

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2016120953

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Stockton, California, on February 27, 2017.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Attorney at Law, VMRC Assistant Director of Case Management and Hearing Designee.

Claimant was represented by his mother.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Is VMRC required to provide claimant with a bus aide when he uses VMRC contracted transportation services (Storer Transportation)?

FACTUAL FINDINGS

1. Claimant is a conserved 27-year-old man eligible for VMRC services based on a diagnosis of intellectual disability and epilepsy. He lives in the Azel Residential Facility, an assisted living facility located in Tracy, California.

2. As indicated in his current Individual Program Plan (IPP), dated December 30, 2016, claimant's services and supports include participation in a day program, with bus transportation provided to and from the program funded by VMRC and provided by Storer Transportation. The IPP specifies, "Vendor will provide [claimant] with curb-to-curb transportation."

3. On November 22, 2016, VMRC issued a Notice of Proposed Action (NOPA) to claimant denying funding for an aide to accompany him on the bus because "possible events are not sufficient justification to support funding for a bus aide."

4. Claimant filed a Fair Hearing Request, dated November 27, 2016, appealing VMRC's decision denying provision of a bus aide. The request stated, "My son needs aide because he has a history of seizure and unpredictable behavior."

5. Dee Thao is claimant's VMRC Service Coordinator. She testified that claimant's epilepsy is controlled by medication and that he has no current behavioral needs. She explained that claimant is the sole rider on the bus to and from his day program. Claimant's adult day program, Starting Out, is located in Stockton, California. Claimant has been riding the bus to and from this program for approximately five years.

Claimant's mother shared her concern with Ms. Thao that in the event of an emergency, such as an earthquake, accident or medical emergency affecting the bus driver, there would be no one to assist claimant. Claimant and the driver are the only two individuals on the bus during this time.

Ms. Thao brought the request for a bus aide to her manager and then to the VMRC Transportation Manager for review. The request was denied and the NOPA issued after it

was determined that there was no justification for the service at this time.

6. Adriana Chavez-Flores is the lead dispatcher for Storer Transportation. She testified that dispatch is the first point of contact for any incidents that occur on company buses. She explained that all drivers are required to have first aid and CPR training. They are also trained to deal with seizures. She presented and described the Storer Transportation "Bus Breakdown Procedures," "Accident Emergency Procedures," and "Consumer Health Related Procedures." Employees are trained to follow the step-by step procedures to deal with any unusual circumstances. Drivers are also "mandated reporters" who are legally required to ensure a report is made when an incident is observed or suspected.

Ms. Chavez-Flores testified that there has never been an emergency situation involving a bus on which claimant was riding. There have only been three non-emergency incident reports filed on claimant's behalf. One was a request to relay information regarding a medication change to the day program staff. The second reported that, in September 2014, claimant stumbled after leaving the bus and while entering his day program. No follow up was required. The final report noted an incident where claimant took his seat belt off but remained in his seat.

Ms. Chavez-Flores stated that riders are assigned a bus aide when they have behaviors that may cause injury to themselves or others, including the bus driver, or when assistance is necessary for medical reasons. She testified that claimant did not exhibit such behaviors nor did he require an aide to accompany him due to a medical condition. Claimant is the sole rider on his bus with a driver that is solely responsible for him.

As Storer Transportation is a vendor of VMRC, Ms. Chavez-Flores communicates with the VMRC Transportation Coordinator regarding any issues or concerns involving VMRC consumers.

7. Wilma Murray is the Community Services Manager responsible for

overseeing transportation services for VMRC. She explained the agency's responsibility for obtaining transportation services for the consumer, which meets his need and is cost-effective. Transportation services are provided based on the results of a needs assessment. Claimant is a "solo ride" to and from his residential placement to his day program. His seizures are under control; he has past incidents of minor behaviors but no Special Incident Reports (SIR).

Ms. Murray testified that a vendor is required to complete an SIR when an incident occurs within seven reportable categories: Suspected Abuse/Exploitation, Suspected Neglect, Victim of Crime, Serious Injury/Accident, Unplanned/Unscheduled Hospitalization, Missing Person, and/or Death. In addition to these seven categories, VMRC must also issue an SIR in five additional categories: Containment(s)/Restraints(s), Emergency Room Visit, Law Enforcement, APS/CPS Involvement, Natural Disaster, and/or Media Attention (Negative Only).

Based on claimant's needs assessment there was no evidence of medical needs or behaviors that would require an aide to accompany claimant and the bus driver on their trips to and from his residential facility and day program.

8. Claimant's mother testified that she is concerned for her son's safety in the event of an emergency during bus transport that could leave the bus driver unable to assist her son. She is concerned that claimant is non-verbal and, as a solo rider, his only protection is the bus driver. She questioned what might happen in an event such as the bus driver having a heart attack, a shooting, serious accident, or natural disaster. She did not foresee a specific potential emergency situation but stressed her desire for prevention rather than responding after a crisis has occurred. She did not disagree that claimant's seizures are controlled with medications. Nor did she contend that claimant exhibits behaviors that would require aide support.

Claimant's mother also questioned why the bus did not have a camera system and

whether that would be something VMRC could consider. She suggested that adjusting claimant's pick-up time and/or allowing him to listen to music on the bus might be of benefit to him. At hearing, VMRC agreed to review these concerns with the parent.

LEGAL CONCLUSIONS

1. Regional centers are governed by the provisions of Welfare and Institutions Code section 4500 et seq. (Lanterman Act).¹ The Lanterman Act mandates that a consumer's IPP be based on his or her individual needs. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources, avoid duplication of services, and ensure the cost-effective use of public funds.

Section 4646, subdivision (a), provides:

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 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

¹ All subsequent statutory references are to the Welfare and Institutions Code, unless otherwise specified.

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.

Section 4646.4, subdivision (a)(1), provides:

Effective September 1, 2008, 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:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

Section 4648, subdivision (a), specifies:

In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

2. A party seeking to change a service in a consumer's IPP typically has the burden of demonstrating that the proposed change is correct. Therefore, claimant bears

the burden of establishing that he requires an aide to accompany him during bus transportation to and from his day program.² Claimant has not met that burden. Services and supports are based on need. There was no persuasive evidence demonstrating that claimant has a level of need that requires an aide to accompany him on his trips to and from his residence to his day program. He has no medical needs or current behaviors that would necessitate the need for aide support. It would not be a cost effective use of public funds to provide a service or support that is not shown to be necessary.

ORDER

The appeal of claimant Shahin S. is denied.

DATED: March 13, 2017

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)

² California Evidence Code section 500 states that “[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.”