

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018080089

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter, in San Bernardino, California, on October 2, 2018.

Claimant appeared on his own behalf.

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

The matter was submitted on October 2, 2018.

ISSUE

Is IRC required to pay for claimant's monthly Metrolink train pass so that he may commute to and from work?

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Claimant is an adult consumer who qualifies for regional center services on the basis of epilepsy. He has been receiving supported living services (SLS) at Circle of

Life since May 2018. Claimant also participates in a supported employment program through Westview Services Inc. and receives job coaching through this provider. In addition, claimant receives supportive services from the Department of Rehabilitation (DOR). As indicated in his current Individual Program Plan (IPP), dated October 18, 2017, claimant is very independent, has his own apartment, and at the time of the IPP, was working full time at the State Compensation Insurance Fund in Glendale. Claimant now works for Caltrans as a Staff Services Analyst where his gross income is at least \$4,136 a month.¹ His job is in Downtown Los Angeles and he takes public transportation, the Metrolink, from his home to his job because he cannot drive due to his epilepsy. Claimant identified the cost of the monthly pass as \$322. However, the true monthly cost of the pass for claimant is \$257 because, as documented in an email dated August 31, 2018, claimant can obtain a \$65 voucher from his employer, Caltrans. Thus, the cost per day for a round trip fare is \$11 based on 22 work days on average per month.

2. Per claimant's October 18, 2017, IPP "transportation" is described as a "new" service to be included in the IPP. On November 2, 2017, according to IRC's Consumer I.D. notes, Sharon Han, IRC Transportation and Mobility Specialist, communicated with claimant that IRC cannot implement a "TSR" because Metrolink is not vendored with IRC. Ms. Han indicated that Scott Sweaza, claimant's Consumer Services Coordinator (CSC), will discuss program reimbursements with the Program Manager and Executive Director. Mr. Sweaza discussed program reimbursement with Don Meza, IRC Program Director, who approved the purchase reimbursement "in order to support and sustain the consumer's current position." The contract was time limited due to "consumers [*sic*] position ending in April 2018." Mr. Sweaza testified that this

¹ According to the salary schedule for claimant's position his salary range is between \$4,136 and \$5,179 per month.

reimbursement was a limited exception because claimant was working in Glendale and was having a financial hardship. His salary was \$2,000, his rent was \$1,000, and the cost to take the Metrolink and Uber was \$600 a month.

The next note regarding transportation is dated July 5, 2018. Mr. Sweaza stated that he sent an email to claimant "asking if his plan is to relocate to OC [Orange County] due to his employment location. CSC encouraged him to contact DOR as the generic services to assist with transportation."

Transportation services for claimant were next mentioned in a note dated July 11, 2018. According to this note, a DOR representative told Mr. Sweaza that DOR provided claimant with one-time funding for a monthly Metrolink pass in July and DOR "encouraged" claimant to explore transportation funding with IRC. Mr. Sweaza discussed transportation services for claimant with his supervisor, Program Manager Mary Pounder and on July 11, 2017, Ms. Pounder told Mr. Sweaza that claimant's transportation request was not appropriate. On July 23, 2018, Ms. Pounder signed a Notice of Proposed Action that denied claimant's transportation request. As the reason for this action, the Notice of Proposed Action stated the following:

The intention of the Legislature is that regional center funded services assist consumers to attain the greatest self-sufficiency possible and become integrated into the community around them. You have been commuting successfully and working competitively in another county from where you live. It is typical for individuals who work to be responsible for the cost of commuting to work; especially when their commute requires them to utilize public transportation such as the Metrolink. . . .

3. On July 31, 2018, claimant filed a fair hearing request. As the reason for his request, he stated, "I've been unfairly denied transportation services from the Inland Regional Center." He asked that IRC fund his public transportation now that he is working full time.

CLAIMANT'S EVIDENCE

4. In August 2017, claimant moved to Corona, in Riverside County, and his case was transferred to IRC. Claimant was unable to find work closer to where he lives; he found a job in Downtown Los Angeles, as noted, for Caltrans. He asserted that he cannot afford public transportation, and this may result in losing his job and his inability to live independently. Claimant submitted documents that show that Harbor Regional Center paid for public transportation for him between July 2016 and August 2017.

INLAND REGIONAL CENTER'S EVIDENCE

5. Ms. Pounder is the IRC Program Manager. She explained that she considered the following factors in denying his request to fund the Metrolink pass: his competitive salary, which she noted was more than CSCs at IRC earn, and he did not ask IRC for assistance to get to and from work. Claimant was able to access and use public transportation.

6. Ms. Han, IRC Transportation and Mobility Specialist, testified that IRC does not fund Metrolink for consumers making a competitive salary. IRC only funds transportation services for consumers with low wages. She said that IRC typically funds transportation services through a vendor or family member.

7. IRC submitted materials regarding Rideshare and Vanpool, which are transportation services for commuters. The submitted material did not include the cost of these services and whether these services would be less than the monthly Metrolink pass with the \$65 voucher from claimant's employer.

THE PARTIES' ARGUMENTS

8. Claimant submitted a position statement with points and authorities in support of his request that IRC pay for the Metrolink pass and reimburse him and, further, reimburse him for the passes he purchased. Claimant's arguments in his position statement have been fully considered.

IRC emphasized that claimant has the responsibility to pay the costs of commuting considering his income and his ability to live and work independently.

EVALUATION OF COMMUTING COST V. COST TO TAKE PUBLIC TRANSPORTATION FROM CORONA TO DOWNTOWN LOS ANGELES

9. The issue to be decided involves whether, as a result of his disability, IRC is required to pay for the monthly Metrolink pass so that claimant may live and work independently. An evaluation, thus, must be made whether claimant must pay more to commute to work because of his disability than he would if he could drive because he cannot drive and must take Metrolink as a result of his disability. IRC correctly notes that individuals are expected to pay for the costs of commuting to and from their places of employment and claimant has a competitive salary that allows him to pay for the monthly Metrolink pass. Considering his salary, claimant can afford the \$257 monthly pass.

As a measure of the cost to claimant if he drove a car from Corona to Downtown Los Angeles, guidance is found in the Internal Revenue Service's calculation of the standard mileage rates for taxpayers to use in computing the deductible costs of operating a car. For 2018 this rate is 55 cents per mile. (Internal Revenue Service Notice 2018-3.) The distance from the Metrolink Corona to Los Angeles Union Station, if driving by car using the most direct route, is 47 miles one way or 94 miles round trip.² Thus, it is

² Official Notice is taken both of the mileage from the Metrolink Corona North

reasonable to conclude that the minimum cost to commute by car if claimant drove between the Corona Metrolink station and Los Angeles is at least, \$52 per day and this sum does not include the cost of parking. As noted earlier, based on an average 22 work days in a month, the cost per day for a round trip monthly Metrolink pass is \$11. The cost, accordingly, to claimant if he commuted from Corona to Downtown Los Angeles by car is far more expensive than the cost to take the Metrolink train.

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

Train Station to Union Station in Downtown Los Angeles by freeways per Google Maps and the IRS's 2018 mileage rate.

independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) 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.

3. 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.

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

5. 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 provision 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.

6. 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.

7. Services and supports shall be flexible and individually tailored to the consumer. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

APPLICABLE LAWS AND REGULATION

8. 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.)

9. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage.

10. Welfare and Institutions Code section 4648, subdivision (a)(3)(B), provides that a regional center may only provide reimbursement for services already provided where the service was provided by a vendor and was provided pursuant to an

emergency vendor authorization.

LAW GOVERNING TRANSPORTATION SERVICES

11. Welfare and Institutions Code section 4648.35, subdivision (a), provides: "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."

EVALUATION AND DISPOSITION

12. Claimant failed to meet his burden to show that IRC must pay for the monthly Metrolink pass in order to help him maintain his ability to live independently and his request that IRC pay for the Metrolink pass is denied. There are several reasons for this conclusion: First, claimant is able to live and work independently and has no difficulties accessing public transportation to and from work. Claimant makes a competitive salary and he can afford the \$257 monthly cost for the Metrolink pass. Considering his salary, it is reasonable that he pay the cost of commuting to and from work as any person must do, and taking Metrolink is a cost effective option for any person who lives in Corona and works in Downtown Los Angeles. If claimant was able to drive from Corona to Downtown Los Angeles the cost to him would be much greater than the cost of his monthly pass.

With this noted, the Department of Rehabilitation, as a generic resource, may be responsible to assist claimant with the cost of the monthly pass as part of claimant's Individual Plan of Employment, notwithstanding that DOR determined that it was not required to pay for claimant's Metrolink pass when it referred claimant to IRC for IRC to pay for the Metrolink pass.³

³ It is unfortunate that claimant appears to be placed between IRC and DOR in a

ORDER

Claimant's appeal is denied.

DATED: October 9, 2018

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)

budget battle concerning which agency may be required to pay the cost of the monthly pass. It is suggested that IRC assist claimant with communicating with DOR and help him with referrals to organizations that may offer him assistance with his request for services from DOR.