

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2017090578

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 8, 2018.

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

Claimant's mother represented claimant, who was present at the hearing. Claimant's father and grandmother were also present.

The matter was submitted on January 8, 2018.

ISSUES

Should SGPRC fund claimant's request for a manual van conversion for the van claimant's family uses to transport claimant to medical appointments and throughout the community?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a nine-year-old boy who is eligible for regional center services based on a diagnosis of moderate intellectual disability and epilepsy. Claimant's parents care for him at home. Claimant receives respite services and has nursing services. Claimant weighs approximately 76 pounds. Claimant does have seizures from time to time and is confined to a wheelchair due to poor trunk and neck control. He has a ventriculoperitoneal shunt (VP shunt).<sup>1</sup> He requires assistance performing all daily life activities. Claimant is sensitive to heat and cold. Claimant is verbal, but his ability to communicate is limited. Claimant takes multiple medications, including one that is administered rectally in the event of a seizure. Extreme heat and cold can cause a seizure. According to claimant's Individualized Program Plan (IPP), claimant participates in a wheelchair basketball team at his church. Claimant likes to dance and play musical instruments. He enjoys playing with his iPad and his mother's cell phone. Claimant is able to focus on activities for approximately five to 15 minutes at a time. He is transported curb-to-curb in a school bus and has a personal aide that sits with him.

2. Neither claimant's eligibility nor the difficulties his parents have with his transportation needs are in dispute.

3. Claimant's parents own a van that is rear-wheelchair accessible. In order to transport claimant to and from medical appointments, and around the community, claimant is lifted into the van and placed in a car seat. Claimant's parent's desire to have a van conversion completed to add a manual ramp in order to make it safer for claimant

---

<sup>1</sup> A VP shunt is a device that drains excess fluid from the brain as a result of a condition which causes excess fluid to accumulate in the brain cavity.

to be transferred in and out of the van. Claimant's parents would prefer an automatic van ramp, but requested a manual ramp in the interest of remaining cost-effective. They obtained two separate estimates for the van conversion; one in the amount of \$29,950, the other in the amount of \$21,860.

4. Claimant has Medi-Cal. Claimant's mother applied for funding for the van conversion through claimant's medical insurance and through California Children's Services; both claims were denied.

5. Claimant's mother submitted a request for funding to SGPRC on July 10, 2017. Claimant's mother included a letter from claimant's pediatrician, Ryan Brady, M.D., among others, in support of her request.

6. On August 4, 2017, SGPRC denied claimant's request for the van conversion, noting the following:

[Claimant] is a 9-year-old Hispanic male who is eligible for Regional Center services with a diagnosis of moderate intellectual disability and Epilepsy. [Claimant] has low tone in his upper body and has poor neck control. He requires total care. [Claimant] is 69 pounds and 49 inches tall and you indicate that it is getting more difficult to carry him in and out of his child car seat. You indicate that currently [claimant] is unable to assist with transfers in and out the vehicle. In your letter dated 7/10/17 you indicated that [claimant] needs to be transported in an adaptive vehicle with the appropriate supports and safety restraints that will ensure he sits in an upright safe position due to his seizures and VP shunt. You also indicated that this vehicle will be utilized to transport

[claimant] to and from doctor's appointments, therapies, school and other places.

[Claimant] receives Medi-Cal/Anthem Blue Cross and CCS; which are publicly funded services for persons with disabilities, to assist in care and support. [Claimant] can receive transportation assistance from Medi-Cal for Children Hospital of Los Angeles appointments, if requested. [Claimant] is eligible for Access Services, which is a public resource available to [claimant] and his family to meet their transportation needs . ...

7. On August 17, 2017, claimant's mother filed a fair hearing request objecting to SGPRC's decision not to fund the van conversion. This hearing ensued.

#### SGPRC'S PURCHASE OF SERVICE POLICY

8. SGPRC's purchase of service policy provides that it may purchase transportation services for consumers from public transportation systems. If there are no appropriate or available public transit services, SGPRC may purchase specialized transportation services from existing vendors. For minors, the SGPRC is required to take into account "the family's responsibilities for providing transportation similar to those provided for a child without disabilities." The SGPRC purchase of service policy does not provide for van conversions.

#### TRANSPORTATION OPTIONS

##### Access

9. Access is a publicly funded transportation service to assist persons with disabilities. Access is a curb-to-curb service that permits the consumer to ride with one

other person wherever they choose to go. Access can be used for any transportation service, including to visit friends, to take a class, to go to the store, to go to church, to see a movie, to go to work, or to go to medical appointments. Access requires 24 hour advanced notice in order to arrange a pick-up. Access operates a call center to assist consumers with scheduling trips. Access vehicles are equipped with either ramps or lifts and the driver will assist with helping a rider into the vehicle. Claimant has never utilized Access services.

#### Medi-Cal

10. Claimant's insurance also has an option to provide transportation to and from medical appointments. Claimant's mother testified that she has not requested this transportation option from claimant's insurance.

#### CLAIMANT'S MOTHER'S TESTIMONY

11. Claimant's mother's testimony was credible, heartfelt, and sincere. She made it clear that she is not seeking a van conversion for her convenience; it is solely for claimant's safety and dignity. Claimant's mother sought the two quotes she provided to SGPRC for manual van conversions because she wanted it to be cost-effective. She has met other regional center consumers whose van conversions were funded by a regional center and wants her son to have the same benefit. Claimant's mother explained that claimant has difficulties with every daily life activity, and feels it is dangerous trying to get him in and out of the van because he could have a seizure. For example, having to wait in the excessive heat or cold could trigger a seizure. Access services, although never tried, would not work for her son because claimant is a "medically fragile child." She also does not feel Access would be helpful because the service only allows one person to ride with claimant and sometimes they like to do family activities.

## CLAIMANT'S FATHER'S TESTIMONY

12. Claimant's father's testimony was sincere, heartfelt, and sincere. He explained that he is the provider for the family and works at far-away construction sites. Claimant's father feels that carrying claimant in and out of the van poses a significant safety risk to claimant and also worries that his wife may slip or hurt herself when she tries to lift claimant up. Claimant's father worries about claimant's exposure time in the heat or cold while being lifted in and out of the van causing a seizure. He also expressed concerns that in the event there was an emergency, Access would not work because of the advanced-notice requirement. Claimant's father echoed his wife's testimony regarding electing a manual van conversion because of it being more cost-effective to fund than an automatic van conversion.

## 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 by a preponderance of the evidence that SGPRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. 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 (Welf. & 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. 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.

4. The 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. 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.

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

7. 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.

8. 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.

9. 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).)

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 4659, subdivision (c), prohibits SGPRC from purchasing services available from generic resources.

#### EVALUATION

12. A preponderance of the evidence did not establish that SGPRC is authorized to fund claimant's request for a manual van conversion. The responsibility of transporting minors to and from medical appointments and around the community normally lies with the minor's family. In the case of a person who has developmental disabilities, a regional center may assume some financial responsibility for funding transportation options in order to accomplish those same ends. However, the funding for the chosen service must be cost-effective, consistent with the Lanterman Act, permitted by the regional center's purchase of service policy, and no generic resources must be available.

Here, there are several generic resources available to meet claimant's needs. Access is a curb-to-curb public transportation service specifically designed to meet the transportation needs for disabled individuals. Access will take a person anywhere they desire to go, including medical appointments. The Access vehicles are equipped with either lifts or ramps and the driver will assist the person in boarding the vehicle. Similarly, claimant's medical insurance, another generic resource, may be used to

provide transportation to and from medically-related appointments. When using Access, claimant may have an additional person in the vehicle with him to tend to his needs. If the family desires an outing, claimant and one family member could ride with Access and the other family members could simply meet claimant and his companion at the event of their choice. In the event of an emergency, claimant's parents could call 911 in order to have claimant's emergency needs met. Claimant's needs for school transportation are already met.

In sum, while it is understandable that Access or other generic resources may not be the desired or most convenient option, on this record, the evidence did not show that these generic resources would fail to address claimant's transportation needs and funding a manual van ramp would therefore not be cost-effective or consistent with the Lanterman Act at this time.

## ORDER

Claimant's appeal from SGPRC's determination that it will not fund a van conversion is denied.

DATED: January 16, 2018

---

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.**