

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2018060527

DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings, heard this matter on September 17, 2018, at the San Gabriel/Pomona Regional Center (SGPRC or Regional Center) in Pomona, California.

G. Daniela Santana, Fair Hearing Manager, represented SGPRC. Claimant's mother (Mother),<sup>1</sup> his legal conservator, represented Claimant, who was present throughout the hearing.

Oral and documentary evidence was received, the record closed, and the matter submitted on the hearing date.

ISSUE

Should SGPRC fund the conversion of Claimant's family vehicle to add an electrically powered ramp?

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<sup>1</sup> To protect their privacy, Claimant and his mother are not identified by name.

## FACTUAL FINDINGS

1. Claimant is a 24 year-old male, eligible for Regional Center services under the diagnoses of Cerebral Palsy, profound intellectual disability, and epilepsy. Claimant is non-ambulatory, nonverbal, and incontinent. He requires complete and total care with all of his needs, including operating his wheelchair, moving out of the wheelchair into a vehicle, and maintaining and operating the feeding tube required to provide him with sustenance. Claimant lives with his parents and two siblings, ages 12 and 14, both of whom are also clients of SGPRC and have their own special needs. Mother is the primary caretaker for the three siblings.

2. Claimant currently attends a five-day per week vocational program, which provides transportation to and from the program facility. He also receives 225 hours per month of In Home Supportive Services. The family receives 35 hours per month of respite services.

3. Claimant and Mother utilize a ride service provided by Claimant's insurance to go to medical appointments. Mother has found the medical transportation, Ballright Transportation, unsatisfactory in three respects: (i) Although she has not witnessed the driver or any of the passengers smoke, the transport vehicle often smells of smoke; (ii) Other passengers have become unruly and Mother fears Claimant could be hit or otherwise injured by them; and; (iii) Mother is not able to bring her other children as additional passengers unless additional space is available. This creates a hardship for Mother because she is often the only adult available to supervise in the household.

4. Claimant weighs approximately 90 pounds. His wheelchair weighs 150 pounds. For routine family outings, including trips to Tijuana, Mexico, local gatherings at the homes of extended family, and other family excursions, often planned on the spur of the moment, Mother is unable to manage Claimant's transport without Claimant's father's assistance. Mother presented a short video taken on the day of the hearing

demonstrating what is involved in transporting Claimant. The video shows Mother disconnecting the feeding tube from Claimant. Claimant's father, bigger and stronger than Mother, picked up his son from the wheelchair and lifted him onto a back seat of the family van. Claimant's father then rolled the wheelchair to the back of the van where he tilted it to one side and then the other in order to remove its wheels, leg braces, and foot stands. Finally, Claimant's father folded and hoisted the chair into the back of the van.

5. Mother testified that Claimant's father is self-employed. Often, when she has an excursion planned for the children during his normal work hours, he must delay or miss his work to assist Mother, creating additional financial hardship for a family already experiencing significant financial strain. The process also causes stress on the family dynamic as Claimant enjoys and benefits from the social interaction, music, and general merriment of extended family gatherings while Claimant's father would rather relax at home when not working. Without a viable way of independently transporting Claimant, Mother faces the difficult choice of either foregoing these events or disturbing Claimant's father's work schedule or periods of rest.

6. Mother believes that an electrically powered ramp would allow her to transport Claimant without the assistance of Claimant's father. Such a ramp requires extensive conversion of the family van and, based on estimates Mother obtained from two vendors, will cost between \$22,785 and \$26,585.<sup>2</sup> Claimant's pediatrician, Dr. Marivic

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<sup>2</sup> Mother presented two estimates from vendors. The first, from Ability Center in Long Beach, California, is dated September 4, 2018, and quotes a cost of \$20,585 to build a "rear entry lower floor manual ramp conversion" and an additional \$3,200 to build a "wheelchair lock down" within the van. With a \$1,000 Regional Center discount, the total cost would be \$22,785. (Exh. A.) The second estimate, from Mobility Specialists, Inc. in Brea, California, estimates the cost of the ramp conversion at \$23,400 and the

Baulisto, also believes an electrically powered ramp would be appropriate for Claimant's needs and he therefore helped the family seek reimbursement for its costs through its insurance provider, Blue Shield California Care First Health Plan; however, the insurance company rejected the claim, noting that its coverage did not extend to permanent ramps, including the particular ramp the family was seeking.

7. On May 9, 2018, SGPRC's Exceptional Services Committee reviewed and denied Mother's request for the van conversion, concluding that Claimant's transportation requirements could be met through Access services, a publicly-funded bus service available for disabled individuals and their caretakers. At the hearing, Ms. Santana testified that, in the experience of other Regional Center employees who use it routinely, Access is safe and reliable, though she concedes it has limitations, including requiring advanced reservations and not always allowing additional family members to ride with Mother and Claimant.

8. Ms. Santana also stated that the Regional Center may have been willing to pay for a removable ramp, equipment she estimates to cost approximately \$1,000; however, Ms. Santana reads the insurance company's letter refusing to fund the electrically-powered ramp to imply that it would be willing to pay for a removable one. The Regional Center would not pay for equipment if the costs would be covered by insurance. Mother has not sought a removable ramp via Claimant's insurance company or SGPRC. Mother has had limited experience with removable ramps, having only observed a neighbor with a disabled relative use it; however, she believes they are too heavy and unwieldy for the family's needs and for her own physical strength and capability.

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wheel chair "tie down" as well as a shoulder harness and lap belt at \$3,185, with a total cost of \$26,585. (Exh. B.)

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Service Act (Lanterman Act) (Welf. & Inst. Code<sup>3</sup>, § 4500 et seq.), individuals with qualifying developmental disabilities are entitled to state-funded services and supports, which promote normalcy and independence for disabled individuals and their families. As provided by the statute, “[an] array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities. . . .The Legislature finds that the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness. It is the intent to the Legislature that agencies serving persons with developmental disabilities have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.” (§ 4501.)

2. The Lanterman Act also establishes a “bill of rights” for disabled persons including “[a] right to social interaction and participation in community activities” (§ 4502, subd. (b)(6)); and “[a] right to . . . recreational opportunities.” (§ 4502, subd. (b)(7).)

3. Regional centers are responsible for providing the services and facilities appropriate to the consumers’ conditions and needs. (§ 4620.) The services and facilities provided must “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age,” (§ 4501) and maximize the client’s ability to participate in community activities. (§ 4646.5, subd. (a)(2).) The Lanterman Act also requires regional centers to affirmatively support the relationships of disabled individuals with their family members: “The Legislature recognizes the ongoing contribution many parents and family members make to the support and well-being of their children and relatives with developmental disabilities. It

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<sup>3</sup> All statutory references are to the Welfare and Institutions Code unless otherwise designated.

is the intent of the Legislature that the important nature of these relationships be respected and fostered by regional centers and providers of direct services and supports." (§ 4620.1.)

4. Regional centers must provide "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, normal lives." (§ 4512, subd. (b).)

5. The determination of which services and supports the regional center shall provide is 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 the each option." (§ 4512, subd.(b).)

6. Whenever appropriate, regional centers must utilize generic services and supports (§ 4646.4, subd. (a)(2)) and must consider family responsibilities to provide similar services and supports for a minor child without disabilities as well as "the consumer's need for extraordinary care, services, supports and supervision and the need for timely access to this care." (§ 4646, subd. (a)(4).) Regional Centers must pursue all outside sources of funding, including any available insurance coverage. (§ 4659, subd. (a)(1).)

7. "Specific statutes must be construed with reference to the entire system of law of which they are a part, so that all may be harmonized and have effect. (*Clements v. Amundson* (1998) 60 Cal.App.4th 1094, 1102 [citations omitted].)

8. As the party initiating this matter, Mother, in her capacity as Claimant's conservator, bears the burden of proof to establish grounds for her request. (Evid. Code, § 500.) The standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

9. In the instant case, Mother established that generic transportation services such as Access cannot provide all the services necessary to allow Claimant to fully participate in his most important and immediate community, his own family. The routine events and family traditions require travel to Mexico, spontaneous local outings, and a division of labor and duties between the parents allowing each to maintain his or her individual responsibilities and opportunities to rest in a sustainable manner. Optimizing Claimant's and family's opportunity to engage in these events is an appropriate objective under the basic tenets of the Lanterman Act. (Factual Findings 4 & 5 and Legal Conclusions 1-4.)

10. Harmonizing the Lanterman Act's provisions setting out the range of assistance regional centers can provide with its requirement to maximize financial efficiencies and utilize other available resources requires considering whether Mother has effectively proven not just the need to independently transport Claimant in the family van, but whether the electrically-powered ramp is the only option. (Legal Conclusions 5-7.)

11. Mother has not met her burden of proving that the electrically-powered ramp is the sole means to allow her to independently transport Claimant. Her limited experience and general dissatisfaction with removable ramps is an insufficient basis to warrant authorizing the van conversion to allow for an electrically-powered ramp given the substantial price difference between the two methods. Under these circumstances, her appeal cannot be granted

## ORDER

Claimant's appeal is denied. SGPRC shall not fund the conversion of Claimant's family vehicle to add an electrically powered ramp.

DATED:

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DEENA R. GHALY

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 90 day.