

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2018100517

CLAIMANT

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 28, 2018, in Torrance, California.

Julie A. Ocheltree, Attorney at Law, represented Harbor Regional Center (HRC or Service Agency).

Soo Yun, Attorney at Law, represented claimant, who was not present.¹ Claimant's mother and conservator was present and utilized the services of a certified interpreter, Sarah Choi, Hanna Interpreters.

Oral and documentary evidence was received. The record was held open until January 25, 2019, for briefing. The Service Agency timely filed a closing brief, which was marked for identification as exhibit 13. Claimant timely filed a closing brief, which was

¹ Claimant's and family members' names are omitted in order to protect their privacy.

marked for identification as exhibit C32. The Service Agency timely filed a reply brief, which was marked for identification as exhibit 14.

The record was closed and the matter was submitted for decision on January 25, 2019.

ISSUE

Must the Service Agency fund a taxi service of parent's choice for claimant to use for transportation to and from (a) the Exceptional Children's Foundation (ECF) Art Center day program and (b) El Camino College or another community college?²

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-7, 9-14; claimant's exhibits C2-C4, C6-C16, C18-C20, C22, C24, C27-C32.

² Claimant raised a second issue in his Fair Hearing Request—whether the Service Agency must fund 10 hours per week of Applied Behavior Analysis (ABA) therapy for claimant through California United Service Providers (CUSP) in addition to 15 hours per week already funded by claimant's insurer. Both sides presented evidence on this issue at hearing. In claimant's closing brief, however, claimant's attorney represented that, "on or about December 26, 2018 [one month after the hearing], Mother received a notification from the private insurance company that [claimant] will be authorized to receive [an] additional 10 hours per week of ABA services to meet his needs. Therefore, the second issue in this hearing became 'moot,' as [claimant] would be receiving the requested remedy from his private insurance carrier . . ." (Ex. C32, p. 6.) The brief stated that "Claimant respectfully requests to withdraw this issue without prejudice." (*Ibid.*) The issue is deemed withdrawn without prejudice and shall not be addressed in this decision.

Testimony. Jessica Mink; Teresa Warner; claimant's mother, Doreece Taylor.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant, a 22-year-old conserved man, is an eligible consumer of HRC based on his diagnosis of Autism Spectrum Disorder; he also has been diagnosed with intellectual disability, seizure disorder, speech and language disorder, and various medical conditions, including irritable bowel syndrome (IBS).

2. Claimant resides at home with his parents and a younger brother; claimant's father spends a significant part of each year in South Korea. According to his most recent Individual Program Plan (IPP), dated February 27, 2018, with an addendum, claimant requires nighttime supervision due to insomnia. Claimant receives 180 hours of In-Home Support Services (IHSS); HRC has offered to fund respite services, but claimant's mother has not accepted that offer. Claimant requires minimal assistance with daily living tasks, but requires prompting for hygiene tasks and eating. He has limited verbal communication skills, but communicates through gestures and sounds. He engages in inappropriate behaviors, such as pushing, when frustrated. He requires adult supervision in the community in order to remain safe.

3. The Service Agency provides funding for claimant to attend ECF Art Center, claimant's day program. Claimant was initially scheduled to attend ECF three days per week; he is currently attending two days per week, with a goal of eventually attending full time. Claimant attends courses at El Camino College twice per week. He receives ABA services through CUSP. (See footnote 2.) Claimant's mother currently drives claimant to ECF Art Center and to community college.

4. On September 11, 2018, at an IPP meeting, claimant's mother requested that the Service Agency pay for private taxi transportation for claimant to and from the ECF Art Center and to and from El Camino College.

5. By a Notice of Proposed Action (NOPA) letter dated September 17, 2018, Cindy Garcia, Service Coordinator, and Jessica Mink, Client Service Manager, denied claimant's mother's request. The letter acknowledges claimant's mother's belief that claimant is incapable of using public transportation, including paratransit services such as Access Paratransit. The letter states that HRC would fund a mobility assessment to identify "any unmet needs related to [claimant's] ability to navigate various transportation options and confirm the best mode of transportation to get him safely to and from his day activities." In the meantime, HRC offered to fund transportation to and from ECF using a transportation provider HRC contracts with. HRC also offered to fund Access Paratransit coupons for claimant's transportation to and from college. Ms. Garcia and Ms. Mink wrote that funding taxi transportation is not cost effective, citing Welfare and Institutions Code sections 4648.3, subdivisions (b) and (c), and 4648, subdivision (a)(6)(D), and HRC's service policy on Transportation and Mobility Services. (Ex. 1.)

6. Claimant's mother, who is also claimant's conservator and authorized representative, filed a Fair Hearing Request on October 3, 2018, appealing the Service Agency's funding denial for taxi transportation. This hearing ensued.

TRANSPORTATION TO ECF AND COMMUNITY COLLEGE

7. Claimant plans to become a professional artist. He has been taking art classes since he was five years old, and his work has been exhibited in student exhibitions. Claimant attended a Transition to Independence ("TTI") program after graduating from high school. He also took general education art courses at Harbor College and El Camino College starting August 2016 with a one-to-one CUSP ABA aide funded by claimant's school district. The school district funded a door-to-door taxi

service from claimant's home to the TTI program, Harbor College, and El Camino College. Two taxi drivers employed with the service became familiar with claimant's needs.

8. In February 2018, some months before claimant was to transition out of his school district, claimant's mother asked Ms. Garcia about day programs that would enable claimant to pursue art as a vocation, and about transportation services from home to the day program and to community colleges for art courses. In July 2018, when claimant "aged out" of his school district, claimant's family enrolled him at ECF Art Center three days per week, funded by HRC as his day program; claimant now attends two days per week. Claimant continued taking art classes at El Camino College two days per week. Claimant's mother requested that HRC fund the taxi service that claimant's school district had been funding. Records show she expressed to HRC a concern that Access Paratransit or another paratransit service would not be able to address claimant's needs should he have a seizure en route. There was conflicting evidence as to whether claimant's mother also expressed concern to Ms. Garcia about claimant's irritable bowel syndrome symptoms and about claimant's behaviors—loud vocalizations, repetitive movements, unfastening his seatbelt—while being transported by any means other than a taxi driven by one of the two drivers familiar with claimant.

9. It is undisputed that claimant cannot use a public bus. For claimant's transportation to and from his day program at ECF Art Center, HRC offered claimant a choice of Access Paratransit service coupons; Ideal Transit, a vendored transport provider; or reimbursing claimant's mother for driving claimant at the Ideal Transit rates. Claimant requires door-to-door, rather than curb-to-curb, service. Access Paratransit would allow an aide to accompany claimant at no charge. HRC told claimant's mother that it is not responsible for claimant's transport to college because college is not an HRC-funded program, and HRC has no vendor for transporting claimant to community

college. Nevertheless, HRC offered to reimburse claimant's parents for transport to college, fund Access Paratransit, or fund Ideal Transit transportation services.

10. Claimant's mother raised several arguments.
 - a. Claimant must be in class at El Camino Community College by 9:00 a.m., so he must arrive at the campus by 8:45 a.m. to walk from the curbside to his classroom. Claimant's CUSP aide currently meets claimant at the college. Access Paratransit has a 20-minute pick-up window and picks up other passengers on the route, so claimant would have to schedule Access Paratransit to pick him up at approximately at 6:30 a.m., an hour earlier than he leaves home now.
 - b. HRC's offer of a generic transportation service such as Access Paratransit with an aide or assistant does not enable claimant to approximate everyday living available to typical 22-year-old male adults. Jessica Mink, a client services manager at HRC who oversees a team of service coordinators, including Ms. Garcia, testified, however, that the services offered are appropriate because they meet claimant's individual needs.
 - c. The difference in cost between a taxi service and other modes of transport do not demonstrate that funding a taxi would not be cost effective. Claimant's mother testified that the distance from claimant's home to El Camino College and to ECF Art Center is about the same. Both parties testified that a round trip using a taxi would cost \$59.70, a round trip using Ideal Transit would cost \$35.84, and a round trip using Access Paratransit would cost \$5.50. The difference in cost between the taxi and Ideal Transit would be \$23.86 daily; the difference between the taxi and Access Paratransit would be \$54.20 daily.
 - d. Claimant may have a seizure while traveling. Claimant's first seizure was in 2012; he had seven seizures between 2012 and 2015. In 2015, however, he

had one seizure, in 2017, he had one seizure and, since then, claimant has had no seizures. In addition to the increasing rarity of claimant's seizures, no evidence was offered to show that the taxi service drivers are trained to deal with a seizure any better than an Access Paratransit driver or Ideal Transit driver. Claimant's physician can provide paratransit drivers instructions on how to respond when claimant has seizures. As the payor of last resort, Ms. Mink testified, the Service Agency must fund cost effective services and supports. Ideal Transit would meet claimant's needs; other regional center consumers who have seizure disorder ride with Ideal Transit. HRC offered to fund Access Paratransit coupons or parent reimbursement. Access Paratransit policy would allow a personal assistant to accompany claimant for free.

- e. Claimant's mother argued that claimant suffers from IBS and that, if he experiences symptoms on the bus, the Ideal Transit bus driver would not be allowed to stop the van at a public restroom and assist claimant. But there was little evidence of claimant's symptoms on the record; it appears from the documents that claimant may have a form of IBS that causes constipation and stomach pain. Ms. Mink offered to conduct a mobility assessment of claimant to provide better information regarding any unmet mobility needs, but claimant's mother has not agreed to the assessment. Without more information of the kind that could be provided through a mobility assessment, it is difficult to conclude that claimant has established a need for taxi service based on claimant's IBS as well as on his seizure disorder and behaviors.

11. Because claimant's mother declined HRC's offers, HRC is not currently funding for transportation.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)³ An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of his request for funding for taxi transportation to his day program and community college. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

2. Because claimant seeks benefits or services, he bears the burden of proof. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

THE LANTERMAN ACT

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client’s developmental needs and the effectiveness of the means selected to assist the

³ Further statutory references are to the Welfare and Institutions Code.

consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or "generic resource." Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if a service specified in a client's IPP is not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

Transportation Expenses

6. The Lanterman Act defines "services and supports" to include "transportation services necessary to ensure delivery of services to persons with developmental disabilities." (§ 4512, subd. (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" (§ 4648.35, subd. (b).) In the IPP process, "[t]he cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as

identified in the individual program plan, shall be selected.” (§ 4648, subd. (a)(6)(D).)

“Optimally, adults with a developmental disability are expected to obtain transportation by accessing generic resources such as public transportation (including Paratransit Services)” (HRC Service Policy, Transportation and Mobility Services.)

7. Claimant did not establish that HRC must fund taxi transportation services to and from claimant’s day program and community college. Under the terms offered by HRC, the use of Access Paratransit or Ideal Transit or both, or reimbursement of claimant’s mother for driving claimant, is appropriate to meet claimant’s needs as set forth in the IPP, until such time as circumstances, or the results of a mobility assessment, warrant otherwise as determined at another IPP meeting.

ORDER

Claimant’s appeal is denied.

DATE: February 1, 2019

HOWARD W. COHEN
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 days.