

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2015050210

DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on June 22, 2015, in San Mateo, California.

Claimant was represented by his mother.

Lisa Rosene, Chief of Regional Center Services, represented service agency Golden Gate Regional Center (GGRC).

The matter was submitted for decision on June 22, 2015.

ISSUE

Should GGRC be ordered to pay the full cost of a van conversion for Claimant's use?

FACTUAL FINDINGS

1. Claimant is an eight-year-old consumer of GGRC. Claimant is eligible for regional center services based upon a diagnosis of cerebral palsy and epilepsy. He lives with his mother, father, and younger sister. He requires complete assistance for his self-help, personal care, and daily living. He uses a wheelchair that is specifically equipped to

meet his needs and weighs approximately 70 pounds. The wheelchair is awkward to handle, has a rigid frame and does not fold for compact storage. His mother is his primary caregiver. She has to transfer Claimant to their vehicle and lift his wheelchair into the rear of the vehicle. His size and involuntary body movements make it difficult for her to transfer him into his car seat. His mother is healthy and would like to remain in the best physical health as possible as Claimant gets older.

2. In December 2013, GGRC conducted an annual review of Claimant's Individual Program Plan (IPP). Drina Dugandzic, Claimant's case manager, observed his mother having difficulty taking him out of her vehicle and removing his wheelchair. They discussed his transportation needs, including van conversions. Dugandzic sent an email on December 16, 2013, providing Claimant's mother with information on the required documentation for GGRC to pay toward a van conversion.

3. On December 9, 2014, Dugandzic met with Claimant and his family for an annual review. Dugandzic informed Claimant's mother that according to GGRC policy, the maximum amount that GGRC could contribute for a van conversion is \$19,000, and any amount over that would have to be covered by the family. Dugandzic also told her that GGRC had a provider, MobilityWorks, that could complete a van conversion for under \$19,000. At the time, Claimant's parents did not have a vehicle that could be converted for wheelchair access. Dugandzic did not make a recommendation regarding the type of vehicle that Claimant's parents should purchase.

4. In January 2015, Claimant's parents purchased a 2015 Toyota Sienna minivan, which requires the most expensive van conversion. His mother had conducted extensive research and chosen a vehicle package that met their family's needs. She had considered buying a gently used van which had already been converted for wheelchair access. However, she was not able to find a vehicle that met their needs. She obtained a cost estimate from MobilityWorks to convert the Toyota in the amount of \$25,569.

According to Claimant's mother, the family is not able to contribute any monies to the van conversion because they spent all of their money to purchase the vehicle. She submitted a request for reimbursement and the cost estimate to GGRC. Dugandzic informed Claimant's mother that GGRC would not pay over \$19,000, toward the van conversion.

5. Occupational Therapist Candace McGwire met with Claimant's family in February 2015, regarding therapy recommendations and a van conversion. In her report, McGwire confirmed the family's need to have a wheelchair accessible vehicle to help Claimant be rolled in his wheelchair without requiring him to be lifted out of his wheelchair and placed inside a vehicle. This would allow him to have freedom to get out of the house safely and let him experience life outside of his home without having to transfer him multiple times per day. McGwire made the following recommendations regarding the best cost effective solution: "1. Van conversion; drop floor, with in floor style ramp, side entry ramp. 2. EZ lock system: vehicle docking base and wheelchair bracket, quantity x 2; one for manual and power chair. 3. Jumper seat and rubberized floor: in center cargo area MobilityWorks can provide, with funding."

6. On March 11, 2015, GGRC's planning team met to discuss Claimant's request for funding for a van conversion. On April 7, 2015, Claimant's mother was informed that GGRC's Purchase of Services guidelines only allowed for a maximum of \$19,000, which is a rate approved by the Department of Developmental Services. GGRC refused to fund any amount over \$19,000. Claimant's mother told the team that they had always intended to purchase a Toyota Sienna because of its larger interior and good track record. She provided two additional quotes for the van conversion: Access Options Incorporated in the amount of \$25,390.28, and Mobility Access, Inc., in the amount of \$26,305.

7. On April 7, 2015, GGRC issued a Notice of Proposed Action, denying Claimant's request for funding the entire van conversion above \$19,000. The following reason was provided: "According to GGRC Purchase of Service guidelines, there is a limitation on funding for van conversion due to cost effectiveness. GGRC recently received another quote from a vendor showing that a van conversion can be done in the amount of \$19,000. Regional Centers are required to ensure cost effective use of public resources." Claimant requested a fair hearing.

8. On May 18, 2015, GGRC conducted an informal meeting and issued a decision. It was found that Claimant's mother was aware of the \$19,000 maximum at the time of the planning team meeting on March 11, 2015. It was also found that she had agreed to the \$19,000, at that time, and later changed her mind and requested that GGRC fund the entire cost of the van conversion. The decision upheld the maximum allowable amount of \$19,000, because Claimant's parents "did not consult with the assigned social worker for their son prior to making the vehicle purchase and therefore, GGRC, was not able to advise them on the most cost effective option available. It was not until after they made the purchase of the Toyota Minivan that they requested modifications."

9. GGRC's Purchase of Services guidelines regarding vehicle modifications, states the following:

"Regional Center funding shall not be used to purchase the vehicle itself. An evaluation by an occupational therapist must be conducted to determine the most appropriate and cost effective alternatives.

Funding for van conversions will not be made when a less costly van modification option exists.

A minimum of three bids must be obtained for consideration by the Planning Team unless there are only 1 or 2 companies that provide the requested equipment. All things being equal, the lowest bid will be authorized for funding. Should the family/individual elect to go with a higher bid, they will be responsible for the difference between the lowest bid and the one they have chosen.”

10. Dugandzic testified at hearing. She described GGRC’s internal process for approval of a van conversion and the state mandate to use generic resources and the most cost-effective options. It is a team decision between the GGRC supervisor, physician, social worker, and the parents. The Chief of Services must approve the request, before a purchase of service is put into place. However, the Purchase of Services guidelines do not specifically state a \$19,000 maximum.

Dugandzic has seen estimates of conversions range from \$19,000 to \$26,000. At hearing, GGRC provided a document detailing numerous van conversions completed by MobilityWorks from December 2010 through September 2014. The document did not identify the model type or year of the vehicles. The majority of the vehicles were reimbursed at \$19,000, but some were reimbursed at lower amounts. One van conversion, dated June 15, 2010, indicated a reimbursement amount of \$22,900.

According to Dugandzic, Claimant’s family could have purchased a used Toyota Sienna minivan, or a new Dodge van and the conversion could still meet Claimant’s need for transportation and be within the \$19,000 limit. She states that the purpose of a van conversion is not to meet a family’s preference, but to meet the consumer’s needs. However, she confirmed that the family can purchase whatever vehicle they choose. Dugandzic also stated that the three estimates that the mother obtained were consistent with the recommendations of the occupational therapist. Also, the estimate

of the type of work to be completed by Access Options and Mobility Access was comparable to the type of work to be completed by MobilityWorks.

11. Beth Dewitt, GGRC Manager, testified at hearing. DeWitt conducted the informal meeting on May 18, 2015. DeWitt confirmed that the family is not required to discuss with GGRC the type of vehicle they wish to buy before purchasing it. Also, the family is not required to buy a particular vehicle. In Dewitt's opinion, the most cost-effective option would have been for the parents to have purchased a Dodge Caravan. Dewitt believes that the parents needed to have consulted with the planning team regarding the most cost-effective option to meet Claimant's needs. Instead, Claimant's parents went outside the IPP process and bought the Toyota Sienna.

12. The state had a severe budget crisis in 2009. GGRC found that the most cost-effective manner to reimburse a consumer for a van conversion was determined by using prior conversions completed by MobilityWorks over a period of time where \$19,000 was the most frequent and lowest amount to convert a Dodge Caravan. GGRC also decided that it was better to eliminate the requirement that a family perform research and submit three bids, pursuant to the Purchase of Services guidelines, to establish the most cost-effective option. However, families can still obtain three bids, if they wish.

13. Claimant's mother testified at hearing. She has been in the process of exploring the types of vehicles her family would have to purchase to accommodate their son since his birth. There were many factors taken into consideration on whether to purchase the Toyota Sienna minivan, in particular, the cost-effectiveness "over the long run" for consumer. The minivan suits their family needs and her son's needs. He is getting heavier and older which hinders his ability to get around without being lifted. They live in an apartment complex that does not accommodate parking for a full size van. She contends that GGRC's requirement that a consumer speak to the regional

center before purchasing a vehicle distorts the law. Also, she contends that GGRC has no documentation of a policy establishing a \$19,000 maximum, and if such a policy exists, then it is a prohibited inflexible policy. It was based upon this policy that the service agency offered to pay Claimant \$19,000 towards a van conversion.

14. At the hearing, the parties agreed that a van conversion is appropriate and necessary to meet Claimant's transportation needs, and to provide him increased independence within the community. The service agency argues that there are more cost-effective ways of obtaining an appropriately modified van than the one Claimant's parents chose. Instead of buying a new vehicle that requires more than \$25,000 in modifications, the service agency points out that Claimant's parents could have purchased a late model used van that had already been converted. But whether Claimant's parents had chosen to buy a new van or an already converted used one, the amount the service agency would be willing to pay would be the same – \$19,000.

15. Claimant's parents did not act unreasonably in purchasing the new Toyota Sienna minivan without first discussing the matter with GGRC and reaching a consensus at a planning team meeting. Any failure to do so does not justify GGRC's denying Claimant's request to pay for the total amount for a van conversion. Claimant's parents met their responsibility under GGRC's Purchase of Services guidelines when they obtained three cost estimates, with the least expensive estimate being less than GGRC's recommended vendor. GGRC is required to review Claimant's request for services and support on an individual basis and consider the cost-effectiveness of each option. It does not appear that GGRC did so in this case.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act

(Lanterman Act), Welfare and Institutions Code section 4500, et seq.¹ The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP that states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.)

2. Section 4648 describes the activities for which regional centers are responsible in order to achieve the stated objectives of a consumer’s IPP, including securing needed services and supports. Services and supports may include transportation services necessary to ensure delivery of services. (§ 4512, subd. (b).) In determining appropriate services and supports, the regional center must consider “... 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 [IPP] participants, the effectiveness of each option in meeting the goals stated in the [IPP] ... [and] the cost-effectiveness of each option.” (§ 4512, subd. (b).)

3. Services and supports secured by the regional center must be “... flexible and individually tailored to the consumer and, where appropriate, his or her family.” (§ 4648, subd. (a)(2).) Consumers and, where appropriate, their parents, are empowered to make choices in all life areas. (§§ 4501 & 4502, subd. (b).) Regional centers must respect the choices made by consumers and their parents. (§ 4646, subd. (a); 4502 .1.)

¹ All references are to the Welfare and Institutions Code.

4. But the requirement that regional centers respect consumers' choices does not mean that developmentally disabled individuals and their parents are entitled to unlimited choice in deciding which services and supports are to be provided. Because regional centers are subject to budgetary and fiscal constraints, the Lanterman Act requires that they implement services and supports in a cost-effective use of public resources. (§ 4646, subd. (a).)

5. GGRC is contending that it is not required to fund the full amount of the requested conversion because Claimant's parents purchased the new Toyota Sienna minivan before they received GGRC's permission or engaged in the planning team process, and GGRC's policy has a \$19,000 maximum. A regional center may not decide which services and supports it will provide based upon a fixed policy. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The law requires that GGRC determine the services and supports to be provided to Claimant on an individual basis.

6. The service agency has failed to offer persuasive evidence in support of its contentions. Instead of a more expensive new van, the service agency contends that purchase of an already converted used van or a less expensive new van would be a more cost-effective use of funds. The "cost-effectiveness" provisions of the Lanterman Act relate to public resources, not private resources. Therefore, while purchase of a lower cost new or used vehicle might be more "cost effective" for Claimant's parents because their out-of-pocket costs would be lower, this is not true for the service agency. Under the service agency's policy, the impact upon the expenditure of public resources would be the same whether the family purchased a new van or a used one because the amount the service agency would be willing to contribute to that purchase remains fixed at \$19,000.

Even if the appropriate cost-effectiveness analysis is considered to be a comparison between purchasing and converting a new van and purchasing an already

converted used one or less expensive new van, a mere comparison of the costs of the vehicles would not tell the entire story. As Claimant's mother indicated, the family purchased the Toyota Sienna largely because of its reliability. Had they instead purchased a used van there is no guarantee that it would have the same reliability.

Despite its contentions regarding cost effectiveness, the actual reason the service agency refused to fund the full cost of a van conversion for Claimant was that the service agency has established a maximum amount it will pay towards any van conversion. Thus, even though the service agency may well have had legitimate budgetary and fiscal reasons for doing so, it has chosen to implement an inflexible and essentially arbitrary limit of \$19,000 towards any conversion. A service agency is entitled to establish policies regarding the provision of services and supports. However, when such a policy is not consistent with the Lanterman Act or with the best interests of a consumer, the policy must give way. The decision as to whether to fund a requested service must be based upon a consideration of all relevant circumstances, not on an inflexible policy.

The service agency cannot solely limit its payment for a needed van conversion to \$19,000, when the cost is higher and the Claimant's parents have provided three estimates as required under GGRC's own Purchase of Services guidelines. Here, the least costly estimate to convert the family's new van is \$25,390. GGRC's preferred vendor, MobilityWorks, does not offer the least expensive estimate. GGRC appears to favor a van conversion on a full size van, like the Dodge Caravan. However, GGRC does not appear have considered the other relevant factors in this case, including that Claimant resides in an apartment complex and a full size van cannot be accommodated, or the reliability and larger interior of the Toyota Sienna, which are factors the family took into consideration when they purchased the vehicle.

7. Generally, all things being equal, the lowest estimate would be the most cost-effective option. However, equity and fairness require that the service agency not be required to bear the full monetary brunt of the parent's decision to purchase a top-of-the-line minivan that requires the most expensive van conversion. Especially, in light of the fact that Claimant's mother was made aware that GGRC would place a maximum on the amount of reimbursement for a van conversion before the family purchased a vehicle. She has no reasonable expectation that GGRC would pay the full amount of the van conversion. Therefore, dividing the increased costs roughly equally and adding the result to the previously authorized \$19,000, it is determined that it is reasonable and cost-effective for the service agency to be required to pay \$22,195 towards the cost of the van conversion requested by Claimant. This amount is less than the \$22,900, which the evidence established GGRC paid toward another consumer's van conversion, even after the 2009 budget cuts, which contemplates that GGRC makes exceptions to their own unwritten \$19,000 maximum. Claimant's parents are responsible for the remaining costs of the conversion over and above \$22,195.

ORDER

Claimant's appeal is granted in part and denied in part. Claimant is not entitled to have Golden Gate Regional Center pay the full cost of the van conversion. However, the regional center is required to pay \$22,195, toward the cost of the van conversion.

DATED: June 30, 2015

_____/s/_____

REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.