

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2018110069

DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Diego, California, on December 4, 2018.

Ronald House, Attorney at Law, represented San Diego Regional Center (SDRC).

Claimant's mother represented claimant as his authorized representative.¹

The matter was submitted on December 4, 2018.

ISSUE

Should SDRC fund claimant's transportation to and from medical appointments?²

¹ Although claimant's mother is his authorized representative, for ease of reference, she is referred to hereinafter as "claimant's mother."

² SDRC agreed to fund transportation to regional center services, and claimant's mother complained during this hearing regarding some problems claimant experienced with that transportation. This decision only addresses claimant's request that SDRC fund

FACTUAL FINDINGS

JURISDICTIONAL BACKGROUND

1. On October 2, 2018, SDRC issued a Notice of Proposed Action to claimant, which stated the following proposed action: "Transportation to medical appointments is denied." The reason given for the denial was: "Planning Team has determined that generic transportation services are available and accessible (Medi-Cal)."

2. Claimant submitted a Fair Hearing Request on November 1, 2018. The request stated the following under the heading "Reason(s) for requesting a fair hearing": "I do not agree with the decision. I want to be heard in front of a judge. Doctor stated consumer medical needs for cab services." The fair hearing request also asserted that the following was necessary to resolve the complaint: "Consumer needs door to door transportation by cab due to his handicapped condition. See Doctor's Letter attached."³

BACKGROUND REGARDING CLAIMANT'S RECEIPT OF REGIONAL CENTER SERVICES

3. Claimant is a 23-year-old non-conserved man. He previously received regional center services through the Westside Regional Center in Los Angeles, and his case was transferred to SDRC in June 2018 when he moved to San Diego. According to his November 20, 2017, Individual Program Plan (IPP), claimant is eligible for regional center services based on diagnoses of "Intellectual Disability (Mild) and Fragile X Syndrome." However, that portion of the IPP was lined over, and during this hearing, claimant's mother stated claimant is autistic.⁴

claimant's transportation to and from medical appointments.

³ The doctor's letter is discussed in detail below.

⁴ SDRC's Title 19 case notes indicated claimant was originally found eligible for regional center services based on a diagnosis of mild Intellectual Disability, his mother

4. The November 20, 2017, IPP did not discuss transportation to medical appointments. In the "Social-Emotional/Recreation" section, the IPP noted the following under the subheading "Transportation access plan":

[Claimant] would benefit from mobility training. Mom was instructed to access generic resources, i.e. Access Transportation, MTA. Mom informed PM that [claimant] is unable to take Access because "it takes too long". Mom added that [claimant] vomits on Access. PM asked [claimant] about his experience with Access/public transportation. [Claimant] stated that he has taken the bus before. [Claimant] stated that he vomited one time on the bus when the bus made a turn and upset his stomach. [Claimant] stated that he also vomited once on a taxi because of the "turn."

Under the "Plan for community supports" heading in the "Part III-Desired Outcomes" section of the IPP, it also stated: "[Claimant] will access public transportation with the assistance of tailored services."

CLAIMANT'S REQUEST THAT SDRC FUND HIS TRANSPORTATION TO MEDICAL APPOINTMENTS AND CLAIMANT'S MEDI-CAL ELIGIBILITY

5. According to SDRC's Title 19 case notes, on June 21, 2018, during a telephone conversation with SDRC Service Coordinator (SC) Cynthia Estrada, MSW, claimant's mother requested that SDRC "set-up transportation services received in Los

told SDRC claimant was autistic, but claimant had never been assessed for eligibility based solely on Autism Spectrum Disorder.

Angeles such as: Lyft, UBER, and FMS Voucher. She informed SC that their [sic] is a physician's order to support this transportation request. Transportation is to be provided for physical therapy. . . ." The Title 19 case notes also stated that during a July 17, 2018, meeting, claimant's mother told SC Estrada that "[claimant] needs transportation for medical appointments," and "SC informed her that as previously discussed per, [sic] Mr. Malone these appointments needed to be scheduled through Medi-Cal transportation program. SC reminded her of the flyer she had forwarded to her. [Claimant's mother] reported having misplaced it. SC handed her another copy."

6. Claimant's doctor, Scott Miller, M.D., of Arch Health Medical Center, wrote a letter addressed to claimant dated August 29, 2018. The letter, as it was typewritten on that date, stated:

The above is under my medical care and participate [sic] in regional center and/or dept of rehabilitation activities at this time. His disabilities include autism, hypotonia, and anxiety and depression.

He can not [sic] take the bus, but needs transportation in a taxi, uber, etc. because of his neuropsychiatric and physical condition.

On September 18, 2018, Dr. Miller added the following handwritten notation to the letter: "The service should be direct with or⁵ and without PCA."⁶

⁵ The word "or" appeared to be crossed out.

⁶ Although the notation did not define the abbreviation "PCA," it appeared to refer to "Personal Care Attendant."

7. On September 25, 2018, SDRC Program Manager (PM) William Lacey sent claimant's mother an email which stated:

I received your phone call and I can meet Thursday at 1230.

In regards to transportation I understand what you are saying. However, SDRC does not offer transportation to medical appointments but medi-cal [sic] does. I understand that he is on straight medi-cal [sic] so in order to get this service you need to have his medi-cal [sic] and IHSS, and SSI transferred from LA to SD as soon as possible. Otherwise, you can transport him and we can set up a voucher in your name. Also, he needs to be signed up for a health care option to receive the transportation services and you can call them ay [sic] 800-430-4263.

When he sent the above-described email, PM Lacey also provided claimant's mother with a copy of the Metropolitan Transit System flyer regarding the transportation services provided to persons enrolled in Medi-Cal managed care programs. The flyer, dated May 29, 2018, was received in evidence and stated that the Medi-Cal Transportation Program had recently been changed to provide free transportation services. It listed the telephone numbers for transportation services available through seven managed care Medi-Cal providers.

PM Lacey explained during his hearing testimony that when he sent the email, he mistakenly wrote that SDRC could set up a voucher in claimant's mother's name. That representation was made in error because SDRC does not fund transportation to medical appointments. According to PM Lacey, SDRC agreed to fund transportation for claimant to get to and from school, but it could not fund transportation to medical

appointments.

8. Although claimant's medical care is funded by Medi-Cal, he is not in a Medi-Cal managed care program. On September 18, 2018, claimant submitted a Request for Temporary Medical Exemption from Plan Enrollment to the California Department of Health Care Services (DHCS). On November 20, 2018, DHCS approved his medical exemption request through May 31, 2019, allowing him to continue to receive medical care from his "regular (Fee-For-Service)⁷ Medi-Cal doctor" rather than enrolling in a Medi-Cal managed care health plan. Claimant's mother contended during the hearing that the November 20, 2018, exemption request approval meant that SDRC was required to provide claimant transportation for his medical appointments.

//

MEDI-CAL FUNDED TRANSPORTATION TO MEDICAL APPOINTMENTS

9. According to an excerpt from DHCS's website⁸:

Medi-Cal offers transportation to and from appointments for services covered by Medi-Cal. This includes transportation to medical, dental, mental health, or substance use disorder

⁷ "Fee-For-Service" was sometimes abbreviated in the record as "FFS."

⁸ Claimant's mother objected because SDRC did not provide this evidence to her until the hearing. However, claimant's mother did not provide claimant's medical exemption request approval documentation to SDRC until the day of the hearing. (SDRC did not object to the admission of those documents.) The website excerpt was received over claimant's objection, in light of claimant's recent medical exemption approval, because the website excerpt discussed Medi-Cal's provision of transportation services to both managed care and FFS patients.

appointments, and to pick up prescriptions and medical supplies.

There are two types of transportation for appointments. Nonemergency medical transportation (NEMT) is transportation by ambulance, wheelchair van, or litter [sic] van for those who cannot use public or private transportation. Nonmedical transportation (NMT) is transportation by private or public vehicle for people who do not have another way to get to their appointment.

When requesting transportation, be sure to contact the transportation provider as soon as you can before an appointment. If you have many appointments, you can also request transportation to cover those appointments.

What do I need to do?

Non Medical Transportation (NMT)

NMT is available to people with full-scope Medi-Cal

If you receive Medi-Cal through a managed care plan, contact your plan's member service department to request NMT. Beneficiaries will need to attest to their managed care plan that all other currently available resources have been reasonably exhausted.

To set up a ride, you can call your health care provider and ask about transportation providers in your area. When you

contact the transportation provider, they will ask you for information about your appointment date and time. You will need to verbally let them know that you do not have any other way to get to your appointment.

DHCS will post a list of NMT providers on the DHCS website. Until the list of transportation providers is posted, DHCS has developed a process to assist FFS Medi-Cal beneficiaries with their transportation needs. Beneficiaries or their designees may email DHCS-Benefits@dhcs.ca.gov requesting assistance if their provider is not able to arrange NMT. . . .

Non Emergency Medical Transportation

If you receive Medi-Cal through a managed care plan, please contact your plan's member services department to request NEMT. You will need a prescription from a licensed provider.

If you have FFS Medi-Cal, please inform your medical provider. They can prescribe NEMT and put you in touch with a transportation provider to coordinate your ride to and from your appointment.

Medi-Cal Transportation Providers

In FFS and managed care, licensed, professional medical transportation companies are able to provide NMT and NEMT. In addition, Medi-Cal managed care plans also contract with other transportation providers for these services.

NMT does not need prior authorization.

CLAIMANT'S MOTHER'S TESTIMONY AND ARGUMENT

10. Claimant's mother asserted that SDRC should fund claimant's transportation to and from his medical appointments via a taxi-cab or Uber because his doctor wrote that claimant needed "direct" transportation. According to claimant's mother, claimant needed door-to-door transportation, he could not ride with others, and he had to be transported by someone who understood his disabilities. There was no evidence presented that Medi-Cal funded transportation services, which are available to both FFS and managed care Medi-Cal patients, could not provide the type of transportation services claimant needs to get to and from his medical appointments.

Claimant's mother testified that Medi-Cal does not provide transportation to medical appointments, based on what someone told her over the telephone. That testimony was not given any weight because it was found to be unreliable, as it was based on an out-of-court statement by an unidentified person and it conflicted with the DHCS website excerpt explaining the availability of Medi-Cal funded transportation. There was no documentary or testimonial evidence presented that claimant ever attempted to obtain transportation from any providers available through Medi-Cal. Nor was there any evidence that Medi-Cal ever denied a request by claimant to transport him to any medical appointments.

Claimant's mother also argued that when claimant's Medi-Cal exemption was approved in November 2018, so he could continue to receive care from his regular FFS Medi-Cal doctor, Medi-Cal transportation was "denied," and SDRC was then required to fund his transportation to medical appointments. However, the documentation she presented and relied upon in support of that argument did not say anything about transportation.

Claimant's mother contended that PM Lacey did not ever tell her he made an

error when he wrote in his September 25, 2018, email that SDRC could set up a voucher in her name to provide claimant transportation to his medical appointments. However, whether PM Lacey made an error and/or whether he ever told claimant or his mother about that error does not affect the determination whether SDRC must fund the requested medical transportation services because the evidence established that Medi-Cal provides transportation to Medi-Cal beneficiaries such as claimant.

Finally, claimant's mother argued that when SDRC denied the request to fund claimant's transportation to medical appointments, it failed to take claimant's needs into consideration and acted negligently. Neither of those arguments was persuasive under the law that must be considered in rendering the decision in this case.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The burden of proof is on the claimant to establish SDRC is required to fund his transportation to and from medical appointments. (Evid. Code, § 115.) The standard is a preponderance of the evidence. (Evid. Code, § 500.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italics in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

STATUTORY AUTHORITY

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq., governs the state's responsibilities to persons with developmental disabilities.

4. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports. A consumer of services and supports, and where appropriate, his or her parents, legal guardian, or conservator, shall have a leadership role in service design.

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to

support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities. . . .

5. The services and supports provided to persons with disabilities are defined by Welfare and Institutions Code section 4512, subdivision (b), as follows:

“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. 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. Services and supports listed in the individual

program plan may include, but are not limited to, . . . transportation services necessary to ensure delivery of services to persons with developmental disabilities. 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. Welfare and Institutions Code section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4646.4 provides:

- (a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant

to Sections 4646 and 4646.5 . . . , the establishment of an internal process.

This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate. . . .
- (3) Utilization of other services and sources of funding as contained in Section 4659.

[11] . . . [11]

- (b) At the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , the consumer, or, where appropriate, the parents, legal guardian, or conservator, shall provide copies of their health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center. . . .

8. Welfare and Institutions Code section 4646.5, subdivision (a)(7), states the following regarding transportation:

- (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[11] . . . [11]

(7)(A) The development of a transportation access plan for a consumer when all of the following conditions are met:

- (i) The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services.
- (ii) The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services.
- (iii) The planning team has determined that generic transportation services are available and accessible.

(B) To maximize independence and community integration and participation, the transportation access plan shall identify the services and supports necessary to assist the consumer in accessing public transportation and shall comply with Section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

9. Welfare and Institutions Code section 4648.35, subdivisions (a) through (c), state:

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.

10. Welfare and Institutions Code section 4659, subdivisions (c) and (d), provide:

- (c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.
- (d)(1) Effective July 1, 2009, notwithstanding any other law or regulation, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan

denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. . . .

11. SDRC's Purchase of Service Standards include a variety of criteria regarding when SDRC may fund transportation to day programs, supported employment, and regional center evaluations. The only specific reference in the Purchase of Service Standards to transportation to medical appointments is in subdivision (j), which states that "[p]arents and care providers have the responsibility for providing transportation for social and recreational activities, medical appointments, and other incidental travel needs." It is not clear whether that provision applies only to minor consumers or whether it also applies to adult consumers. SDRC did not take the position during this hearing that claimant's mother would be considered a generic resource for claimant, who is her adult son.

EVALUATION

12. In this case, SDRC notified claimant more than once that his transportation to medical appointments could be funded by Medi-Cal. SDRC provided claimant a Metropolitan Transit Authority flyer that contained telephone numbers for transportation for Medi-Cal managed care patients. In September 2018, claimant submitted a Request for Temporary Medical Exemption from Plan Enrollment to DHCS; the requested exemption was granted on November 20, 2018. The exemption meant that claimant may continue to receive medical care from his regular "Fee-for-Service" (or "FFS") Medi-Cal doctor. Claimant's mother argued the exemption meant SDRC would be required to fund claimant's transportation to and from his medical appointments. Nothing in the exemption approval mentioned transportation, and the evidence established that Medi-Cal provides transportation services for medical appointments to both managed care and FFS Medi-Cal patients. No evidence was presented that claimant has tried to use the transportation services offered and funded through Medi-

Cal. Although claimant's mother argued that he needs direct, door-to-door transportation, there was no evidence that such transportation services are not available through Medi-Cal. Rather, the evidence showed that Medi-Cal offers public and private transportation services and non-emergency medical transportation for patients who are unable to use public or private transportation.

13. The evidence established Medi-Cal provides transportation to medical appointments to Medi-Cal patients, such as claimant. Therefore, under Welfare and Institutions Code section 4659, subdivision (c), SDRC is precluded from funding claimant's transportation to his medical appointments. Any statements made in error to claimant or his mother about a possible voucher do not override the applicable Welfare and Institutions Code sections that require SDRC to "reflect the cost-effective use of public resources" (Welf. & Inst. Code, § 4646, subd. (a)) and "not purchase any service that would otherwise be available from Medi-Cal" (Welf. & Inst. Code, § 4659, subd. (c)).

ORDER

Claimant's request for an order requiring San Diego Regional Center to fund his transportation to and from medical appointments is DENIED.

DATED: December 17, 2018

THERESA M. BREHL
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.