

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017090792

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 30, 2017.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's father represented claimant, who was not present at the hearing.

The matter was submitted on October 30, 2017.

ISSUES

Should IRC reimburse claimant's father for transportation he provided to claimant to take her to and from her day program in July 2015?

Should IRC pay claimant's father to transport her from her day program when her regular transportation company is unable to do so because of an emergency that may arise at the day program?

FACTUAL FINDINGS

1. Claimant is a 24-year-old woman who is eligible for regional center services based on a diagnosis of mild intellectual disability. Claimant lives at home with her parents. According to IRC consumer services coordinator Alisa Terry, claimant's parents do not work. Claimant receives social security, but does not receive in home supportive services.

2. From July 2015 to July 2017, claimant attended a day program. IRC also funded transportation to and from that day program. For the first two weeks of the program, the transportation provider was delayed, so IRC agreed to vendor and pay claimant's father to provide the transportation services for that two week period.

3. Paperwork must be submitted to IRC as well as to an entity known as "Accredited," in order to reimburse claimant's father for the transportation services he provided. Claimant's father submitted the necessary paperwork to IRC. However, e-mail communications submitted as evidence show that Accredited has not received the required paperwork it needs in order to issue a check to claimant's father. Specifically, the e-mail communications dating back to 2015 show that claimant's father must submit expense reports and other documentation that contains names, dates, locations, and signatures to validate the requested transportation expenses.

4. An e-mail dated October 13, 2016, showed that claimant's father informed Accredited that he sent the required paperwork and would not send it again because it was Accredited's fault that it was lost. Accredited sent the required paperwork to claimant's father on at least two occasions, as verified by UPS tracking numbers contained in the various e-mail communications.

5. Claimant's father testified that he sent the paperwork to Accredited twice. He testified that he sent the paperwork via certified mail but did not provide the receipts.

6. To date, Accredited has not received the required paperwork so it cannot legally pay the reimbursement claimant's father is seeking.

7. In Fall 2016, there was an interdisciplinary team meeting regarding claimant's behavioral issues while attending her day program. Claimant's parents had to be called to pick claimant up approximately five times per month due to behavioral concerns. At some point, a decision was made to transfer her to a different kind of day program – social vocational services (SVS) – as they are better equipped to handle consumers with behavioral difficulties than the previous day program. Claimant began attending the SVS day program in July 2017, and IRC is still providing transportation funding to and from the program.

8. According to Ms. Terry, claimant has not attended the SVS day program as of yet because medical documentation and other clearances must be provided before they can accept her. Once claimant's father provides that documentation to the SVS facility, claimant can begin attending the program. IRC also has a vendor, Loyalty, that provides transportation to and from claimant's SVS day program.

9. In September 2017, claimant's father requested IRC provide transportation funding to him to drive claimant to and from her SVS day program on an "emergency basis" – in other words, in those instances where claimant may need to be picked up early for whatever reason. He also raised the issues regarding not receiving payment for the two week period he provided transportation to claimant in July 2015.

10. On September 6, 2017, IRC served claimant with a notice of proposed action denying claimant's request for transportation funding for him to transport claimant from her SVS day program because he is not vendored and it is not unreasonable to expect a parent to transport her to and from the day program on an occasional basis. Additionally, since claimant is already receiving transportation services

from Loyalty, adding another vendor for that purpose would constitute a duplication of services.

11. On September 13, 2017, claimant's father filed a fair hearing request. The fair hearing request was difficult to read, but at a minimum, appeared to allege the above-referenced issues. At hearing, the issues were confirmed with claimant's father prior to the commencement of the hearing.

12. The above-referenced background information was obtained from the testimony of Ms. Terry as well as the Program Manager handling claimant's case, Olivia Gutierrez.

13. Claimant's father testified at the hearing. Claimant's father said his daughter does not have behavioral problems and was adamant that he "proved" she did not have behavioral problems during the interdisciplinary team meeting in 2016. Notwithstanding that contention, the propriety of the SVS services or whether claimant has behavioral problems is not the issue in this hearing.

With respect to the prior transportation he provided for his daughter in July 2015, claimant's father insisted that he sent the required paperwork to Accredited. He did not, however, provide evidence to that end.

With respect to the current request to fund transportation on an "emergency" basis, claimant's father testified that he and claimant's mother are getting older. Claimant's mother has health issues. Claimant's father desires a decision saying that he should be paid in the event he must transport his daughter from her SVS day program should the program require her to be picked up and Loyalty cannot provide that service.

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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 IRC 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 (IPP) 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 IPPs, 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 IPP. (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 IRC from purchasing services available from generic resources.

EVALUATION

12. A preponderance of the evidence did not establish that IRC should pay for claimant's father to transport her from the SVS day program on an "emergency" basis. First, such a request is too speculative and would require a precise definition of what constitutes an "emergency." Second, the facility is only 13 miles away from claimant's home and claimant's father does transport claimant to and from medical appointments and into the community. Finally, parents are expected to be a natural support for their children and it is not unreasonable to expect claimant's father to transport her from her day program in the event Loyalty cannot do so, in the event of an emergency.

13. A preponderance of the evidence also did not establish that IRC can reimburse claimant's father for transportation services provided in the past, as IRC agreed to do, because Accredited has not received the required paperwork. Although claimant's father testified he twice submitted the paperwork, he did not submit any proof that Accredited had received it. Until claimant's father provides the required paperwork to Accredited, they cannot legally issue a check.

ORDER

Claimant's appeal is denied.

DATED: November 1, 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.