

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2019071000

DECISION

James Michael Davis, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 29, 2019, in Lancaster, California.

Contract Officer Jimmy Alamillo and Fair Hearing Coordinator Dana Lawrence represented North Los Angeles County Regional Center (Service Agency or NLACRC). Marlene Lueck, Stand Out Advocates, and Claimant's father (and authorized representative) represented Claimant, who was present for approximately the first 30 minutes of the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 29, 2019.

ISSUE

The parties agreed the issue was whether, under the relevant law and the underlying facts of this matter, the Service Agency must provide funded transportation to Claimant to and from his home to his competitive integrated employment at Six Flags Magic Mountain in Santa Clarita, California.

EVIDENCE RELIED UPON

Documents:

Service Agency exhibits 1-3, 6, and 11-14

Testimony:

Edie Bryant, Sonia Carrillo, and Claimant's father

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant¹, a 28-year-old, un-conserved man, is an eligible consumer of NLACRC services based upon his diagnosis of mild intellectual disability. Claimant also has been diagnosed as having ADHD.

2. Claimant resides at home with his father, his 36-year old step brother and his step brother's girlfriend. According to his most recent Individual Program Plan (IPP), dated March 29, 2017 (ex. 2), claimant receives 56 hours of In-Home Support Services (IHSS). Claimant's father is his IHSS provider.

3. Claimant requires minimal assistance with most daily living tasks, albeit with occasional prompting. He understands the denominations of money and is able to count change. Claimant is able to cross the street safely without being reminded to look both ways. He is able to take public transportation on his own (ex. 2, p. 2), which, as discussed below, is significant.

4. Claimant received his high school certificate of completion in 2011. Between completing high school and the present time, Claimant has been frustrated by the employment opportunities presented by the Service Agency. In mid-June 2019, on his own initiative, Claimant applied for a custodial job at Six Flags Magic Mountain in Santa Clarita. The job is a competitive integrated employment which means it provides no specific accommodations for Claimant's developmental disability.

¹The term "Claimant" is used herein to protect the individual's privacy.

5. Claimant's father filed a Fair Hearing Request (FHR) on July 17, 2019 requesting that the Service Agency fund transportation for Claimant from his home near Lancaster to Claimant's work at Six Flags Magic Mountain. (Ex. 1.)

6. By a Notice of Action (NOA) letter dated August 9, 2019, the Service Agency denied claimant's father's request. The NOA states that "NLACRC has determined that [Claimant] does not have a specialized need for transportation nor does he need a specialized adaptation to transportation services." (Ex. 6, p. 1.) The NOA also states that "[a]t present, [Claimant] has the option and capability to utilize public transportation as well as purchase a bus and/or Metrolink pass for disabled individuals." (*Ibid.*) With the Service Agency therefore denying Claimant's request, this fair hearing ensued.

Chronology of Communication between NLACRC and Claimant's Father

7A. Claimant's FHR was the culmination of a series of emails between Claimant's father and Sonia Carrillo, NLACRC Consumer Services Coordinator, from July 14 to July 17, 2019. In the email exchange, Claimant sought transportation costs to his Six Flags job pending acceptance by Access Paratransit. (See ex. 3.) Initially, Claimant's father informed the Service Agency that it appeared that Claimant would be employed by Six Flags Magic Mountain, starting July 20, 2019. Claimant's father requested that the Service Agency pay for Claimant's transportation to Six Flags Magic Mountain pending Access Paratransit's approval. In the emails up to and including July 17, Ms. Carrillo repeatedly stated that some form of reimbursement could be arranged while awaiting approval for Access Paratransit. Ms. Carrillo stated that the easiest way forward was for Claimant's father to get mileage reimbursement to Metrolink and Metrolink would then transport Claimant to Six Flags Magic Mountain and vice versa.

7B. Claimant's father asserted that reimbursement would not suffice as neither he nor Claimant could afford the initial monetary outlay. Claimant's father requested that the Service Agency pay for Lyft or Uber transportation to and from home to Six Flags until Access was approved.

7C. Ms. Carrillo stated funding Lyft all the way from home to work would not be possible; she suggested reimbursement for Lyft from home to the Metrolink as an alternative.

7D. Claimant's father found this approach unsatisfactory and filed the FHR on July 17, 2019.

7E. On July 31, 2019, Claimant's father emailed to inquire on the status of the NOA. The NOA was subsequently sent to Claimant on August 9, 2019.

8A. On August 12, 2019, Claimant's father emailed Contract Officer Jimmy Alamillo and stated that he agrees to accept the transportation reimbursement initially offered.

8B. The following day, Mr. Alamillo, by email, directed Claimant's father's attention to a July 31, 2019 email from Consumer Services Supervisor Edie Bryant. Ms. Bryant's email notified Claimant that the NOA was forthcoming and that NLACRC would be denying any transportation payment, including travel reimbursement. Mr. Alamillo further asserted that the Service Agency never committed to offering reimbursement for Claimant's transportation to Six Flags Magic Mountain.

TRANSPORTATION FROM HOME TO SIX FLAGS

9. Claimant's father testified that Claimant was currently working about 20 hours per month and the round trip distance from his home to Six Flags Magic Mountain was approximately 50 miles.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)² 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 transportation from home to his competitive integrated employment at Six Flags Magic Mountain. Jurisdiction in this case was thus established. (Factual Findings 1-6.)

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.) As discussed below, Claimant did not meet his burden.

² All subsequent statutory references are to the Welfare and Institution Code.

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 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

6A. 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).)

6B. Section 4648.35 provides, in pertinent part, that

[a]t 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.

6C. 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).) "The consumer, family member or service provider is responsible for the consumer's transportation . . . to and from work when the consumer is actively employed." (Ex. 11, p.67.)

6D. Here, according to Claimant's IPP, Claimant can safely utilize public transportation. (Factual Finding 3.) Moreover, he does not have a specialized need for transportation nor does Claimant need a specialized adaptation to transportation services. To his credit, Claimant is engaged in competitive integrated employment. This situation falls outside of a regional center's statutory mandate under the Lanterman Act. (See Legal Conclusions 6B & 6C.)

CONTRACT FORMATION

7A. Alternatively, Claimant argues that, at a minimum, the Service Agency should reimburse Claimant his travel expenses to and from Six Flags because the Service Agency should honor a commitment it previously made. Claimant's argument is one of equity but legally it is governed by contract law. The services that a regional center provides are contractual in nature, in furtherance of the regional center's statutory requirements under the Lanterman Act. These contractual commitments are

memorialized in the consumer's IPP. Under fundamental contract law, the following is required for the formation of any contract, including an IPP:

Contract formation requires mutual consent, which cannot exist unless the parties "agree upon the same thing in the same sense." (Civ.Code, §§ 1580, 1550, 1565.) "If there is no evidence establishing a manifestation of assent to the 'same thing' by both parties, then there is no mutual consent to contract and no contract formation." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811, 71 Cal.Rptr.2d 265.) "Mutual consent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings." (*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 141, 127 Cal.Rptr.2d 145; see also *Meyer v. Benko* (1976) 55 Cal.App.3d 937, 942–943, [existence of mutual consent "is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe"].)

(*Bustamante v. Intuit, Inc.*, (2006) 141 Cal. App. 4th 199, 208.)

7B. Here, Claimant asserts that he subsequently agreed to the Service Agency's offer and that therefore he should be reimbursed for his transportation costs. But the evidence indicates that the parties never formed a contract for travel reimbursement. When the Service Agency offered to reimburse Claimant, Claimant's

father expressly rejected that offer. (See Factual Finding 7B & 7D.) Thus, at the time Service Agency offered reimbursement, there was no mutual consent. (See Legal Conclusion 7A.) By the time Claimant agreed to reimbursement (after receiving the NOA), the Service Agency had already expressly rescinded its offer for reimbursement. (See Factual Finding 8B.) Accordingly, at the time Claimant accepted reimbursement, the Service Agency had not offered it and thus the parties did not have the mutual consent necessary for contract formation.

PROMISSORY ESTOPPEL

8A. Claimant could claim that he relied to his detriment on a reasonable expectation that the Service Agency would reimburse his transportation costs as Ms. Carrillo originally represented. But this theory of recovery also falls short. In the absence of contract formation, an enforceable promise can arise if specific factual elements are met. The elements are as follows:

(1) [A] promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise.

(Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority (2000) 23 Cal.4th 305, 310; see Rest.2d Contracts, § 90, subd. (1).)

(West v. JPMorgan Chase Bank, N.A., (2013) 214 Cal. App. 4th 780, 803.)

8B. Here, Claimant had already decided to accept the Six Flags job before Claimant's father sought transportation costs from the Service Agency. (See Factual Finding 7A.) Therefore, there was no initial promise on the part of the Service Agency that induced Claimant's action. Without a promise on the part of the Service Agency inducing action or forbearance on the part of the Claimant, there can be no promissory estoppel.

DISPOSITION

9. Claimant did not establish that NLACRC must fund claimant's transportation services to and from claimant's competitive integrated employment at Six Flags Magic Mountain. As per Claimant's IPP, he has no specialized need for transportation and is capable of using public transportation. Further, the evidence failed to establish that the Service Agency and Claimant formed a contract in which the Service Agency would be legally bound to reimburse Claimant's transportation costs. Lastly, Claimant did not establish the necessary elements of promissory estoppel, which would support NLACRC reimbursing Claimant's transportation costs. (Factual Findings 7-9.) Therefore, Claimant's appeal must be denied.

ORDER

Claimant's appeal is denied.

DATE:

JAMES MICHAEL DAVIS

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.