

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2016040624

DECISION

On May 26, 2016, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Claimant's mother and conservator represented claimant who was present only for the first few minutes of the hearing. Claimant's mother was assisted by a Spanish language interpreter.

Oral and documentary evidence was introduced, and the matter was submitted on May 26, 2016.

ISSUE

Is San Diego Regional Center required to fund appropriate transportation in the afternoons for claimant to return home after attending a day program? Additionally, is the funding of a rental car or, alternatively, a taxi service appropriate transportation for claimant?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant receives services from SDRC. He qualifies for services from SDRC on the basis of mild intellectual disability and autism spectrum disorder. Claimant requested SDRC provide appropriate transportation in the afternoons for claimant to be transported from a day program to home. Claimant asserts that the appropriateness of the transportation method depends upon the length of time claimant must remain sitting in an automobile, as well as the size of the automobile, because it is unsafe to transport claimant in the front seat of a standard size car due to his physical and behavioral conditions. Claimant currently receives transportation to his day program in the mornings via CityLink transportation service (CityLink) funded by SDRC, and that transportation is acceptable to claimant. However, claimant has had problems with the CityLink transportation service in the afternoons and is seeking "appropriate transportation" from the day program to home for that time.

2. SDRC received a request from claimant for "appropriate transportation" from the day program to home in the afternoons. Claimant requested transportation in the form of either a taxi cab, or alternatively, a rental car.

3. On March 22, 2016, SDRC notified claimant that SDRC denied the request for transportation for claimant via taxi service or rental car because a taxi cab service would be unsafe and a rental car is not cost effective.

4. On April 12, 2016, claimant's mother filed a fair hearing request appealing SDRC's decision and requesting a hearing. This hearing followed.

BACKGROUND

5. Claimant is a 27- year-old man who lives with his parents. He suffers from mild intellectual disability and autism spectrum disorder, and presents significant

behavioral issues. Claimant swings his arms, hits and has caused damage to vehicles and endangered others during transportation. Metropolitan Transit Service (MTS) terminated claimant from using its services because of his behavioral problems. Claimant has been attending a day program for a number of years. Because claimant's parents were having difficulty caring for him, claimant was placed in a residential care facility for a brief period of time beginning in January 2016 and ending in February 2016, when claimant's parents removed him from the facility and brought him back into their home. During the time claimant was in the residential care facility, the facility provided transportation to and from the day program. After claimant was removed from the residential care facility by his parents, his parents sought assistance from SDRC to solve claimant's transportation needs to and from the day program. Currently, claimant receives satisfactory transportation in the mornings to the day program via CityLink transportation service. However, in the afternoon claimant's mother transports him from the day program to home and is reimbursed for that transportation via a voucher system.

6. Claimant's Individual Program Plan (IPP), dated December 11, 2013, sets out the plan for the support necessary for claimant's well-being. Additionally, an Addendum to that IPP, dated February 17, 2016, was created updating his necessary support. The IPP and Addendum both discuss transportation needs of claimant and note that claimant presents challenging issues for safe transportation; he has been terminated from MTS services; and SDRC will continue to fund travel reimbursement for claimant's transportation.

CLAIMANT'S EVIDENCE

Testimony of Claimant's Mother

7. Claimant's mother testified regarding claimant's current physical condition and behavioral challenges, as well as the issues related to claimant's transportation needs.

She stated that respondent has difficulty getting into and out of a standard automobile such as her car or her husband's car. He has sustained injuries attempting to get in and out of her vehicle because of its small size. She stated that he should not sit in the front seat of a standard automobile because of his behavioral problems. Claimant has opened the car door during transport, or hit the glass on the windshield during behavioral outbursts, causing her to stop the car until he calms down. She further testified that claimant is not able to get out of his wheelchair easily and climb stairs onto a standard bus, instead he requires the assistance of a wheelchair lift.

8. Claimant's mother provided a letter from claimant's physician dated March 16, 2016, stating that claimant "should not sit for more than 1 hour at a time." She provided a second letter from the same physician dated April 19, 2016, stating that "[t]he current mode of transportation that the regional center is providing for him is aggravating his condition. Please provide a larger vehicle for his needs."

9. Claimant's mother also provided a history of her experience with CityLink transportation service. She explained that claimant utilizes CityLink for his morning transportation to the day program with no problems. However, she has been transporting claimant in her husband's car in the afternoons to return home from the day program. She explained that the use of her husband's car is not ideal because of injuries claimant has suffered getting into and out of the car, as well as the risk involved with his behavioral problems. Claimant's mother utilized the CityLink transportation service in the afternoons only on two occasions. The first occasion was on May 9, 2016, and the second was on May 10, 2016. Claimant's mother explained that claimant's day program ends at 2:00 p.m. every day. On May 9, 2016, claimant did not arrive home until 3:45 p.m., and on May 10, 2016, claimant arrived home at 5:00 p.m. Claimant's mother stated that because claimant was sitting during that transportation for such a long time, he suffered back and hip pain and had to increase his pain medication.

Claimant's mother testified that she attempted to resolve the problems with CityLink transportation service. On Monday, May 23, 2016, she arranged for another transportation of claimant from the day program to his home in the afternoon of Tuesday, May 24, 2016. She claimed that CityLink informed her that claimant would arrive home by 3:05 p.m. on that day. At 1:00 p.m. on May 24, 2016, claimant's daughter received a telephone call from someone at CityLink informing her that CityLink would not be able to transport claimant home that afternoon because the ramp on the bus was not in working order and there was no other bus to use that had a wheelchair ramp or lift. Claimant's mother stated that claimant was not able to get out of his wheelchair and walk up the steps into the bus to take a regular seat. Claimant's mother called CityLink soon thereafter to inquire about the problem. According to claimant's mother, CityLink was unable to provide a date by which a useable bus would be available to pick up claimant in the afternoon. Claimant's mother attempted to reach a supervisor at CityLink, but was unable to do so. Claimant's mother picked up claimant in her husband's car on the afternoon of May 24, 2016, to return home from the day program.

10. Claimant's mother understands that there is no perfect transportation options for claimant, but that transportation by taxi will only take approximately 20 minutes, and such a short travel time would be better for claimant. Also, she stated that if the taxi service used a van, then claimant could be safely put in the back of the van to reduce his chance of injury. Claimant's mother failed to explain how claimant would be able to get out of his wheelchair and into a van if he could not do so to get into a bus.

SDRC'S EVIDENCE

Testimony of Susan Cavanagh

11. Susan Cavanagh is employed at SDRC as a program manager in unit 16, which is a unit at SDRC that provides case management to adult clients living on their own

or with their families, and is claimant's unit. Ms. Cavanagh has a Bachelor's degree in Developmental Psychology and a Master's degree in Human Behavior. She has worked in these fields for 34 years and for SDRC for 22 years. During the time she has worked for SDRC she has worked as a program manager for four different units, including units for children and clients living in state-operated facilities.

12. Ms. Cavanagh testified that when claimant's parents removed him from the residential care facility and brought him back home, they requested assistance from SDRC for transportation of claimant to and from the day program. SDRC provided claimant's parents with options for transportation including CityLink, and another transportation service called AAA. Ms. Cavanagh explained that AAA provides transportation similar to CityLink, but also provides taxi service. Another option provided was vouchers, which are given to a client to either provide the transportation themselves, or to hire someone they may know who can provide transportation at a set rate mileage reimbursement. According to Ms. Cavanagh claimant's mother was resistant to the use of CityLink and instead requested that SDRC cover the expense of providing a rental car for her to drive claimant from the day program, or, alternatively, to cover the expense of a taxi service. However, according to Ms. Cavanagh the cost of renting a car for claimant's mother to drive claimant from the day care program to home would be excessive, and the use of a taxi service would be unsafe for claimant in light of his physical and behavioral issues, particularly because taxi drivers are not trained to manage those issues.

13. Ms. Cavanagh explained that before claimant was placed in a residential care facility, claimant's mother transported him to the day program herself using the voucher system for a few years. Ms. Cavanagh stated that currently claimant's mother utilizes the voucher system to transport claimant from the day program to home in the afternoons, and the CityLink transportation system transports claimant to the day program in the mornings. She stated that after claimant was removed from the residential care facility,

claimant's mother transported claimant to and from the day program for about two-and-a-half months before CityLink transportation was put in place on May 9, 2016. The voucher payment to claimant's mother for transportation of claimant in the afternoons was put in place on May 26, 2016, but was backdated to May 9, 2016

14. Ms. Cavanagh further explained that SDRC rejected the mother's request for a taxi service because such services provide different drivers each day, none of whom are trained in management of the physical or behavioral issues claimant presents. Additionally, the taxis are usually standard size automobiles, which would present the same problem claimant currently has regarding his parents' cars, namely injury while getting in and out of the car, as well as claimant's behavioral problems such as reaching over to the driver while the car is in motion or opening the door to the car. With regard to the use of CityLink, Ms. Cavanagh explained that the morning transportation provided by CityLink has two options, with the first option taking only 20 minutes to get claimant to his day program and the second option taking one-and-a-half hours. She stated that claimant's mother chose the second option for claimant because the 20 minute commute would get him to the day program after it already starts. Ms. Cavanagh testified that she had not heard from CityLink that claimant had any problems on the travel time on those occasions that CityLink transported claimant from the day program to his home.

Testimony of Anthony Ferguson

15. Anthony Ferguson is employed at SDRC as the transportation manager. His responsibilities include setting up transportation for SDRC clients as recommended by service coordinators. Mr. Ferguson is also in charge of identifying transportation companies who can provide services to SDRC clients. Mr. Ferguson is familiar with CityLink and described the company as a contract service transportation provider that uses "cut-away" vehicles about half the size of a city bus that contain wheelchair lifts. Currently, CityLink transports approximately 120 SDRC clients. In addition to CityLink, Mr. Ferguson

described the services provided by AAA transportation service. He stated that AAA is a transportation service that utilizes mostly sedans and standard cars as taxis for their transportation. According to Mr. Ferguson, AAA is not able to transport wheelchair clients if those clients are not able to transfer from the wheelchair to a car seat and the wheelchair does not fold and fit into the trunk of a standard size car. Mr. Ferguson also testified that he has never provided rental cars for use by clients of SDRC. He stated that the costs associated with obtaining a rental car would be extremely high in comparison to other modes of transportation available.

16. Mr. Ferguson stated that SDRC has had a history of client complaints about CityLink beginning in 2014 related to failures to pick-up or drop-off clients in a timely manner, and failure to communicate with family members regarding traffic issues that may delay drop-off or pick-up of clients. Mr. Ferguson stated that CityLink had an elevated number of complaints regarding those issues beginning in 2014. He said those issues were resolved with CityLink before the beginning of 2016. Mr. Ferguson has constant interaction with CityLink, as well as all other transportation services utilized by SDRC, to discuss any such client complaints in order to resolve them.

17. Mr. Ferguson stated that he was in communication with the supervisor of CityLink regarding the issues related to transportation of claimant on the afternoons of May 23, 2016, and May 24, 2016. Specifically, the communication consisted of an email exchange between Mr. Ferguson and the supervisor on May 25, 2016. The supervisor of CityLink sent the following email to Mr. Ferguson on May 25, 2016.

On Monday of this week [claimant] was picked up in the a.m. and transported in the afternoon by the mother. On Tuesday [claimant] was picked up by us in the morning and transported in the afternoon by the mother. He was supposed to be transported by us but she canceled at the

door we guess. This morning [claimant] was picked up by us and the afternoon trip was canceled by the mother.

Mr. Ferguson responded to this email with another email stating in relevant part:

When you say, "she canceled at the door," was this when you were trying to bring [claimant] home in the afternoon?

In response to this email, the supervisor sent an email stating as follows:

When our driver went to pick him up Tuesday afternoon he was not there. The mother had picked him up but she told us that we were supposed to pick him up.

The above email communication was the only communication that SDRC had with CityLink regarding the issues of transportation of claimant on May 23 and 24, 2016.

18. Mr. Ferguson testified that claimant's mother contacted him by telephone on the Monday, May 23, 2016, requesting a voucher for her to transport claimant in the afternoon from the day program to home. Mr. Ferguson testified that at that time he was trying to resolve the issues with CityLink and was "still unsure of what was going on."

THE PARTIES' ARGUMENTS

19. SDRC argued that claimant's request for a rental car for transportation to and from the day program is cost prohibitive. SDRC also argued that the use of a taxi service, such as AAA, is not safe for claimant given his physical and behavioral limitations. Accordingly, SDRC argued that the use of either CityLink or a voucher payment to claimant for transportation should meet his needs.

20. Claimant's mother argued that she is willing to work with CityLink, but that CityLink has repeatedly failed to provide proper transportation. Claimant's mother

requested appropriate transportation for claimant regardless of the source.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to receive appropriate transportation for claimant, and that the appropriate transportation should be in the form of a rental car or taxi service.

2. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

4. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b), as:

“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, and 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, when 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. . . .

5. In order to be authorized, a service or support must be included in the consumer's IPP. (Welf. & Inst. Code, § 4512, subd. (b).)

6. Section 4646.4, subdivision (a)(4), requires that the Regional Center take into consideration: "[T]he family's responsibility for providing similar services and supports for a minor child without disabilities . . ." when developing, reviewing or modifying the IPP.

7. Welfare and Institutions Code section 4648 provides in pertinent part:

[¶] . . . [¶]

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan....

[¶] . . . [¶]

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents ... determines will best accomplish all or any part of that consumer' s program plan.

EVALUATION

8. A preponderance of the evidence demonstrates that appropriate transportation to and from the day program is necessary for claimant as outlined in his IPP. Claimant's physical limitations and behavioral issues present challenging problems when assessing the type of transportation that will be appropriate for him. A preponderance of the evidence demonstrated that transportation by a vehicle with a wheelchair lift, as provided by CityLink is appropriate for claimant and will serve his needs, as long as that transportation is timely and reliable. Claimant's mother testified that CityLink contacted her daughter and had subsequent communication with claimant's mother on Tuesday, May 24, 2016, wherein CityLink informed her that they did not have a vehicle with a wheelchair lift available to pick up claimant that afternoon. Claimant's mother's testimony was credible. While Mr. Ferguson had communications with CityLink by email regarding the incident, SDRC never inquired whether CityLink contacted claimant's mother to tell her that CityLink did not have a vehicle available for her. Notably, the email exchange with CityLink was incomplete at best, and the supervisor of CityLink qualified his understanding of the events of May 24, 2016, with the phrase "we guess" indicating that he did not have a full understanding of the events of that day. No person from SDRC inquired whether or not CityLink had any communications with claimant's family on May 23 or May 24, 2016,

regarding the afternoon transportation of claimant. No evidence contradicted claimant's mother's testimony.

A preponderance of the evidence demonstrated that the cost to provide claimant's mother with a rental car is excessive, when less expensive alternatives are available. Additionally, a preponderance of the evidence demonstrated that the use of a taxi service utilizing standard size automobiles driven by untrained taxi drivers would present a safety risk to claimant and others. Accordingly, neither a rental car nor standard taxi service is appropriate transportation under the circumstances of this case. Claimant's mother is currently receiving vouchers for the cost of transportation of claimant from the day program in the afternoon, but she complains that the use of her husband's standard size car is not ideal given claimant's physical and behavioral limitations.

The regional center is, therefore, required to fund the cost of appropriate transportation for claimant to travel to and from his day program. The appropriate transportation under these circumstances would be a transportation service utilizing a wheelchair lift, such as CityLink, or, alternatively, the use of a voucher system provided to claimant's parents so that they may obtain other appropriate transportation. Claimant's request for funding of either a rental car or standard taxi service is denied.

ORDER

Claimant's appeal requesting a rental car or taxi service is denied.

Claimant's appeal requesting appropriate transportation is granted. SDRC shall fund the transportation voucher for claimant or a transportation service that utilizes a wheelchair lift for claimant.

DATED: June 9, 2016

_____/s/_____

DEBRA D. NYE-PERKINS

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 ninety days.