

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2015070869

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on September 8, 2015, in Bakersfield, California.

Cherylle Mallinson, Director of Consumer Services, represented Kern Regional Center (Regional Center or Service Agency).

Claimant's mother represented Claimant.¹

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on September 8, 2015.

ISSUE

Should Regional Center fund services to transport Claimant from the Jasmine Nyree Educational Center (JNEC) to his home?

FACTUAL FINDINGS

1. Claimant is a four-year-old Service Agency consumer with a qualifying

¹ Claimant's name and the names of his family members have not been used to protect Claimant's privacy.

diagnosis of autism. He resides with his mother in Taft, California.

2. As set forth in the Individual Program Plan (IPP) prepared after a meeting on February 2, 2015, Claimant primarily communicates through gestures. He requires assistance with daily living skills. Claimant engages in misbehaviors when he is angry or frustrated, such as throwing himself on the floor, hitting others, and hitting his head against hard surfaces. He runs away and requires close supervision for his safety.

3. The local school district does not have pre-school placement options in Taft that would meet Claimant's educational needs, and has placed Claimant at the Richardson Center (Richardson) in Bakersfield, California. Richardson is approximately 42 miles from Claimant's home, and the local school district provides transportation. A district bus picks Claimant up at about 7:00 a.m. each weekday for the approximate two-hour trip to Richardson. Claimant receives services at Richardson from 9:00 a.m. to 1:30 p.m.

4. At the conclusion of the Richardson program, a district bus takes Claimant to his after school program at JNEC, also located in Bakersfield, where he remains until approximately 5:30 p.m. Claimant has benefited from the services he receives at JNEC. He has been provided with a helmet for his safety. He has started learning sounds.

5. The district bus picks up students in the early afternoon for the return trip to Taft, but is not available for Claimant when he completes the JNEC program at 5:30 p.m.

6. Claimant's mother is a student at Taft College. She also works approximately 20 hours per week at the college. She is typically at school from 8:00 or 9:00 a.m. until past 5:00 p.m., and cannot regularly and consistently pick Claimant up at the time he leaves JNEC. Claimant's mother is a single parent and she and Claimant depend on her income and future educational prospects.

7. Claimant's grandmother picks Claimant up at JNEC, and takes him to her house, where he remains until his mother picks him up. Claimant's grandmother is elderly and cannot regularly drive him to his home in Taft.

8. Regional Center obtained an estimate from the vendor it uses to provide transportation services to its consumers, Express Transit. On May 22, 2015, the vendor estimated that it would cost \$120.35 per day, or \$28,643.33 per year, to transport Claimant from JNEC to his home.

9. On May 22, 2015, Claimant's mother requested funding for transportation

services to and from JNEC during the summer and from JNEC to his home during the school year. On June 17, 2015, Service Agency denied the request. Relying on Welfare and Institutions Code² sections 4646.4, subdivision (a)(1), and 4646, subdivision (a), Service Agency concluded that it was more cost-effective for Claimant's mother to transport Claimant. Service Agency also deemed the transportation at issue to be a parental responsibility, citing section 4646.4, subdivision (a)(4). Claimant's mother filed a Fair Hearing Request on June 18, 2015.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., 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. (§ 4501.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, for procuring services, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines the services and supports that may be funded, in pertinent part, as follows: "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. The determination of which services and supports are necessary for each consumer shall be made through the individual

² All further statutory references are to the Welfare and Institutions Code.

program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." Services specifically mentioned in the non-exhaustive list contained in section 4512, subdivision (b), include transportation services.

4. Section 4646.4 provides, in pertinent part: "Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: [¶] . . . [¶] (4) Consideration of 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 as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. [¶] . . . [¶]"

5. In this case, it is Claimant's developmental disability and his need for services and supports not available in his hometown of Taft that causes him to travel to Bakersfield. The JNEC services are also provided to address Claimant's needs associated with his developmental disability, and there is no evidence that a cost-effective alternative exists in Taft. The school bus is not available to pick up Claimant at the conclusion of the JNEC program, and his mother is usually in school. Claimant's needs that give rise to the transportation services request are therefore not the same as those of children without disabilities, who do not need to travel out-of-town to obtain services, and these needs cannot be deemed a parental responsibility pursuant to section 4646.4, subdivision (4).

6. Except for arguing that the transportation of Claimant was a parental responsibility, Service Agency presented no other alternative to the one set forth in factual finding number 8. However, as set forth in legal conclusion number 5, Claimant's

transportation needs exceed those of children without developmental disabilities and family transportation cannot be considered a cost-effective alternative. Accordingly, absent a valid alternative, the cost of transportation set forth in factual finding number 8 is found to be cost-effective.

7. By reason of factual finding numbers 1 through 8 and legal conclusion numbers 1 through 6, Claimant's appeal is granted and Service Agency shall fund services to transport Claimant from the JNEC to his home.

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ORDER

Claimant's appeal is granted and Service Agency shall fund services to transport Claimant from the JNEC to his home.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.