

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2018030482

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on July 10, 2018, in Pomona, California. Claimant was represented by his mother and authorized representative.¹ San Gabriel Pomona Regional Center (Service Agency or SGPRC) was represented by Aaron Christian, Associate Director of Community Services.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on July 10, 2018.

¹ Names are omitted throughout this Decision to protect the parties' privacy.

ISSUE

Should the Service Agency be required provide funding for a conversion of Claimant's family's van?

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EVIDENCE

Documentary: Service Agency exhibits 1-15; Claimant's exhibits A - B.

Testimonial: Aaron Christian, Associate Director of Community Services; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 12-year-old male client of SGPRC who qualifies for regional center services under a diagnosis of cerebral palsy, intellectual disability, and seizure disorder.

2A. Claimant is non-ambulatory. He uses a manual wheelchair for transportation, and he requires assistance moving the wheelchair. For short periods of time, he can use a walker, with support, for mobility.

2B. Claimant is non-verbal. He can engage in minimal signing. He uses a speech-generating communication device which he activates with a switch at his right knee.

2C. Claimant requires supervision 24 hours per day. He is dependent on his parents for all of his self-care needs. He eats food orally, but needs to be fed and monitored while eating to prevent choking. Claimant's mother blends his food to a pureed consistency. It can take between 20 to 45 minutes to feed Claimant, and he does not allow anyone but his mother to feed him. To maintain in an upright seated position when eating, Claimant has a special chair which his

parents independently purchased. Claimant also needs to be kept in an upright position for one hour after each meal due to difficulties with reflux.

2D. Claimant is not toilet trained, and he wears diapers to remain clean and dry.

2E. Claimant occasionally engages in behaviors including becoming agitated, kicking, hitting, sliding in his chair, and refusing to cooperate with transfers.

3. Claimant lives with his parents and his younger sister.

4. In about February of 2016, Claimant began attending HMS School for Children with Cerebral Palsy located in Philadelphia, Pennsylvania. This educational placement is funded by Claimant's California school district to meet Claimant's educational needs, as set forth in his Individualized Education Plan (IEP).

5. Claimant, his mother and his six-year-old sister live in Pennsylvania during school months, and they return to California during school breaks. Claimant's parents maintain California residency, and his father lives in California year-round.

6. Claimant's mother is his primary caregiver. For a few months per year, Claimant's grandmother visits from India to help, but the assistance she provides is limited due to her age and health.

7. Claimant's school district provides for his transportation to and from school, and a nurse travels with him.

8A. While in Philadelphia, Claimant receives no services or supports from SGPRC. Since he is not a Pennsylvania resident and does not have a Medicare card, Claimant does not qualify to receive services and supports from

that state. Consequently, Claimant's mother must find and fund Claimant's non-school transportation while residing in Philadelphia.

8B. Additionally, while Claimant is in California, he receives no transportation funding from SGPRC.

9. To transport Claimant in Philadelphia for non-educational purposes and in California for all purposes, Claimant's mother uses the family van, which they ship back and forth between the two states.

10A. When Claimant travels (to get to therapy sessions, medical appointments, or trips into the community), he must always have his wheelchair, his communication device, and his leg braces. Claimant uses a rigid manual wheelchair, which requires caregiver assistance to push. The wheelchair weights about 50 pounds and is not collapsible, so transferring it into a vehicle is a two-person task. Claimant's specialized communication device includes an "arm" and a mount enabling him to access the device while in his wheelchair. The communication package weighs a total of 12 pounds, and the arm at full extension measures about 24 inches. The leg braces not heavy, but they are long (to provide support from Claimant's thighs to his ankles).

10B. In addition to his essential traveling items, Claimant also has walker which he frequently uses in the community, such as when his mother is grocery shopping. Claimant's mother has difficulty moving both his manual wheelchair and the grocery cart, so the walker facilitates short shopping trips. The walker can only be used for short periods of time, but it gives Claimant a sense of independence and helps manage his anxiety and negative behaviors. The walker is rigid and non-foldable, and it weighs 34 pounds. When bringing the walker, the wheelchair must be transported as well.

10C. Claimant also periodically travels with his specialized tricycle, and/or a bath and toilet chair.

11A. In an effort to provide appropriate transportation for Claimant, his parents have utilized the generic resources to which the Service Agency directed them.

11B. Claimant currently travels with a specialized car seat. Claimant's parents purchased the car seat in 2015 at the Service Agency's suggestion. However, Claimant's mother noted that the car seat is no longer a feasible option because Claimant has almost outgrown it. He is currently 52 inches tall and weighs about 44 pounds. Consequently, Claimant must find transportation which will accommodate him traveling in his wheelchair.

12. In April 2016, their family's mini-van was rear-ended and totaled. Claimant's parents purchased a new van to serve as their family vehicle. In 2017, they requested that the Service Agency to fund the conversion of the vehicle to adequately transport Claimant in California and in Pennsylvania.

13A. The proposed van conversion includes lowering the van floor by 14 inches, installing a manual slide-out ramp, and providing for a removable passenger seat and a manual wheelchair docking system. Claimant's parents obtained estimates from three entities for the requested van conversion. The estimates provided were: \$26,375 (from Aero Mobility); \$28,695 (from Mobility Specialists); and \$29,200 (from Ability Center).

13B. Claimant's family van has approximately 20,000 miles on its odometer. Claimant's mother noted that, in order to perform the van conversion, the vehicle must have less than 50,000 miles on the odometer and must not have been in an accident.

14. In a further attempt to exhaust generic resources, Claimant's parents turned to the Los Angeles County Public Health Agency, California Children's Services (CCS). In September 2017, Claimant's parents requested that CCS fund the ramp installation/van conversion to meet Claimant's needs. On September 12, 2017, CCS denied the request, noting, "The requested equipment requires modification to an automobile or home and therefore is not a CCS benefit." (Exhibit 6.)

15. Claimant's parents also sought assistance from Claimant's medical insurance provider. In October 2017, Claimant's request for vehicle modification was denied by his medical insurer because "vehicle modifications, replacement or upgrades are not a covered benefit under the member's plan." (Exhibit 7.)

16. Claimant's mother has also used several generic transportation resources in an attempt to meet Claimant's needs. However, based on her experiences with these providers, they were "extremely limiting," and she found that Claimant "was not an appropriate candidate" to use those generic services. Claimant's mother noted that, due to space and weight restrictions, the carriers were unwilling to transport Claimant's walker, specialized tricycle, and/ or bath and toilet chair. Additionally, the providers would typically accommodate only Claimant and one caregiver, and Claimant typically traveled with his mother, his caregiver, his sister and often his grandmother. Moreover, the providers required extended waiting times outdoors for pick up, and pick-ups were unreliable; this made scheduling Claimant's doctors' appointments (often 30 to 40 miles away) and maintaining his feeding schedule unfeasible. Since Claimant cannot be fed on route, it is difficult to meet Claimant's nutritional needs on travel days. Furthermore, if Claimant has a seizure during transport, which occurs periodically,

the generic transportation providers are not trained to respond to the situation, which often necessitates calling 9-1-1 for further transport.

17A. Access Services (Access) is one of the generic transportation services Claimant's mother has used several times, unsatisfactorily. Access customers must schedule their ride a day in advance by calling to make a reservation. In its brochure, Access points out its limitations on prompt pick-up, stating:

[I]t would be impossible to pick up everyone who needs a ride at exactly the time they would like. That is why we have a "one-hour reservation window." This means that the Reservationist can offer you a pick-up time up to one hour before or after your requested time. For example, if you ask for a pick-up time at 6am, you can be offered a trip sometime between 5am and 7am. . . .

[A]ccess has a 20-minute pick-up window. This means that a vehicle is considered on time if it arrives up to 20 minutes after the scheduled time.

(Exhibit 13.)

17B. Access limits the number of persons traveling with the customer to a personal care assistant and one guest. Extra guests are allowed only if there is space, which cannot be determined beforehand. Access also limits the number of a customer's packages to "the equivalent of two paper grocery bags or six plastic grocery bags, with a total weight of no more than 25 pounds." (Exhibit 13.)

17C. The Access driver cannot leave the vehicle even to come to the front door. Consequently, the customer must be waiting at the curb for pick-up during a large window of time for anticipated pick-up.

17D. If an Access driver fails to pick up a customer, which occurs occasionally, the customer must call Access to request another vehicle for pick-up.

18. Claimant's mother cited several examples of limitations posed by generic transportation resources, two of which are recounted below:

A. In one example, Claimant's mother recalled that, in January 2016, Claimant had to be taken to a physician for an urgent matter. Since Access must be scheduled a day in advance, Claimant's mother called Dial-a-Ride for same day pick-up. However, due to boundary restrictions, Dial-a-Ride could not take Claimant to his regular pediatrician in Covina. Consequently, Claimant's mother had to find and use an unfamiliar physician for Claimant within Dial-a-Ride's boundaries.

B. Claimant's mother also noted that she had attempted to schedule a ride for Claimant, his mother, his grandmother, and his sister to attend the fair hearing, but Access could not bring all four people, nor could it accommodate all of Claimant's equipment needs due to its package limitation.

19. Claimant's request for funding of the van conversion was presented to the Service Agency's Exceptional Service Review (ESR) Committee on October 25, 2017, and it was denied. The denial was "based on generic resource availability which is public transportation, Access Services, and managed care plans have their own transportation providers." (Exhibit 4.)

20. On December 15, 2017, Laura Boyd, a Social Worker employed at HMS School for Children with Cerebral Palsy, wrote a letter on Claimant's behalf advocating for the van conversion. Her letter states, in pertinent part:

[Claimant's] medical providers including his pediatrician, specialists, and therapists span not only multiple counties, but also multiple states. [Claimant] travels to all appointments and care [providers] with his communication device and necessary medical equipment. Additionally, [Claimant] requires a trained caregiver with him at all times due to his age and his needs. At times, [Claimant] travels with both his mother and a nurse. Due to childcare needs for his younger sibling, there are times that she also attends medical appointments and therapies with [Claimant].

It would be inappropriate for [Claimant] to rely on transportation that would not allow for him to have all of his medical equipment and communication devices with him at all times. County run transportation is often unable to cross county and state lines meaning it would be unable to function for this individual. County run transportation frequently limits the number of people able to travel with an individual. Claimant often has two adults as well as his younger sibling that need to travel with him. Additionally [Claimant] is an individual with multiple medical issues

including seizure disorder so it is imperative to his safely [*sic*] that he is transported as quickly as possible with the most direct route. County run transportation typically does not accommodate same day or next day appointments, requiring 3-5 days for rides to be scheduled. For a child like [Claimant], there is a frequent need for same day or next day or next day appointments due to illness and other urgent issues. . . .

[Claimant] continues to grow and gain weight making it more and more difficult for his mother to lift him from his wheelchair and safely transfer him into a car or van [Claimant] is inconsistent with his ability to assist with these transfers resulting in a true health risk to his caregiver's physical health.

[T]his is hardly a matter of convenience and truly a matter of safety for [Claimant] and his family that they have an accessible vehicle.

(Exhibit 11.)

21. Claimant's request, along with Ms. Boyd's letter, was again presented to the ESR committee on December 20, 2017.

22. On January 5, 2018, the Service Agency sent Claimant's parents a Notice of Proposed Action (NOPA) informing them that it was denying Claimant's request to fund for a conversion of the family's van. The NOPA stated, in pertinent part:

You have now provided new information in order to present [your] request for van conversion a second time. You have indicated that you have accessed generic transportation in the past through Access, Get About, and Dial A Ride; however, [Claimant] is not the right candidate for generic transportation due to his needs to travel with his medical equipment and due to his medical complexities with seizures and anxiety. [Claimant] has the following equipment: wheelchair with communication device and attachments, walker, feeding chair, bath chair with transfer bench, car seat . . . and knee mobilize[r]s. You have indicated that [Claimant] also suffers from seizures occurring up to 4 times a month lasting 5 to 7 minutes. You further stated that [Claimant] suffers from anxiety and will display behaviors excesses [*sic*] when waiting too long to be transported.

[Claimant] is a client of CCS and you previously provided documentation which indicated your request for a van conversion requires modification to an automobile or home and therefore is not a CCS benefit. Additionally, you have also previously presented your request to your private insurance . . . who indicated that "any vehicle modifications, replacements or upgrades are not a covered benefit under the members plan."

Your request for van conversion with your included letter from HMS School for Cerebral Palsy dated 12/15/17 written by Laura Boyd, MSW, LCSW was presented to the ESR committee on 12/20/17. . . .

At this time, SG/PRC has denied your request for van conversion and recommended that you pursue [your] request through [Claimant's] IEP team as they have recommended the conversion as a critical service to [Claimant]. Furthermore, as previously recommended[,] generic resources should be explored in order to meet [Claimant's] transportation needs and the Regional Center services must reflect the cost effective use of public resources. Lastly, managed care plans have their own transportation providers that could transport [Claimant] with his equipment needs.

(Exhibit 1.)

23. Claimant's mother filed a fair hearing request.

24A. Claimant's mother testified credibly at the fair hearing. She convincingly noted that the Service Agency misinterpreted Ms. Boyd's letter when it asserted that Claimant's IEP team "recommended the conversion as a critical service." Claimant's IEP is currently meeting his transportation needs as they relate to his educational goals. Ms. Boyd had written the letter to assist Claimant's family, and she was not asserting either that the school could not meet

Claimant's educational needs or that the Service Agency should provide funding to meet his educational needs.

24B. Claimant's mother also pointed out that Claimant's medical insurance does not cover transportation.

24C. Claimant's mother further asserted that the Service Agency's insistence that Claimant continue to use "failed generic resources is irresponsible." She noted that it is "becoming nearly impossible" to transport Claimant out into the community, and there will be no other way to transport him safely once he has completely outgrown his car seat. Claimant's mother observed that, without a reliable wheelchair accessible means of transportation, Claimant will lose opportunities to participate in programs and will be excluded from socialization opportunities such as play dates. She asserted that Claimant "should have equal access" and that she is trying to provide him a "full life."

25A. Mr. Christian testified credibly at the fair hearing. He has used Access, and he acknowledged that he "had a problem where [he] had to wait for an extended period of time." Although he noted that many individuals use Access every day, he admitted that Access "is imperfect" and there are times when the Access vehicle is late or does not show up. When Claimant's mother asked if this was a "safe way to meet [Claimant's] needs," Mr. Christian stated that he "cannot speak to your individual situation."

25B. In response, Claimant's mother pointed out that the Service Agency is "supposed to meet individual needs." She further noted that Claimant "is very complex," and he "would not be placed in Philadelphia" if his needs were not complex. She argued that the Service Agency has "failed to tailor services and support to meet [its] client's needs."

26. Mr. Christian maintained that the Service Agency's "standpoint is that [Claimant should] use generic resources . . . albeit imperfect . . . in accordance with [the Service Agency's] Purchase of Service Policy."

27. The Service Agency does not have a service policy that specifically addresses Claimant's situation. Its policy for purchasing "Transportation" does not speak to the concept of modifying a privately-owned vehicle. Generally, consumers who can safely use public paratransit (i.e., Access) or generic transportation are to do so. "For minors living at home, the regional center shall take into account the family's responsibilities for providing transportation services similar to those provided for a child without disabilities," such as travel to and from medical appointments and afterschool programs. (Exhibit 14, p. 34.) If the minor's family demonstrates that "they cannot provide or arrange transportation," the regional center "may provide transportation." (*Ibid.*) The regional center may also "purchase vendored specialized transportation services" for adults if "there is no appropriate or available public paratransit (Access) or generic transportation." (*Ibid.*) However, the policy specifies that "[t]he regional center shall purchase the least expensive transportation modality that meets the individual's needs" and "[t]ransportation will be provided by the most cost-effective method that meets the needs of the child and family." (*Ibid.*)

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of funding a van conversion for Claimant's family vehicle is granted. (Factual Findings 1 through 27; Legal Conclusions 2 through 10.)

2 Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.) In seeking Service Agency funding for a van conversion,

Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet his individual needs. Claimant has met his burden.

3. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501, 4512, subd.(b), and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (Welf. & Inst. Code, § 4502, subd. (b)(1).); and “maximize opportunities and choices for living, working, learning and recreating in the community” (Welf. & Inst. Code, § 4640.7, subd. (a).).

4. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).) Additionally, when purchasing services and supports, service agencies are required to ensure the “utilization of generic services and supports when appropriate,” and the “consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities.” (Welf. & Inst. Code §, 4646.4, subd. (a)(2) and (4).)

5. As defined in Welfare and Institutions Code section 4512, subdivision (b):

“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, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . adaptive equipment and supplies, . . . behavior training and behavior modification programs, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities.

6. Welfare and Institutions Code section 4648.35 provides for purchase of transportation services from a vendor in certain instances as follows:

At the time of development, review, or modification of a consumer's individual program plan (IPP) or individualized family service plan (IFSP), all of the following shall apply to a regional center:

- (a) A regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.
- (b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.
- (c) A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall

be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor.

(d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.

7. Welfare and Institutions Code section 4685, subdivision (c) provides

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home. . . . This assistance may include, but is not limited to . . . special adaptive equipment such as wheelchairs, hospital beds, . . . and other necessary appliances and supplies.
.. [¶] . . . [¶]

(3)(A) To ensure that these services and supports are provided in the most cost-effective and beneficial manner, regional centers may utilize innovative service-delivery mechanisms. . . .

8A. The Service Agency may be required to fund a minor child's transportation services in certain instances, as set forth in Welfare and Institutions Code section 4648.35, subdivision (d). Although Section 4648.35 specifically speaks to the purchase of transportation "services," it does not preclude the van conversion that Claimant requests. Additionally, Welfare and Institutions Code sections 4512, subdivision (b), and 4685, subdivision (c), identify "adaptive

equipment” as a service or support for persons with developmental disabilities which may be provided to assist families caring for their children at home. Given the foregoing, vehicle modification, necessary to lift and transport a wheelchair, would fall under the term “adaptive equipment” as that term is used in sections 4512, subdivision (b), and 4685, subdivision (c), and would constitute a transportation “service.”² Consequently, the Lanterman Act allows a regional center to fund a van conversion for purposes of transporting a wheelchair if that vehicle modification is necessary to meet an individual’s needs.

8B. However, the Service Agency must “fund the least expensive transportation modality that meets the consumer’s needs” (Welf. & Inst. Code, § 4648.35, subd. (b), and must also strive to utilize generic services and supports when appropriate and to consider the family’s responsibility for providing similar services and supports for a minor child without disabilities. (Welf. & Inst. Code, § 4646.4, subd. (a)(2) and (4).)

9. In this case, Claimant’s parents sought to meet their parental transportation responsibilities by using the family van along with Claimant’s specialized car seat. However, Claimant is about to outgrow his car seat, and he must look to a mode of transportation which will transport him in his wheelchair. Claimant’s family appropriately attempted first to obtain funding for a van conversion from CCS and Claimant’s medical insurer. When those requests were denied, Claimant then turned to generic resources to address his need for

² It is noteworthy that, when the Legislature established the potential Self Directed Services Program, “vehicle adaptations” was one of the categories of authorized services for which consumers could receive funds. (Welf. & Inst. Code, §4685.7, subd. (b)(6)(L).)

wheelchair transportation. Those generic services were not adequate to meet Claimant's individual needs. At this point, no viable option has been identified to meet Claimant's individual needs other than modification of the family van. The vehicle modification would facilitate Claimant's ability to travel to and from his medical and therapy appointments and out into the community for activities and socialization, while also addressing his individual medical and nutritional needs.

10. Given the foregoing, Claimant has established that the Service Agency should be required to fund the least-costly van conversion for \$26,375, by Aero Mobility.

ORDER

Claimant's appeal is granted. The Service Agency shall fund the conversion of Claimant's family van, as specified in the \$26,375 estimate from Aero Mobility (Exhibit 8).

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.

DATED: July 20, 2018

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings