

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2015050759

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 8, November 9, 2015, and January 8, 2016 in Van Nuys, California.

Mother and father represented claimant at the hearings on September 8, 2015 and January 8, 2016 (family members' names are omitted to preserve confidentiality). Claimant had notice but was not present or represented at the November 9, 2015 hearing. Reached by telephone, mother stated that the family had not received notice. She stated that she and father would not accept the invitation to participate in the hearing by telephone and would make no appearance that day, even if the hearing were delayed to late morning or early afternoon to allow for travel and preparation.

North Los Angeles County Regional Center, the service agency, was represented by Stella Dorian, its Fair Hearing Representative.

Oral and documentary evidence was received, argument was heard, the record was closed, and the matter was submitted for decision on January 8, 2016.

ISSUE

Whether the service agency should reimburse claimant for transportation services in 2012 and 2013?

FACTUAL FINDINGS

1. Claimant is 26 years old. She is a consumer of the service agency based on a diagnosis of Borderline Intellectual Disability. (Welf. & Inst. Code, § 4512, subd. (a).) She lives with her mother and father and a younger sister and brother in Porter Ranch, California. Claimant has attended three colleges in the San Fernando Valley. She has attended Valley Community College, where she passed an office procedure class. After several attempts, claimant recently obtained her driver's license. She is able to use public transportation at times, but has trouble in unfamiliar settings and is easily confused.

2. On April 28, 2015, the service agency issued its notice of proposed action to deny retroactive funding for transportation costs for 2012 and 2013. On May 14, 2015, claimant made her fair hearing request. (Exhibit 1.)

3. The service agency's February 23, 2011 interdisciplinary note states that mother and Consumer Service Coordinator (CSC) Soraya Vargas spoke by telephone to schedule an Individual Program Plan (IPP) meeting to take place on March 2, 2011. During the phone conversation, mother asked whether the service agency would pay for claimant's bus pass. CSC Vargas told mother that she should apply for ACCESS transportation services. Mother responded that claimant had applied but had been found not qualified. CSC Vargas advised that claimant should look into the matter further because, as a service agency consumer, she was entitled to receive discounted transportation services. (Exhibit 8.)

4. The March 2, 2011 IPP states claimant completed classes at Dollar Driving School and had taken the DMV exam several times. She had not yet passed, but mother

said she would continue to work with claimant on driving rules. Claimant was planning to take courses at a college not yet chosen and, as mother said, was planning to take public transportation to and from school. Reimbursement or payment for a bus pass was not discussed at the March 2, 2011 meeting. (Exhibit 3.)

5. Another IPP meeting occurred December 6, 2011. Claimant, her mother, and service coordinator Patricia Bauman attended. As the IPP states, claimant was "able to use public transportation to places she's familiar with, but can become easily confused in unfamiliar places." The IPP noted that claimant continued to work on getting her driver's license and the plan that she would take driver training classes funded by the family. The IPP noted also that claimant had attended Valley College. She took a bus to the college, but it took too long, in mother's opinion, so that mother preferred that claimant attend college classes closer to home, allowing her to use public bus service to and from classes. Under "Funding Considerations," the IPP states, "The IPP planning team has determined that generic transportation services are available and accessible. [Claimant] is able to use public transportation to familiar places. Her parents also drive her when they're available. She is working towards getting her driver's license as well." (Exhibit 4.)

6. The January 4, 2012 interdisciplinary note states claimant was considering attending Mission College, but her family believed she would need help obtaining a vendor's transportation services "because it would take to [sic] long to teach her how to catch the bus to Mission College." (Exhibit 8.)

7. There was a review IPP on December 14, 2012. Regarding transportation, it is noted that claimant was attending Mission College, to which mother transported her or "she uses public transportation to and from school and home by herself." (Exhibit 5.)

8. As set out in a December 12, 2014 interdisciplinary note included in Exhibit 8:

[Claimant] has been using transportation through Accredited. The family had several incidents with this company regarding their daughter. [Claimant] was called a liar and yelled at before by the driver. [Claimant] has waited several hours in the rain for rides and they have left without taking her home at times. The family reported it and the drivers were talked to, however, the mother stated to CSC [Consumer Services Coordinator] that this was not the first time. The family would like to use another service and is hoping Regional Center can help. They are also hoping to be reimbursed because they have been paying privately for this company.

9. As set out in a January 9, 2015 interdisciplinary note, part of Exhibit 8:

The only pressing issue from the family is the transportation reimbursement they need from privately paying access. The family is not happy with any of the transportation services they have used and need help with providing one for [claimant]. However, CSC met with [claimant] and she is very capable of taking public transportation. She also passed the written part of the driver's test and wants to take the road test. . . . [Claimant's] day program at Tierra Del Sol wants to hire [claimant] and they really like [claimant], however, they stated to CSC that she is often late to program or missing it because she is not feeling well or because of the transportation. This happens even when her family brings

her. TDS has addressed this with the family. At this point, the family need reimbursement for the transportation they paid for the last two years. . . .

10. Beginning in October 2014, the regional center agreed to reimburse claimant's bus transportation costs at the rate of 42 trips per month at \$2.75 per trip. It also agreed to reimburse mother's driving claimant starting on January 22, 2015 at \$.575 per mile. (Exhibit 7.)

11. Mother claimed that when Patricia Bauman and she discussed transportation costs in 2014, Ms. Bauman promised mother that the regional center would reimburse transportation costs retroactively.

12. Ms. Bauman testified at the November 9, 2015 hearing. She worked at the regional center for approximately 16 years, until October 2014. As of 2011, she was familiar with claimant's case as the service coordinator whose duties included supervision of CSC, Ms. Vargas. Ms. Bauman recalled discussing claimant's transportation needs with mother. She did not promise and knew of no promise by the regional center of reimbursement for transportation costs to mother.

LEGAL CONCLUSIONS

1. No IPP states that the service agency was to reimburse claimant's transportation costs in 2012 through 2013. Reimbursement is not required in these circumstances.

2. "Persons with developmental disabilities have the same legal rights and responsibilities" as other individuals. (Welfare & Inst. Code, § 4502, subd. (a).) Like other individuals, claimant has the burden of proof to show she is entitled to government benefits, in this case reimbursement of transportation costs. (Evid. Code, § 500.)

3. Welfare and Institutions Code section 4646 provides in pertinent part:

- (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.
 - (b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.
4. Welfare and Institutions Code section 4646.5 provides in pertinent part:
- a) The planning process for the individual program plan described in Section 4646 shall include all of the following:
 - (7) (A) The development of a transportation access plan for a consumer when all of the following conditions are met:
 - (i) The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services.

- (ii) The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services.
- (iii) The planning team has determined that generic transportation services are available and accessible.
- (B) To maximize independence and community integration and participation, the transportation access plan shall identify the services and supports necessary to assist the consumer in accessing public transportation and shall comply with Section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

5. In March 2011, claimant's mother considered her able to use public transportation to attend college. The family's plan was that claimant could take a bus to the college campus. (Finding 4.)

6. The family's plan was implemented, at least in part. To make transportation more manageable, however, claimant switched to a college closer to home in 2012. She was able to use the bus for transportation to the new campus, although her mother sometimes drove her. (Finding 7.)

7. Especially after 2012, and at various times before 2015, claimant used specialized transportation services, but the family became unhappy with them. As a result, mother preferred to use her own car to transport claimant. During these years, claimant continued to be capable of taking public transportation. (Finding 9.)

8. The statutes, and Welfare and Institutions Code section 4646, subdivision (a), in particular, recognize that a claimant and a regional center may have divergent interests. Thus a family's preferences may not be for services that are available and cost-

effective.

9. The family sought to show that the cost-effective option of bus transportation, though they used it at times before the regional center agreed to transportation cost reimbursement, should not be considered appropriate for two reasons. First, the family developed a preference against it. Second, mother testified to a promise by case manager Ms. Bauman that all transportation costs would be reimbursed retroactively. However, the preference the family developed was not reflected in an IPP before October 2014. Agreement regarding transportation and its costs should properly be set out in an IPP, but was not set out in an IPP in this case. There was also no promise of reimbursement from the service agency. Mother's testimony that Ms. Bauman made such a promise was not credible, whereas Ms. Bauman's clear denial that she made such a promise was credible.

10. Claimant did not present evidence of when or how much mother may have used her car to transport claimant in 2012 and 2013. There was evidence of claimant's using a vendor's transportation services beginning in approximately January 2012 and that this is the same transportation vendor for the cost of whose services claimant is currently being reimbursed. (Findings 3, 6, 8, and 9.) However, there was no agreement under Welfare and Institutions Code section 4646.5 that these costs would be reimbursed.

ORDER

The service agency, the North Los Angeles County Regional Center, is not required to reimburse claimant for transportation costs in 2012 and 2013.

DATED: January 25, 2016

THOMAS Y. LUCERO

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.