

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2019030480

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2019, in San Diego, California.

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

Claimant's mother and father represented claimant, who was present at the hearing.

The matter was submitted on April 22, 2019.

ISSUE

Can SDRC fund claimant's request for door-to-door transportation from his home to his day program at a contract rate greater than currently authorized by the Department of Developmental Services (DDS)?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 25-year-old male who qualifies for regional center services based on a diagnoses of cerebral palsy, epilepsy, and moderate intellectual disability. He is nonverbal and requires total assistance for all self-care needs. Claimant lives with his parents in the family home.

2. Claimant attends an adult day program in San Marcos, which is approximately 31 miles from the family home in Ramona. Claimant's parents currently transport claimant from the home to the day program.

3. On January 17, 2019, SDRC issued a Notice of Proposed Action stating that it was denying claimant's request to fund transportation services from claimant's house to the day program. As the reason for denying the request, SDRC stated that it does not have a transportation provider that will transport claimant at the rate set by DDS. SDRC also stated that there is another day program closer to claimant's residence that will meet claimant's needs.

4. Claimant filed a Fair Hearing Request on March 7, 2019, requesting SDRC fund a transportation provider at the current rate or at a DDS-approved rate increase. This hearing ensued.

5. Anthony Ferguson is SDRC's Community Projects and Transportation Manager, who testified at the hearing. He explained that in 2008, the Legislature froze the rates regional centers can pay for transportation vendors. The current rate SDRC is authorized to pay for a wheelchair-bound client is approximately \$15 each way. Mr. Ferguson contacted three transportation companies in an attempt to secure transportation for claimant. Only one company provided a bid at \$170 per day. Because this rate exceeds the DDS authorized rate, SDRC would have to obtain a health and safety waiver through DDS. In the past 15 years, DDS has never approved a health and

safety waiver request by SDRC. In addition, DDS has changed the way it processes waivers, and now requires transportation companies to provide certain financial information directly to DDS. The transportation company Mr. Ferguson identified has gone through the waiver process in the past. The company felt that the process involved a “perpetual audit” by DDS and it no longer wished to be involved in that process. Consequently, SDRC has yet to find a company willing to go through the waiver process. However, Mr. Ferguson is continuing to look for other options, including companies that are not yet vendored with SDRC.

6. Neil Kramer is SDRC’s Fair Hearing Manager who also testified at the hearing. Prior to the hearing, he and claimant’s parents had an informal meeting to discuss the fair hearing request. Mr. Kramer testified that after discussing the day program with claimant’s parents, SDRC is in agreement that the program in San Marcos is the closest and most appropriate program to meet claimant’s needs. He explained that there is difficulty in developing programs and resources in more remote areas of the County. Claimant has been at his day program for approximately three years now and has thrived. He has exceeded many of his Individual Program Plan (IPP) goals. There are no other programs that are closer that would meet claimant’s needs. SDRC believes that a health and safety waiver is appropriate in claimant’s situation, but it cannot force a service provider to go through the process with DDS.

#### CLAIMANT’S EVIDENCE

7. Claimant’s parents both testified about the current situation of transporting claimant to his day class. Claimant’s father drives claimant to his program in the morning, which takes approximately an hour. He then drives to work, which takes approximately one more hour. Claimant’s mother owns a small business in Ramona. In the afternoon she closes the store and drives to a location near her husband’s work in order to pick-up the wheelchair van. She then drives to the day program and takes

claimant back home. Both parents testified about the time and financial commitments involved with daily transportation. The schedule has begun to affect their health and has become quite exhausting. They both testified about the progress claimant has made in the day program; it is a place where claimant is extremely happy.

## LEGAL CONCLUSIONS

### THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether a regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center 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 State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

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 ...

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.

4. 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.

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

6. Welfare and Institutions Code section 4646 requires that the 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 provisions 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.

7. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

8. 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.

9. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

10. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

11. 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.)

12. Welfare and Institutions Code section 4648.4, subdivision (b), provides that no regional center may pay any provider of certain services, including transportation, at a rate that is greater than the rate that is in effect on or after June 30, 2008, unless the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization:

#### EVALUATION

13. Both parties are in agreement that claimant is attending the closest and most appropriate day program to achieve his IPP goals, and transportation to the program is a service that is appropriate for SDRC to fund. SDRC has diligently sought to find a transportation vendor that would be willing to transport claimant. However, because of the distance of the program from claimant's house, no transportation company has been willing to provide service at the contract rate. SDRC is prohibited from funding transportation services at a greater rate without first obtaining a health

and safety waiver from DDS. SDRC has taken all appropriate steps to try and locate a company that would be willing to participate in the waiver process. However, at this stage, its efforts have not been fruitful. Accordingly, SDRC properly denied claimant's request to increase its contract rate for transportation services, which can only occur if DDS first grants a health and safety waiver. (Welf. & Inst. Code, § 4648.4, subd. (b).)

## ORDER

Claimant's appeal is denied.

DATED: May 6, 2019

---

ADAM L. BERG  
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.**