

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2017120239

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Imperial, California, on January 10, 2018.

Neil Kramer, Fair Hearing Manager, represented San Diego Regional Center (SDRC).

Claimant's mother represented claimant, who was present at the hearing.

The matter was submitted on January 10, 2018.

ISSUES

Should SDRC fund claimant's mother's request for transportation from her home to visit claimant at his residential facility?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 23-year-old conserved male who is eligible for regional center services. According to claimant's Individualized Program Plan (IPP) dated January

18, 2017, claimant and his mother recently moved to California from New York. The two moved into an apartment in Brawley, but claimant's mother wished to explore residential placement in the San Diego area. Under the IPP, SDRC agreed to provide funding for day programs and transportation services. The IPP indicated that claimant and claimant's mother would explore different residential facilities for eventual placement.

2. Beginning in October 2017, claimant's mother contacted claimant's SDRC Service Coordinator Tanya Hudson and indicated she had found residential facilities in San Diego County that she was interested in visiting. Claimant's mother requested transportation to the facility for claimant and herself. Ms. Hudson spoke to SDRC's transportation vendor, Community Catalyst of California (Community Catalyst) to see if they were able to transport claimant's mother in addition to claimant. Community Catalyst informed SDRC that its insurance policy prevented it from transporting non-SDRC clients (claimant's mother). Ms. Hudson attempted to explore other options with claimant's mother for her own transportation.

3. On November 15, 2017, SDRC received a letter from claimant's mother complaining that SDRC refused to provide her with transportation to visit various residential facilities in San Diego County. In the letter, claimant's mother indicated that it was not feasible for her to follow claimant in her own car because her car is old, the engine light is on, and it is a long distance from her home to the facilities in the San Diego area.

4. About the same time, claimant's mother submitted a Fair Hearing Request stating that she desired to accompany claimant to visit group homes for residential placement. She wrote that she is sick and there is no other person who can help him find the right placement. Based on the Fair Hearing Request, this hearing was scheduled by OAH.

5. On December 4, 2017, Lori Robinson, Regional Manager for the Imperial County Office, sent claimant's mother a letter stating that SDRC's transportation vendor, Community Catalyst, agreed to allow claimant's mother to accompany claimant in its company vehicle so the two could tour facilities together. Ms. Robinson testified that Community Catalyst agreed to modify its insurance coverage for a particular day so that claimant's mother could accompany claimant in the vehicle.

6. At hearing, it was determined that claimant's brother had provided transportation for claimant and his mother to visit facilities, and the family had located a suitable facility in Escondido. In fact, claimant is scheduled to move to the facility on January 16, 2018. According to Ms. Robinson, Community Catalyst has agreed to transport both claimant and claimant's mother from their home in Brawley to the facility in Escondido, as well as to transport claimant's mother back to Brawley. However, at hearing, claimant's mother requested SDRC to fund transportation for her to visit claimant at the residential facility in the future.

7. Although claimant's original claim in the Fair Hearing Request, to transport claimant's mother to tour various residential facilities, is now moot, both parties agreed that the issue to be decided is whether SDRC should fund transportation for claimant's mother from her home to visit claimant at the residential facility in Escondido.¹

8. SDRC's Purchase of Service Standards, which have been approved by the Department of Developmental Services, contain provisions regarding funding for transportation services. The Standards specifically state, "Parents are responsible for their own transportation to meetings and program residence visitations." (p. 31, subd. (j).)

¹ Official Notice is taken that Brawley and Escondido are approximately 150 miles apart.

9. Claimant's mother testified that her car is old, it has a check-engine light illuminated, and because of health reasons she is unable to drive the distance to visit claimant. She believes SDRC should fund her transportation. She said she has no other means or money for securing transportation to visit claimant. She has not researched other transportation options, such as bus service, between the two cities.

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 SDRC 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 4434, subdivision (d), provides that the department shall review new or amended purchase-of-service policies prior to implementation by the regional center to ensure compliance with statute and regulation. The department shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of the Lanterman Act or any regulation adopted thereunder.

9. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

10. 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.

11. 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).)

12. 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.)

13. Welfare and Institutions Code section 4659, subdivision (c), prohibits SDRC from purchasing services available from generic resources.

EVALUATION

14. A preponderance of the evidence did not establish that SDRC should pay for transportation for claimant's mother to visit claimant at his new residential facility. Under the Lanterman Act, SDRC "must adhere to federal and state laws and regulations" and must purchase services and supports pursuant to the purchase of service policies. (Welf. & Inst. Code, § 4646.4, subd. (a).) SDRC's purchase of service policy prohibits funding transportation for family members of consumers for the purpose of visiting consumers at their residential facility. Although it was not required by law, regulation, or its own policies, SDRC convinced its transportation vendor to modify its policy to allow claimant's mother to accompany claimant from his residence to move to the residential facility. The transportation vendor also agreed to bring claimant's mother back to her residence, again, something they were not obligated to do under applicable law, policy, or regulation. Although it is unfortunate that claimant's mother lives far away from

claimant's new facility and has challenges that make visitation financially burdensome, SDRC is prohibited from funding claimant's mother's transportation for visitation purposes.

ORDER

Claimant's appeal from SDRC's determination that it will not fund transportation for claimant's mother to visit claimant at his residential facility is denied.

DATED: January 17, 2018

ADAM L. BERG

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.