

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH Nos. 2019030851  
2019030855

DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard these matters in Stockton, California, on May 30, 2019.

Anthony Hill, Legal Affairs Advisor, represented Valley Mountain Regional Center (VMRC).

Claimant was represented by her father.

Evidence was received, the record was closed, and the matter was submitted for decision on May 30, 2019.

ISSUES

1. Is VMRC required to fund equestrian therapy services for claimant?
2. Is VMRC required to fund window-tinting for claimant's family vehicles?

FACTUAL FINDINGS

1. Claimant is a 12-year-old girl who is eligible for VMRC services based on a diagnosis of Autism. She has other diagnoses, which include: hypothyroidism, oppositional defiance, obsessive compulsive disorder, attention deficit hyperactivity disorder, and

unspecified anxiety and mood dysregulation. She receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)

2. In February 2019, claimant's father emailed her service coordinator to request funding for horseback riding and window-tinting for the family's vehicles. On March 12, 2019, VMRC denied both requests in Notices of Proposed Action (NOPA). Regarding the first request, VMRC advised claimant that it would, "[d]eny request for funding both horseback riding through direct payment or exchange of respite service funding." Regarding the second request, VMRC advised it would: "deny request to fund window tint on family vehicles." On March 18, 2019, claimant's father filed two requests for a fair hearing, appealing the denials.

The first NOPA advised claimant that the reason for denying funding for horseback riding was as follows:

The regional center is prohibited from paying for social recreation services and or non-medical therapies. These services are suspended effective July 1, 2009. An effort to lift the suspension was carved out of the California State budget during the 2018 May budget revise by Governor Brown. Advocates will again, lobby California lawmakers for restoration of these services during upcoming Legislative session.

The second NOPA advised claimant:

VMRC is prohibited from funding non-medical therapies.

3. Claimant filed Fair Hearing Requests, received by VMRC on March 18, 2019, appealing the decisions. Claimant requested that VMRC “provide horseback riding to address sensory needs, behavioral concerns, understanding emotions,” and “provide window tint to address sensory needs.”

#### VMRC’S EVIDENCE

4. Janelle Van Dyke is claimant’s VMRC Service Coordinator. She received a request from claimant’s father on February 13, 2019, for funding for window-tinting and equestrian therapy at Project Ride in Elk Grove, California. Project Ride provides horseback riding lessons for children with developmental issues to help them develop social skills, better their interactions with others, and reduce maladaptive behaviors. Because the services were recommended and not medical therapies, Welfare and Institutions Code section 4648.5 prohibits VMRC from funding them. Ms. Van Dyke attempted to determine if an exception, as articulated in Welfare and Institutions Code, section 4648.5, subdivision (c) applied. That subdivision states:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs.

Claimant’s father did not provide any information that would allow the exception to apply, and Ms. Van Dyke submitted the request to the Purchase of Services Exceptions

Committee (POS Committee) for a clinical review. The POS Committee found that horseback riding lessons were a "social recreational activity," and that window-tinting on the family vehicles was a "nonmedical therapy," funding for which was suspended under Welfare and Institutions Code section 4648.5, subdivisions (a)(2) and (a)(4). The POS Committee did not find that either request was "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability," or that the services were necessary to enable claimant to remain in her home.

5. Elizabeth Diaz is a Program Manager for VMRC's Children's Team. She explained that VMRC is actively lobbying the Legislature to lift the suspension on funding for services such as equestrian therapy, or horseback riding lessons. VMRC believes that the services are valuable, but as long as the suspension is in place, VMRC cannot fund the services unless an exception applies. Claimant's father also requested information regarding funding the services from the James Popplewell Fund, and Ms. Diaz explained that those funds are donation-based, and accessed only in extreme circumstances. Claimant's request for horseback riding lessons and window-tinting did not qualify for access to those funds.

6. Janwyn Funamara, M.D., is a staff physician at VMRC. She serves as a medical consultant on committees, such as the POS Committee. Dr. Funamara reviewed claimant's available medical history, including visit notes from three appointments claimant had with neurologist Shailesh Asaikar, M.D., in 2018. The neurologist examined claimant, referred her for an EEG, and provided the following diagnoses: Autism; Intellectual Disability; Adjustment Reaction with Aggression; Attention Deficit Hyperactivity Disorder; Obsessive Compulsive Disorder; Anxiety; Mood Disorder; and Sleep Disorder.

7. The EEG showed normal brainwaves, and that claimant experienced "staring spells." Claimant was unable to fully participate due to the nature of the test in

combination with her diagnoses, however, and Dr. Asaika referred claimant for a “24-hour EEG,” which he believed would produce more accurate results. This test has not yet been completed.

8. Based on this testing, Dr. Asaika did not diagnose claimant with “photosensitive epilepsy,” which involves seizures brought on by bright or flashing lights. Dr. Funamara reviewed a letter from Dr. Asaika, dated February 5, 2019, which stated that claimant is Dr. Asaika’s patient and that she has “Autism ... and photosensitive epilepsy,” and car window-tinting would assist her “sensory issues.” Dr. Funamara considered this information, but because there was no testing or report to confirm the diagnosis and consequently the need for window-tinting, she found that window-tinting was not a medically necessary treatment for claimant, and recommended that the funding request be denied. She also determined that claimant did not qualify for an exemption because window-tinting is not the primary or critical service for ameliorating the effects of her developmental disability, nor is it required to allow claimant to continue living in the family home.

#### CLAIMANT’S EVIDENCE

9. Claimant’s father is her vocal and tireless advocate. He has worked with VMRC service coordinators to ensure that claimant receives the services and placements that she needs. He has seen claimant interact with animals, and finds that their unconditional love, patience, and calm are all soothing to claimant, and assist her in managing her behaviors. In the upcoming school year, claimant will transfer to Point Quest, a school that offers programs that better suit claimant’s needs. Point Quest has several farm animals, including goats and chickens, and claimant’s father believes the school would also like to obtain horses. Based on these interactions, claimant’s father believes that she would greatly benefit from horseback riding lessons, but funding the lessons would be a financial hardship. Claimant’s father testified that equestrian therapy

was not required to maintain claimant in the family home.

10. Claimant is sensitive to heat, light, and noise. Following a "Sensory Consultation" in claimant's home on March 18, 2019, Lula Capuchino, Occupational Therapist, made several recommendations to address claimant's sensitivities in the home. Among these recommendations was that claimant's father "place a [*sic*] outdoor solar shade with the maximum UV block of 90 to 100% size (consider 96 wide by 72 long) or a black-out roller shade to decrease light coming through the window." In addition to the solar shade in claimant's bedroom window, claimant's father believes tinted windows in the family vehicles will also help to address her sensory sensitivities.

11. Claimant's family has four vehicles, including a Volvo for which claimant's father already purchased window-tinting. When claimant is in a vehicle with no window-tinting, she complains about the heat and the brightness. Claimant's father sees an improvement in claimant's behaviors when she is in the Volvo, compared to the other vehicles. He provided estimates for tinting on the remaining vehicles, which would cost \$425 per vehicle. He explained that if all of the cars had window-tinting, she could accompany him on more outings, such as when he takes his pick-up truck to the dump, and she can choose which vehicle is used for any excursion.

12. Claimant's father has been working with her insurance provider and Dr. Asaika's office to obtain the 24-hour EEG. He believes that once she has a properly-completed EEG, she will have an official diagnosis of photosensitive epilepsy.

13. Regional centers are governed by the provisions of the Lanterman Act. Section 4648.5, subdivision (a), which was enacted in 2009, suspends regional centers' authority to purchase the following services: (1) camping services and associated travel expenses; (2) social recreation activities, except for those activities vendored as community-based day programs; (3) educational services for children three to 17, inclusive, years of age; and (4) nonmedical therapies, including, but not limited to, specialized

recreation, art, dance, and music.

14. Regional centers retain authority to purchase the services enumerated in section 4648.5, subdivision (a), only where a consumer falls within the exemption set forth in section 4648.5, subdivision (c), which provides:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

15. The evidence established that Welfare and Institutions Code section 4648.5, subdivisions (a)(2) and (a)(4), prohibit purchase of equestrian therapy because this service constitutes a "social recreation activity," and window-tinting is a "nonmedical therapy," which are suspended services. Claimant's neurological testing and diagnoses did not confirm that there is a medical necessity for window-tinting, as there was no diagnosis of photosensitive epilepsy based on clinical testing. The evidence supported VMRC's conclusion that claimant did not qualify for an exemption permitting the purchase of these services. There was no evidence presented that equestrian therapy or window-tinting are "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service[s] [are] necessary to enable the consumer to remain in his or her home and no alternative service[s] [are] available to meet the consumer's needs." While VMRC is lobbying to have the funding for such services

restored, it is currently not permitted to fund equestrian services or non-medical therapies, and claimant's requests must be denied.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... to support their integration into the mainstream life of the community ... and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§ 4646.5 & 4648.)

2. Section 4648.5 of the Lanterman Act provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.



[¶] ... [¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶] ... [¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

3. The evidence demonstrated that equestrian therapy and f fall within the prohibition of section 4648.5. VMRC determined that it is prohibited from funding these services for claimant as they are identified as suspended services and section 4648.5 expressly prohibits regional centers from purchasing social recreation activities and nonmedical therapies unless an exemption is warranted. VMRC determined that claimant did not qualify for an exemption.

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4. Claimant bears the burden of establishing that he qualifies for an exemption

under section 4648.5, subdivision (c).<sup>1</sup> Claimant has not met that burden.

5. There is no evidence that without equestrian therapy services or window-tinting on the family's remaining three cars, claimant's ability to remain in her home is threatened, and no alternative services are available to meet her needs. In addition, claimant has failed to show that equestrian therapy services and window-tinting are "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability." Even though the services may provide benefit to the claimant, VMRC is prohibited from funding a suspended service unless claimant qualifies for an exemption pursuant to Welfare and Institutions Code section 4648.5, subdivision (c). The above matters having been considered, claimant does not currently qualify for an exemption under section 4648.5, subdivision (c)

## ORDER

Claimant's appeals are denied. VMRC is not required to fund claimant's equestrian therapy services or window-tinting for the family vehicles at this time.

DATED: June 6, 2019

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HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings

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<sup>1</sup> California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

## 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 this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**