

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for an Automatic Van Ramp:

CLAIMANT,

and

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2017080205

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on September 21, 2017.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC).

Jose A. Figueroa, Advocate, represented claimant, who was present.¹

The matter was submitted on September 21, 2017.

¹ A Spanish interpreter was not requested prior to the hearing. At the hearing, claimant's representative requested an interpreter for claimant's mother. SGPRC found an employee willing to act as an interpreter. Both parties agreed to have Hortencia Tafoya, Federal Programs Specialist, act as an interpreter for claimant's mother.

ISSUE

Should IRC fund claimant's request to pay for an automatic van ramp?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a nine-year-old girl who qualifies for regional center services based on cerebral palsy, seizure disorder, and severe intellectual disability. Claimant is confined to a wheelchair that requires her to be strapped in so she does not harm herself. Claimant is non-verbal. She has a gastrostomy tube. She is approximately 58 pounds and 45 inches long. Claimant receives 32 hours per month of licensed vocational nurse (LVN) respite services and 283 hours per month of In Home Supportive Services (IHSS). Her mother is her IHSS provider. Claimant also receives social security benefits and is on Medi-Cal. Claimant's most recent Individualized Program Plan (IPP) details her medical conditions and mobility challenges.

2. At claimant's August 2016 Individualized Program Plan meeting, claimant's mother expressed a desire that SGPRC fund an automatic van ramp for claimant. SGPRC did not fund the request.

3. On January 2, 2017, claimant's mother filed a fair hearing request asking that SGPRC fund an automatic van conversion for claimant.

4. On January 25, 2017, SGPRC served claimant with a notice of proposed action denying claimant's request for funding for an automatic van conversion. SGPRC explained that claimant's request was presented to the Exceptional Service Review Committee on January 18, 2017, who reviewed claimant's records and determined that the van ramp was not a medical necessity. SGPRC also determined that Access Services, a low cost curb-to-curb public transportation resource specifically designed to help disabled persons access the community, was available for claimant's use. Given that

claimant's request was not medically necessary and generic resources were available, SGPRC concluded it could not fund the request.

EVIDENCE PRESENTED AT HEARING

5. Claimant's mother does not currently own a van available for a conversion.

6. According to SGPRC's purchase of service policy, a van conversion would fall under "medical, dental, and equipment services." Purchase of such services are only authorized if the needed treatment or equipment is associated with, or has resulted from, a developmental disability, developmental delay, or an established risk condition; the requested treatment or equipment is deemed to be medically necessary; the regional center consultants 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.

7. Claimant's mother obtained three quotes for an automatic van ramp in the amounts of \$ 25,900, \$25,000, and \$ 30,435.48.²

8. SGPRC's consumer notes, dated September 22, 2015, show claimant's mother has not yet requested an automatic van conversion from her insurance. Claimant's mother did request the funding from California Children Services, but was denied.

9. Access Services is a form of public transportation for persons who have disabilities and are unable to use regular public transportation. It is a curb-to-curb

² One of the quotes contained an additional cost for the purchase of a new van, but claimant's mother testified that she is not requesting funding for the purchase of the van; she is only requesting the automatic van ramp.

service that operates throughout Los Angeles County. There are similar services in other counties. Consumers can make appointments to be picked up and dropped off at the time and location of their choice in order to engage in the activity of their choice. To that end, Access Services is designed to help disabled persons achieve independence. According to Ms. Santana, the cost to utilize Access Services is minimal, running approximately \$1.75 for every 20 miles. Consumers are permitted to bring a third-party with them free of charge. Ms. Santana explained that this service, a generic resource, would permit claimant to access the community as necessary, and have a companion with her. Thus, a van ramp on claimant's mother's personal vehicle, despite not being medically necessary, is also not a proper use of SGPRC resources.

10. Claimant's mother testified at the hearing. She claimed she has difficulty lifting claimant in and out of her wheelchair to put her in her car seat and into their truck. Claimant's mother said she has "disabilities." Specifically she said her shoulder and wrist hurt. She said she has not gone to the doctor to obtain paperwork regarding her conditions because she does not have health insurance. Claimant's mother said claimant often gets diarrhea and if inside the vehicle, they have to stop and change claimant on the seat. Claimant's mother said claimant needs privacy for that reason. Claimant's mother also said that when it is raining, claimant's wheelchair gets wet and the van ramp would make it easier and quicker to get claimant in and out of the vehicle. She said sometimes she gets a passerby or other person to help claimant. Claimant's mother does not feel Access Services is appropriate because claimant would not have privacy in the event she has a bowel movement and needs to be changed, and Access Services would not be available in the event of an emergency, for example, when claimant has a seizure.

11. Lucian Vasquez has been claimant's LVN for two years. She attends to claimant approximately 48 hours per week. She said she cares for claimant seven days a

week from approximately 3:00 p.m. to 9:30 p.m. Claimant is in school from approximately 8:00 a.m. to 3:00 p.m. In addition to her LVN services, she provides the 32 hours of monthly LVN respite services. Ms. Vasquez echoed claimant's mother's testimony, and added that she is concerned for claimant's safety because the truck they have right now is very high so it takes two people to lift and secure claimant into her car seat. She also has the concern that with Access Services, it would not be private.

12. Claimant's sister testified at the hearing. She took time off of school because her sister means a lot to her and she felt the hearing was very important. Claimant's sister testified that she helps her mother care for claimant quite a bit. She said claimant is very heavy and it is hard to lift her into the truck; she has seen her mother struggle with trying to get claimant into the truck. Claimant's sister feels the automatic van ramp would help with claimant's privacy and also in the event she needed to be fed. She also felt that Access Services would not work for claimant because claimant does not like to be around people she does not know.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that by a preponderance of the evidence that IRC should fund his request to attend driving school. (Evid. Code, §§ 115, 500; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap,

and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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, 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 . . . Nothing in this subdivision is

intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The State Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2). Services and supports shall be flexible

and individually tailored to the consumer and, where appropriate, his or her family.

(*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; a provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code Section 4646.4, subdivision (a), requires IRC to adhere to its Purchase of Service Standards (POS) when determining what services it will fund. As IRC explained, its current POS does not provide funding for automatic van ramps for its consumers.

CAUSE DOES NOT EXIST TO REQUIRE SGPRC TO FUND A VAN RAMP

12. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating her need for the requested service or support, funding for an automatic van ramp. Claimant has not met that burden.

Although claimant has some significant medical challenges, a preponderance of the evidence did not establish that an automatic van ramp is a medical necessity, which is a required element under the purchase of service policy. Moreover, the Exceptional Service Review Committee reviewed claimant's records, which include detailed explanations regarding claimant's medical needs, and did not approve the requested service. Claimant's mother has also not requested Medi-Cal fund the service; as such, no denial in writing has been produced from Medi-Cal. Further, a generic resource, Access Services, is available to provide low-cost transportation to claimant and is specifically designed for persons with disabilities; it functions throughout Los Angeles County and permits riders to have a companion ride for free. Although it is not private, given that the service is specifically designed for persons like claimant, they must have plans in place to deal with unique situations, should they arise (i.e. a bowel movement, or stopping if need be). Moreover, while Access Services is not designed for emergencies, in the event claimant had a seizure or other medical emergency, claimant's mother could call 911.

No medical records were produced to show claimant's mother suffers from any disability that prevents her from moving claimant. Even if records had been produced, based on the testimony, claimant is receiving services that provide for an extra pair of hands to be at her service almost 24 hours a day 7 days a week. Claimant's mother is her IHSS provider; if claimant's mother needs additional help, she could hire a different person to provide the IHSS hours, which would provide an additional pair of hands 283 hours per month. In other words, there are other more fiscally responsible ways of providing transportation for claimant than funding a van ramp; not to mention, claimant's family does not currently own a van, rendering the entire appeal premature.

SGPRC may purchase services and supports only in accordance with its purchase of service policy and applicable law; in this case, the conditions necessary to fund the

service have not been met, there are generic resources available to provide for claimant's transportation needs, and the purchase of an automatic van ramp would not be fiscally responsible.

ORDER

Claimant's appeal from San Gabriel/Pomona Regional Center's determination that it will not fund an automatic van ramp is denied.

DATED: September 26, 2017

KIMBERLY J. BELVEDERE

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.