

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2015120219

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on March 28, 2016, in Bakersfield, California.

Mark Meyer, Program Manager, represented Kern Regional Center (Regional Center or Service Agency).

Claimant's mother represented Claimant.<sup>1</sup>

Oral and documentary evidence was received at the hearing. The record was left open for Claimant to provide information about her upcoming school schedule, which was not available at the time of the hearing, and for the parties to review the matter in dispute in light of the additional information. No additional information or notice of resolution was provided to the Administrative Law Judge by the April 13, 2016 deadline, and the matter was submitted for decision on April 13, 2016.

ISSUE

Should Regional Center fund services to transport Claimant from her day care program to his home?

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

## FACTUAL FINDINGS

1. Claimant is a five-year-old Service Agency consumer with a qualifying diagnosis of autism. He resides with his parents and his older sister.

2. Claimant attends a special education program on weekdays. A bus picks him up at home in the morning and takes him to school. At the end of the school day, the school bus transports Claimant to an after school program funded by Service Agency. He remains in the program until approximately 5:00 p.m.

3. The after school program does not provide transportation services. During the period of January to November 2015, Service Agency provided transportation for Claimant from his after school program to home. At the time, Claimant's mother was attending Bakersfield College and could not provide the transportation. Claimant's mother arranged for an adult relative or neighbor to provide care to Claimant until she returned from school.

4. In November 2015, Service Agency lost its transportation services provider, and it stopped providing transportation services to Claimant. Claimant's mother's schedule changed, and she was able to pick up Claimant at his after school program. However, she is back in school, now at Bakersfield Adult School, and has to perform clinical work to complete her course of study. Her clinical work schedule had not been finalized at the time of the hearing, and Claimant's mother is concerned that her schedule will prevent her from driving Claimant home from his after school program. Claimant's mother's clinical program is scheduled to run between April 4, 2016, and June 2, 2016.

5. Claimant's father works full time, and returns home between 6:30 and 7:00 p.m. He is unable to regularly provide weekday transportation to Claimant from his after school program.

6. On November 4, 2015, Service Agency denied continued funding for transportation services from Claimant's after school program, asserting that the transportation was a parental responsibility. Claimant's mother filed a Fair Hearing Request on December 4, 2015.

## LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code<sup>2</sup> 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 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.

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<sup>2</sup> All further references are to the Welfare and Institutions Code.

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: "[a)](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, Claimant receives after school services because of his developmental disability. The 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 to or from a special needs after school program. Therefore, Claimant's need for transportation services is one for extraordinary care that must be considered pursuant to section 4646.4, subdivision (4). The after school program does not provide transportation, and Claimant's parents are not always able to drive Claimant home at the end of the program. Service Agency has not presented a generic resource or other viable alternative for providing the service. In fact, Service Agency has previously recognized its obligation during periods that Claimant's parents were unable to provide the needed transportation. In the existing circumstances, Service Agency funding of Claimant's transportation is a cost-effective service or support for Claimant.

6. By reason of factual finding numbers 1 through 6 and legal conclusion numbers 1 through 5, Claimant's appeal is granted.

## ORDER

Claimant's appeal is granted, and Service Agency shall fund services to transport Claimant from his after school program to his home during the period that his mother is

unable to do so because she is scheduled to attend school or to receive school-sponsored clinical training.

Dated: April 18, 2016

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.