

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
In the Matter of the CLAIMANT against:
HARBOR REGIONAL CENTER, Service Agency
OAH No. 2019030877

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 20, 2019, in Torrance, California.

Claimant's mother represented Claimant, who was not present. The names of Claimant and her mother are omitted to protect their privacy.

Elizabeth Stroh represented Harbor Regional Center (HRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 20, 2019.

ISSUE

Whether HRC may discontinue funding for Comfort Transportation, an HRC-contracted provider, to transport Claimant to and from her day program.

EVIDENCE RELIED UPON

Documents: HRC exhibits 1 through 13; Claimant's exhibits A through D.

Testimony: Liz Cohen-Zeboulon; Claimant's mother; Claimant's father.

FACTUAL FINDINGS

Background

1. HRC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)¹

2. Claimant is a 32-year-old woman who is eligible for Lanterman Act services due to diagnoses of mild intellectual disability and cerebral palsy. She lives with her parents in Rancho Palos Verdes, California. Since January 2017, HRC has funded Claimant's participation in a day program offered by ICAN, and transportation to and from the program by Comfort Transportation, an HRC-contracted provider. Claimant attends the day program four days per week from 9:00 a.m. to about 2:00 p.m. each day.

3. The ICAN day program is located in Hermosa Beach, California, about 14.2 miles one-way from Claimant's home. The public bus is not an option for Claimant to get to and from the program because she would have to be driven from

¹ Undesignated statutory references are to the Welfare and Institutions Code.

her home to a bus stop and take three buses each way. Claimant is eligible to be transported to and from the program by Access Services (Access), the curb-to-curb paratransit service for Los Angeles County. But when starting the program, HRC agreed to fund Claimant's use of Comfort Transportation instead of Access at the request of Claimant and her parents. Claimant had tried Access 20 or 25 times before when attending a College 2 Career (C2C) program and had many problems with the service. The Access vehicle was often late, and Access sometimes sent a regular taxi in lieu of a marked vehicle, which was confusing to Claimant. On some occasions, a vehicle never arrived at all for a scheduled pickup. The problems made Claimant anxious and unwilling to use Access again.

4. Colleen Mock, HRC's then-Director of Community Services, approved HRC's funding of Comfort Transportation to transport Claimant to and from the day program starting in January 2017. Susan Methven at HRC also approved the initial transportation service request. In January 2018, Liz Cohen-Zeboulon, a Client Services Manager at HRC, approved continuing the same funding. HRC's most recent individual program plan for Claimant extended that approval through January 31, 2019, stating "HRC continues to fund for [Claimant] to be transported to and from her day program authorization period 01/01/2018 to 01/31/2019." (Exhibit 5.)

5. According to HRC, it has since determined "the proper level of HRC approval for this transportation service was never obtained," and that Access is "the least expensive transportation (\$2.75 per one-way trip vs. \$20.18 per one-way trip for Comfort Transportation) modality that meets [Claimant's] needs." (Exhibit 1.) Therefore, HRC proposed to discontinue funding for Comfort Transportation and begin funding for Access instead to transport Claimant to and from the day program. On March 11, 2019, Ms. Cohen-Zeboulon and Ashley Brown, Claimant's Service

Coordinator, sent Claimant's mother a notice of this proposed action stating that HRC would cease funding for Comfort Transportation in 30 days.

6. On March 20, 2019, HRC received a fair hearing request from Claimant appealing the proposed action. Claimant later waived the 50-day time limit for holding the hearing and the 80-day time limit for a final administrative decision. (§§ 4712, subd. (a), 4712.5, subd. (a).)

Hearing

7. Ms. Cohen-Zeboulon testified that Comfort Transportation was the most restrictive and least inclusive mode of transportation for the day program, opining that transportation through Access could better meet Claimant's needs at a much lower cost to HRC. While acknowledging some reliability problems with Access, Ms. Cohen-Zeboulon testified that many HRC clients use Access successfully, and Access has a "Steady Ride" program available to riders after six months for regularly scheduled pickups. Ms. Cohen-Zeboulon noted that Claimant took a public bus when attending the C2C program, evidencing Claimant's ability to navigate more inclusive transportation options. Furthermore, HRC's Transportation and Mobility Services Policy states, "Optimally, adults with a developmental disability are expected to obtain transportation by accessing generic resources such as public transportation (including Paratransit Services)," and that HRC's purchase of transportation services for an adult should involve "use of the least restrictive/most independent option." (Exhibit 12.) In HRC's view, continuing funding with Comfort Transportation would violate this policy.

8. In addition, Ms. Cohen-Zeboulon testified that HRC's initial approval to fund Comfort Transportation for Claimant required Executive Director approval and sign-off, which did not occur. Ms. Mock and Ms. Methven were not authorized to

approve the funding, and Ms. Cohen-Zeboulon extended the arrangement without investigating whether it was properly approved. A few months ago, HRC changed its policy to allow such an approval by a Client Services Director, but the approval for Claimant in January 2017 would have not met even that lower standard.

9. Claimant's mother testified that Access was never reliable when Claimant used it during the C2C program. It was more often late than on time, and Claimant is very concerned about punctuality. Claimant's parents complained again and again to Access, but its service for Claimant was always poor and caused Claimant a great deal of anxiety. Furthermore, Claimant's mother is concerned that Claimant is unable to understand what to do if Access does not arrive to pick her up, which has occurred in the past. Claimant has had problems with safety awareness in the community due to her developmental disability, and also has balance and coordination problems. She uses forearm crutches to assist with mobility and has difficulty visually scanning her physical environment when walking, in addition to not anticipating or recognizing potential hazards. Given the past problems with Access, Claimant's mother testified Claimant would refuse to use the service again, and therefore would not continue the ICAN day program if required to take Access to get there.

10. Regarding Claimant's past use of a public bus, Claimant's mother testified the bus was reliable, unlike the service from Access. At the time, Claimant lived in an apartment near the C2C program and the bus trip to the program was short. Regarding HRC's initial approval of Comfort Transportation, Claimant's mother testified it was based directly on Claimant's past problems with and anxiety about using Access. HRC's own records support this testimony.

11. Claimant's father testified that Comfort Transportation picks up other HRC clients living nearby, and he fails to see a justification for treating Claimant differently. He also testified Claimant last tried using Access three or four years ago.

LEGAL CONCLUSIONS

Legal Standards

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under its fair hearing and appeal procedures. (§ 4706, subd. (a).) "'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." (§ 4512, subd. (b).) The determination of Claimant's services and supports "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." (*Ibid.*)

2. 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).) In selecting a transportation service, HRC must ensure "[u]tilization of generic services and supports when appropriate"

(§ 4646.4, subd. (a)(2)), and "fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's [individual program plan] . . ." (§ 4648.35, subd. (b).)

3. Because HRC is proposing to discontinue an on-going service, it bears the burden of proving the proposed change is justified. HRC's burden of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Discussion

4. HRC did not meet its burden of proving that it may discontinue funding for Comfort Transportation to transport Claimant to and from her day program. Claimant needs transportation to and from the program, and HRC did not identify a generic or lower-cost service that would meet that need. (§§ 4646.4, subd. (a)(2), 4648.35, subd. (b).) HRC argues that Access is a generic and lower-cost service, but Access did not meet Claimant's needs for the C2C program because a vehicle often did not arrive as scheduled, Access sometimes sent a regular taxi in lieu of a marked vehicle, and a vehicle sometimes did not arrive at all. This caused Claimant confusion and anxiety, and was of particular concern due to her problems with safety awareness. (Factual Findings 3, 9-10.)

5. Based directly on those problems and Claimant's needs, HRC began funding Claimant's transportation to the ICAN day program through Comfort Transportation in January 2017. None of HRC's evidence proves a change in circumstances or a Lanterman Act violation that justifies discontinuing that funding

now. HRC asserts the original funding decision lacked proper approval, but that is not a change in circumstances or proof of a Lanterman Act violation. Ms. Cohen-Zeboulon's testimony about other HRC clients using Access also did not prove the service will meet Claimant's particular needs where it did not before.

6. Given the evidence of Claimant's past problems with Access, HRC did not prove that Access is a viable option with respect to Claimant's transportation to and from the day program. Absent such proof, HRC did not establish that continuing to use Comfort Transportation would violate the statutory requirement to "fund the least expensive transportation modality that meets the consumer's needs" (§ 4648.35, subd. (b)), or the policy of HRC that adults with a developmental disability should obtain transportation by accessing generic resources and using the "least restrictive/most independent" transportation option where possible. (Factual Finding 7.) Accordingly, the order below is warranted.

ORDER

Claimant's appeal is granted. HRC shall not discontinue Claimant's transportation services through Comfort Transportation.

DATE:

THOMAS HELLER
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.