

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

v.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency

OAH No. 2017061011

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on August 28, 2017, in Pomona, California.

Daniela Santana, Contract Administrator, represented the San Gabriel/Pomona Regional Center (SGPRC or Service Agency). Claimant¹ was represented by his cousin (Representative).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on August 28, 2017.

ISSUE

Must the Service Agency provide funding to install a ramp/lift to Claimant's van in order to facilitate Claimant's entering and exiting his vehicle with his electric wheelchair?

¹ Party title is used to protect the privacy of Claimant and his family.

FINDINGS OF FACT

1. Claimant is a 26-year-old man, and a consumer of the Service Agency. Specifically, Claimant has been diagnosed with cerebral palsy and is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² Claimant currently resides with his mother (Mother) within the Service Agency's catchment area. Claimant is not ambulatory and primarily uses an electric wheelchair to get around. Claimant currently receives no services from the Service Agency.

2. The Service Agency issued a Notice of Proposed Action (NOPA) on May 26, 2017, denying Claimant's request for the Service Agency to fund the installation of a wheelchair ramp/lift to his van. Claimant requested the ramp/lift to aid in his independence to transport himself from one destination to another, eliminating the need for human assistance to enter and exit his van. On June 23, 2017, Claimant filed a Fair Hearing Request. All jurisdictional requirements have been met.

3. While Claimant exercises significant independence in his daily living, he continues to rely on Mother for his primary physical support, and also enjoys the support of his extended family. Claimant primarily relies on Mother and his extended family for his transportation needs. Traveling from one destination to another requires Claimant to obtain assistance climbing into and out of the vehicle, and relegates Claimant to the use of his manual wheelchair as opposed to his motorized wheelchair. Claimant's manual wheelchair, which weighs approximately 50 pounds, can be folded and stored in the trunk of the car. His motorized wheelchair cannot be folded and is significantly bigger and heavier than his manual wheelchair. Claimant's manual wheelchair becomes difficult to operate after traveling in it for extended distances, as Claimant becomes fatigued from

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

manually rolling it.

4. Mother experiences great difficulty assisting Claimant, who weighs 234 pounds, to enter and exit vehicles and ensuring Claimant does not fall into the street. She also experiences difficulty depositing and retrieving Claimant's manual wheelchair into and out of vehicles. Specifically, Mother, who is 65-years-old and has been diagnosed with fibromyalgia, diabetes, lupus, and arthritis, suffers significant pain and physical limitations. Additionally, last year, Mother suffered a fall which resulted in surgery to repair discs in her spine.

5. Claimant has accomplished much over the years. Specifically, Claimant attended community college and then transferred to California State University at Northridge (CSUN), where he majored in screen writing. Claimant graduated from CSUN in May 2016. When Claimant attended CSUN, he availed himself of the public transit system, which required Mother to transport him to and from the bus stop or train platform. However, in his final year, Claimant was required to take late classes that ended well into the night. The public buses and trains did not run as frequently as they did during the day, and Claimant, as one confined to a wheelchair, felt unsafe traveling at night. Consequently, Mother hired someone to transport Claimant to and from school.

6. During the period in which Claimant was taking late classes, Claimant explored transportation services from Access. Access is a shared-ride service for persons with disabilities and provides curb-to-curb transportation. Specifically, Claimant called Access on five different occasions attempting to start the process to obtain transportation services. However, despite multiple representations that Access staff would mail Claimant an application, Access never did. On three separate occasions, Claimant told his service coordinator at the Service Agency about his difficulty in getting Access to send him an application. Each time, the service coordinator would tell Claimant that she "would look into it," but Claimant never received an application.

7. Though Claimant and Mother have very limited funds, they purchased a 2015 Dodge Caravan for Claimant's use, and pay a car note in the amount of \$435 per month. While Claimant can drive the van with no modifications, he cannot enter and exit the vehicle independently, because he cannot ride his motorized vehicle onto the van without a ramp/lift. Consequently, Claimant requires someone (generally Mother) to travel with him to help Claimant to enter and exit the van. Additionally, Claimant is still relegated to the use of his manual wheelchair, and requires someone (generally Mother) to fold it and store it in his van and to retrieve it from the van upon his arrival to his destination.

8. In order to facilitate his independence and to keep Mother from further jeopardizing her physical health in assisting Claimant to enter and exit vehicles and to lift and retrieve Claimant's manual wheelchair, Claimant requested the Service Agency to fund for the installation of a ramp/lift to the van. Such an installation would permit Claimant to enter and exit his vehicle without human assistance, as he would be able to wheel his motorized wheelchair onto the van.

9. Claimant obtained two estimates from companies that install ramps/lifts onto vehicles. Specifically, Claimant obtained an estimate of \$27,873.45 from Mobility Works and an estimate of \$26,530 from Aero Mobility. Claimant submitted both estimates to the Service Agency.

10. The Service Agency's Exceptional Service Review Committee (ESRC), which consists of three directors, considers requests atypical of requests the Service Agency generally receives. The ESRC met on March 21, 2017 to discuss Claimant's request for the Service Agency to fund for the installation of a ramp/lift onto his van. ESRC concluded that Claimant needed to apply for a generic resource, such as Access, or use public transportation.

11. On May 26, 2017, the Service Agency sent Claimant a Notice of Proposed Action (NOPA) denying Claimant's request. Specifically, the NOPA set forth the Service

Agency's determination that Claimant should avail himself of generic resources, such as Access, and public transportation, such as Metro Transit Authority, MetroLink, and Dial-A-Ride.

12. Additionally, the NOPA indicated that the Service Agency denied Claimant's request because Claimant failed to meet the criteria for such purchases, as set forth in the Service Agency's Purchase of Service Policy (the Policy). The Policy provided that equipment and supply services and supports could be purchased to improve or maintain an individual's health status. The Policy provided that the Service Agency may purchase equipment and supplies for children or adults if the following criteria are met:

1. The needed treatment or equipment is associated with, or has resulted from a developmental disability, developmental delay or an established risk condition.

AND

2. The requested treatment or equipment is deemed to be medically necessary.

AND

3. The regional center consultant or clinicians have reviewed and approved the need for such treatment or equipment.

AND

The individual is not eligible for Medi-Cal, California Children's Services, private insurance or another third party payer coverage or these funding resources have denied the necessary equipment or services in writing and the regional center has determined that an appeal of the denial is not warranted. (Exhibit 7, page 20.)

13. Claimant presented no evidence demonstrating that the requested ramp/lift

is medically necessary for him or that he was denied funding by Medi-Cal, private insurance, or a third party payer.

LEGAL CONCLUSIONS

The Service Agency is not required to fund the installation of a ramp/lift onto Claimant's van, as discussed in more detail below:

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the consumer's Individual Program Plan (IPP). Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subs. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

"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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . .

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or

his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

7. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

8. Claimant contends that the installation of a ramp/lift would afford him great independence and eliminate the need for human assistance in entering or exiting his vehicle or folding and storing his manual wheelchair. As such, the ramp/lift would, as set forth in Legal Conclusion 6, further the Service Agency's mission in "assist[ing] [a] disabled consumer in achieving the greatest amount of self-sufficiency possible and . . . giv[ing] the highest preference to services and supports that will enable an adult person with

Date:

CARLA L. GARRETT
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.