service Agency and Claimant's family should problem-solve together, to meet the challenges of providing for Claimant's transportation needs.

ORDER

Claimant's appeal is denied. The Service Agency is not required to fund the purchase of a van that has been modified to be accessible for Claimant. Claimant's parents and Service Agency representatives should schedule an Individual Program Plan meeting to discuss all of the possible alternatives for meeting Claimant's transportation needs.

DATED: September 4, 2013



MARK HARMAN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.