

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

VALLEY MOUNTAIN REGIONAL  
CENTER,

Service Agency.

OAH No. 2014040129

DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings (OAH), in Stockton, California, on May 20, 2014.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director.

Claimant appeared on her own behalf.

ISSUE

Is claimant entitled to continued transportation services for in-town medical appointments and local errands through Supportive Living Services (SLS)? (Welf. & Inst. Code, § 4648.35.)<sup>1</sup>

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

## FACTUAL FINDINGS

1. Claimant is an adult consumer who receives SLS from VMRC. As indicated in her current Individual Program Plan (IPP), dated September 5, 2013, claimant's long range goals are to maintain an appropriate living arrangement in the community, and optimal health and control of her medical conditions including epilepsy, sleep apnea, high blood pressure, and gastroesophageal reflux disorder. She also suffers from arthritic pain and Lupus, an autoimmune disease.

2. Pursuant to these IPP goals, VMRC has arranged for SLS assistance from Person Centered Services (PCS) with accessing claimant's medical appointments, including interim transportation. Claimant also requires support with "bulk shopping, resolving various incidental problems regarding correspondence and communication among her community resources, and accessing generic resources." Regarding transportation, claimant's IPP provides as follows:

[Claimant] continues to utilize Supportive Living Services (SLS) for transportation to *necessary* resources. [Claimant's] previous IPP indicated that [claimant] would "complete a DAR<sup>2</sup> application no later than 1/31/13 [and contact] *her IHSS SW for re-evaluation of medical and errands transportation.*" (IPP 8/28/12, 11/30/12). These plans appear to have been implemented but the transportation need was not resolved, and [claimant] continues to advocate that these plans were not addressed appropriately in previous meetings. [Claimant] continues to advocate for transportation to all resources via

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<sup>2</sup> Dial-a-Ride.

SLS. Currently, [claimant's] transportation to all *necessary* resources continues to be provided by SLS, until IDT (via mediation) can successfully resolve [claimant's] maximizing the least restrictive means of transportation that meets [claimant's] needs effectively.

(Italics in original.)

3. An IPP Addendum was prepared on March 19, 2014. It was not signed by claimant. Regarding transportation, it provides as follows:

SLS will provide assistance to foster [claimant's] independent living situation, including: accessing community/generic resources (e.g. medical resources, public service agencies such as IHSS); emergency preparedness; financial assistance (e.g. financial correspondence, identity theft issues); medical support; incidental miscellaneous problem solving; grocery/incidental shopping once per week (including transportation); static route bus training and/or Dial-a-Ride problem solving, *as applicable*; and transportation only to out of town medical appointments.

(Italics and underlining in original.)

4. Effective June 30, 2011, Assembly Bill 104 (A.B. 104, Chapter 37, Sec. 12 Statutes 2011) amended existing sections of, and added new sections to, the Lanterman Act.

New section 4648.35, subdivision (a), provides: "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."

5. On March 19, 2014, VMRC issued a Notice of Proposed Action (NOPA) to claimant, advising that it proposed to suspend service agency funding for SLS transportation services for in-town medical appointments and local errands. The NOPA indicated that "Claimant has the capacity to access a less restrictive transportation service (e.g. the city bus). The regional center is agreeable to fund a city bus pass for the Claimant to support the Claimant in meeting her necessities of life." At hearing, VMRC confirmed that it plans to continue to provide claimant SLS transportation for both medical emergencies and out-of-town medical appointments.

6. On March 28, 2014, claimant filed a Fair Hearing Request. This hearing followed.

7. John Poblete is the VMRC Service Coordinator assigned to claimant. He testified that VMRC has worked with claimant but was unsuccessful in securing for her the transportation she desired through either Dial-a-Ride or IHSS. In the absence of medical justification, VMRC can only provide her "static route transportation," essentially a bus pass. Claimant currently receives 39 hours of SLS per month. Mr. Poblete explained that transportation services that have been funded to date through SLS were designed to be an interim measure until this matter was resolved.

8. Mary Ann Gonzalez is the VMRC Program Manager. She explained that VMRC denied claimant's request for full transportation services because it has identified other generic means of transportation available to claimant that are more cost effective and also a less restrictive form of transportation services. Ms. Gonzalez has identified a bus stop in front of claimant's residence. Bus service from claimant's residence runs on the hour between 6:13 a.m. to 9:14 a.m.; and from 12:13 p.m. to 6:13 p.m. VMRC is prepared to fund a monthly unlimited Stockton bus pass for claimant. It will be substantially less costly than the SLS rate of \$20.33 per hour for transportation time.

Ms. Gonzalez considered claimant's medical conditions, and in particular a letter dated April 2, 2013, from Roland Hart, M.D. Dr. Hart is claimant's physician. He confirmed that she was under his care for Systemic Lupus Erythematosus. He indicated that claimant does need assistance with transportation because of her arthritis. However, he indicated that for her Lupus condition, "her only limitations would be that, if she goes outdoors, she should wear a sunscreen with an SPF of 45 or greater and cover both UVB and UVA rays."

9. Claimant testified to the physical difficulties she has due to her health conditions. Walking outside and standing for periods of time cause her discomfort. She has chronic arthritis and has had discs removed from her back. She acknowledges that a bus stop is in front of her residence, but is concerned that there will be no place for her to sit once she boards the bus. It is also difficult for her to navigate the steps up the bus. Claimant estimates that she requires transportation assistance with errands only once per week. Most of her medical appointments are in Stockton, and she has had no out-of-town medical appointments over the last three months.

10. Claimant has not appealed from Dial-a-Ride's denial of her request for services. VMRC will support any such appeal. Similarly, if claimant provides VMRC with an updated letter from her physician in support of her present medical claims precluding her from riding a bus, it will reconsider its determination that she is able to use static route transportation for weekly errands and scheduled medical appointments in Stockton.

11. VMRC has reasonably concluded that claimant is capable of using static route transportation as an alternative to SLS transportation for weekly errands and scheduled local medical appointments. In the absence of medical evidence to the contrary, VMRC has correctly determined that claimant can safely access and utilize public transportation.

## LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4648.35, subdivision (a), provides: "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."

2. Welfare and Institutions Code section 4648, subdivision (a)(6)(D), further provides:

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 services, 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 and family as identified in the individual program plan, shall be selected.

3. A service agency seeking to change a service contained in a consumer's IPP typically has the burden of demonstrating that its proposed decision is correct.

4. In this matter, VMRC has correctly determined that it must discontinue certain transportation services previously provided for claimant due to enactment of section 4648.35. The matters set forth in Findings 7 through 11 have been considered in finding that VMRC reasonably determined that claimant's transportation services for weekly errands and scheduled local medical appointments are no longer authorized where she can safely access and utilize public transportation. VMRC will, however, continue to fund her transportation services through SLS for medical emergencies and out-of-town medical appointments.

## ORDER

The appeal of claimant is DENIED.

DATED: May 27, 2014

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JONATHAN LEW

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**