

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2015040585

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Alhambra, California on May 11, 2015.

Carmen C. Luna, Supervisor, Family Services and Supports, represented Eastern Los Angeles Regional Center (ELARC or service agency). Parent represented Claimant.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on May 11, 2015. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

Whether ELARC should continue funding private taxi service to transport Claimant to and from his medical appointments and music therapy sessions.

FACTUAL FINDINGS

1. Claimant is a 10-year-old consumer of ELARC due to his qualifying diagnoses of Autism Spectrum Disorder and Cerebral Palsy. Claimant has an unsteady gait. He is ambulatory, but uses a wheelchair when traveling for long durations. Claimant

experiences as many as 100 seizures daily. He wears a protective helmet. Due to the frequency and intensity of Claimant's seizures, Claimant is home schooled. Claimant infrequently ventures out of his home, and when he does it is for medical appointments and therapeutic sessions.

2. Claimant has an appointment with his neurologist each month; an appointment with his pediatrician every two to three months; an appointment with his dentist every six months; and music therapy sessions each week. Since May 2011, ELARC has been funding private taxi transportation for Claimant to attend his medical appointments and music therapy sessions. No evidence of the costs of private taxi transportation for Claimant was offered at the administrative hearing.

3. During Claimant's most recent individual program plan (IPP) meeting, which occurred on February 20, 2015, ELARC advised Parent that she is required to pursue generic resources to meet Claimant's transportation needs to his medical appointments and therapeutic sessions. Parent indicated to ELARC that she was not in agreement with any changes to Claimant's transportation services. On March 4, 2015, ELARC issued a Notice of Proposed Action informing Parent that, effective April 4, 2015, the service agency would discontinue funding private taxi transportation services for Claimant to attend his medical appointments and music therapy sessions. On March 17, 2015, Parent filed a Fair Hearing Request objecting to any discontinuation of individualized taxi transportation for Claimant.

4. On April 9, 2015, an informal meeting occurred between ELARC and Parent. Parent informed ELARC that she does not own a car. ELARC requested that Parent provide written documentation verifying her lack of car ownership. ELARC suggested that Parent participate in a taxi voucher program that provides the service agency with vouchers for distribution to its clients. Parent declined the voucher program because she does not want to participate in any voucher program which would possibly

result in a change in the taxi company she currently uses. ELARC recommended Access Paratransit (Access), a share ride service, for Claimant's consideration. As an alternative to, or in conjunction with Access, ELARC also recommended transportation offered by the City of Los Angeles City Ride Program (City Ride Program), which services the facilities where Claimant receives his medical and therapeutic care. Parent maintained that these are not viable transportation alternatives because Claimant is excitable and stressed when he is around others. Claimant's excitement and stress, in turn, trigger epileptic seizures. Access requires Claimant to remain seated in his wheelchair during transport. Parent objects indicating that in the event Claimant has a seizure, it is impossible for her to remove him from his wheel chair to reposition him into a prostrate position to alleviate the seizure. According to Parent, when Claimant is transported by private taxi, his wheel chair is stored in the trunk of the taxi, and he is seated next to Parent where he reclines on Parent's lap in the event that he has a seizure.

5. ELARC requested that Parent provide documentation from Claimant's physician to substantiate the claim that Claimant is easily agitated around other people and that Claimant's agitation triggers epileptic seizures. Parent provided ELARC with an April 28, 2015 letter from Claimant's physician stating the following:

[Claimant] is a 10y/o boy with Autism and Refractory epilepsy due to problems with behavior related to autism and frequent seizures [Claimant] should if possible travel by himself when transportation is provided by regional center to medical appointments, music therapy etc. Please feel free to contact me if you have any questions. (ELARC Ex. VI.)

6. ELARC determined that the letter was authored by a general practitioner rather than by Claimant's neurologist, and that the letter was non-specific. ELARC

informed Parent that the letter was insufficient and that Parent should work with Claimant's neurologist to obtain "a more thorough report that explains the reasoning behind the request the [Claimant] must utilize individualized Taxi transportation in order to minimize the possibility of seizures occurring and explain how seizure activity may increase while traveling with others." (ELARC Ex. III.)

7. Based on the information Parent provided at the informal meeting, ELARC determined to continue funding private taxi transportation for Claimant until the date of Claimant's February 2016 IPP meeting to allow Parent additional time to provide the service agency with the information it has requested. ELARC stipulated that Claimant's service coordinator would continue to research all possible generic transportation sources to meet Claimant's transportation needs. (ELARC Ex. III.)

8. Parent reasserted her objection to any change in Claimant's private taxi transportation services. Thereafter, these proceedings ensued.

9. At the administrative hearing, ELARC conceded that at this time it has insufficient information to make any decision to discontinue Claimant's private taxi transportation services. ELARC indicated that it requires additional information regarding how best to meet Claimant's transportation needs. For example, the features and characteristics of the service agency's taxi voucher program are not yet fully understood by ELARC's staff. It is uncertain whether Claimant meets the qualifications for participation in the City Ride Program or other yet to be determined generic programs. It is uncertain whether a single, generic transportation source is capable of meeting all of Claimant's transportation needs. The ensuing 10-month period leading up to Claimant's February 2016 IPP meeting is intended for both Claimant and ELARC to obtain the information necessary to resolve these unanswered questions.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act

(Lanterman Act), Welfare and Institutions Code section 4500 et seq.,¹ the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) “Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities[.]” (*Id.*)

2. The Lanterman Act gives regional centers, such as ELARC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. Services and supports for persons with developmental disabilities are defined as “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, §§ 4215, subd. (b).) Services and supports listed in the IPP may include, *inter alia*, “transportation services necessary to ensure delivery of services to persons with developmental disabilities.” (*Id.*)

¹ All further references are to the Welfare and Institutions Code.

4. "In implementing individual program plans, regional centers, through the planning team, 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." (Welf. & Inst. Code, § 4648, subd. (a) (3).)

5. The selection of a provider of consumer services and supports requires consideration of several factors: (1) a provider's ability to deliver quality services and supports which can accomplish all or part of the consumer's individual program plan; (2) a provider's success in achieving the objectives set forth in the individual program plan; (3) a provider's licenses, accreditation and professional certifications; (4) whether services and supports of comparable quality can be obtained at less cost from another available provider; and (5) the consumer's choice of providers. (Welf. & Inst. Code, § 4648 (a) (6).)

6. Consistent with the Lanterman Act, ELARC's *Purchase of Service Guideline Transportation Services*, dated May 8, 2012, provides that "transportation may be defined as the means by which an individual travels to services identified and documented in the . . . IPP. ELARC transportation assistance may consist of identification, arrangement, and purchase of public or private modes of travel to enable consumers to obtain needed services." (ELARC Ex. V.) The *Guideline* further provides that "the need for the transportation service must relate directly to the presence of a developmental disability and the need for such a service must be documented in the [IPP]." (*Id.*)

7. As the party seeking to discontinue an existing government benefit, ELARC bears the burden of establishing cause to discontinue Claimant's private taxi transportation services by a preponderance of the evidence. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); Evid. Code, §§ 115 ("Except as otherwise provided by law, the burden of proof requires proof by a

preponderance of the evidence.”) and 500 (“a party has the burden of proof as to each fact the existence of which is essential to the claim for relief or defense that he is asserting.”).)

8. ELARC has not met its evidentiary burden. ELARC has conceded that at this time it has insufficient information on which to make a determination to discontinue private taxi transportation for Claimant to access his medical and therapeutic services. (Factual Finding 9.)

9. By reason of Factual Findings¹ through 9 and Legal Conclusions 1 through 8, no cause exists, at this time, for ELARC to discontinue funding private taxi service to transport Claimant to and from his medical appointments and music therapy sessions.

ORDER

1. Claimant’s appeal is granted.
2. Eastern Los Angeles Regional Center shall continue to fund private taxi service to transport Claimant to and from his medical appointments and music therapy sessions until it has been determined through the individualized program planning process that such services are neither necessary, appropriate, or effective to meet Claimant’s transportation needs.

DATED: May 18, 2015

_____/s/_____
JENNIFER M. RUSSELL
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.