

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency

OAH No. 2019100788

DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on December 12, 2019, in Pomona, California. Claimant was present and was represented by his mother.¹ San Gabriel/Pomona Regional Center (Service Agency or SGPRC) was represented by Daniela Santana, Program Manager, Fair Hearings.

¹ Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and his family.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 12, 2019.

ISSUE

Must the Service Agency provide funding for the purchase and installation of an XL-Base for Claimant?

EVIDENCE

Documentary: Exhibits 1-16 and A.

Testimonial: Daniela Santana, SGPRC Program Manager, Fair Hearings, and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a nearly six-year-old male client of the SGPRC who lives with his mother (Mother), father (Father), and two sisters, ages four and eight. Claimant is eligible for, and receives services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

2. Claimant has profound intellectual disability, cerebral palsy, lissencephaly,² reduction deformity of the brain, and chromosome abnormalities. He has low muscle tone and is not ambulatory. He uses a wheelchair, has a gastrostomy tube, and requires assistance with all basic daily living needs. Claimant is seen regularly by numerous specialists, and has frequent medical appointments and emergency room visits. Claimant is scheduled to undergo bilateral hip surgery at Children's Hospital Los Angeles in January 2020. He is expected to be in a cast for four to six weeks.

3. Claimant has an Individual Program Plan (IPP) with SGPRC. Goals include maintaining Claimant's health and enabling him to access the community. Claimant also has an Individualized Education Program (IEP) and receives Special Education services from the Monrovia Unified School District. He receives Occupational Therapy, Physical Therapy, Licensed Vocational Nurse (LVN) support at school, and 36 hours per month of LVN respite services. Claimant is a Medi-Cal beneficiary. He also receives benefits from California Children's Services (CCS) for items deemed to be medically necessary.

4. Mother transports Claimant and her other two children in the family's Honda Odyssey van (Van). Previous to this request, Claimant's parents had unsuccessfully sought Service Agency funding for a van conversion which would enable them to seat Claimant in the Van while he remained in his wheelchair. Claimant's parents did not pursue an appeal of that denial. They determined that the

² Lissencephaly is a rare brain condition that results in severe physical, developmental, and intellectual disability. Affected individuals generally will not progress beyond the developmental level of a three to five-month-old infant.

purchase and installation of an XL-Base for the Van would be more practical and cost-effective.

5A. SGPRC asserts that generic resources for transportation services are available through private insurance³ and ACCESS transportation. ACCESS is a curb-to-curb form of public transportation provided by Los Angeles County in accordance with the Americans with Disabilities Act (ADA). It is a county-wide, shared ride service for disabled persons who are unable to use regular bus and rail services.

5B. ACCESS trips must be scheduled one day in advance, and the desired pick-up time may not be available. The return trip must also be scheduled a day before, which can be difficult when a medical appointment or ER visit of unknown duration is involved. There is a 20-minute pick-up window. ACCESS riders generally will not go directly to their destination as other riders will typically be dropped off or picked up first. A one-mile trip may take anywhere from 30 to 90 minutes. ACCESS drivers will not lift or carry any individual to place him into the vehicle. ACCESS will only allow a group of three to travel. If Mother had to bring Claimant's two young siblings along, she could not do so, and ACCESS could not be used for family outings for Claimant's family of five.

XL-Base

6. Mother must lift and carry Claimant from his wheelchair and place him into the back seat of the Van. Mother is a petite woman who is under five feet tall and weighs 85 pounds. Claimant is 45 inches long and weighs over 50 pounds. Based upon

³ Evidence of private insurance coverage was not presented. Claimant is a Medi-Cal beneficiary.

his Body Mass Index (BMI), Claimant is in the 95th percentile for his age, and is considered to be obese. As Claimant has gotten older, larger, and heavier, it has become increasingly difficult for Mother to lift him into the Van. At hearing, Mother showed a video on her cellphone depicting her efforts to transfer Claimant from his wheelchair into the Van. In order to do so, Mother must bend over, lift Claimant out of his wheelchair, and twist her torso, in order to place Claimant into the backseat.

7. Funding for an XL-Base is less costly than a wheelchair conversion for the Van. Installation of an XL-Base is also more practical as it would leave space in the vehicle for Claimant's adaptive stroller, other medical equipment, and Claimant's two siblings.

8. The XL-Base is a powered, turning seat base which is installed in a vehicle using existing seat mounts. The XL-Base is controlled with a button that controls the seat, which pivots and raises or lowers. To enter the vehicle, the seat rotates out of the vehicle's doorway and is lowered to an appropriate height, so that the user can transfer into the seat from a wheelchair. The seat is then raised and rotated back into the vehicle. To exit the vehicle, the seat rotates out of the vehicle, and lowers the individual to the height of the wheelchair.

9. Installation of the power seat involves removing the existing vehicle seat and base, replacing it with the XL-Base, and then reinstalling the original seat onto the new base. No permanent modifications are done to the vehicle, which would enable Claimant's family to remove the XL-Base from the Van they currently own and transfer it to another vehicle in the future.

10. Father obtained several quotes. MobilityWorks of California, LLC, provided the lowest quote of \$8,440.28 for the purchase and installation of the

XL-Base. (Exhibit A.) A van conversion to accommodate Claimant's wheelchair would be far more costly.

Request for XL-Base Purchase and Installation

11. On December 4, 2018, Mother requested that the SGPRC provide funding for an XL-Base for the Van for the safety of Claimant and his parents. Claimant's parents informed the Service Agency that they transport Claimant in the Van for routine and emergency medical appointments and for family outings. Mother asserted that ACCESS will not meet Claimant's needs. It cannot be used in emergencies since it must be scheduled a day before, it cannot ensure that Claimant will arrive on time for medical appointments since it is a shared service with a 20-minute pick-up window, and it cannot accommodate Claimant's siblings who often must come with Mother if Claimant goes to the doctor or emergency room.

12. At the request of the SGPRC, Claimant sought funding from CCS for the XL-Base. On May 29, 2019, CCS denied Claimant's request, stating that the requested equipment requires modification to an automobile and is, therefore, not a CCS benefit. (Exhibit 11, p. 1) Mother also contacted four local transportation services to see if she could obtain Medi-Cal funding for transport to medical appointments. However, none could accommodate Claimant's needs. One only transports individuals to dialysis appointments, one only serves the San Fernando Valley, and the other two will only transport ambulatory individuals.

13. Claimant received SGPRC's Notice of Proposed Action (NOPA), dated July 29, 2019. (Exhibit 3.) SGPRC denied Claimant's request to fund the purchase and installation of an XL-Base on the grounds that generic resources for transportation services are available through private insurance and ACCESS. The NOPA states that

SGPRC is prohibited from using regional center funds to supplant the budget of any agency which has the responsibility to serve all members of the general public and is receiving public funds for providing those services, or which is available from private insurance. As authority for its action, the Service Agency cited Welfare and Institutions Code sections 4648, subdivision (a)(8); and 4659, subdivisions (a)(1) and (d)(1).

14. Claimant filed a timely Fair Hearing Request and this matter ensued.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of funding for the purchase and installation of the XL-Base is granted. (Factual Findings 1-14; Legal Conclusions 2-14.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding for the purchase and installation of the XL-Base, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services or items not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for an XL-Base, Claimant bears the burden

of proving by a preponderance of the evidence that the funding is necessary to meet his needs. Claimant has met his burden.

4. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

5. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

6A. Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t 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.

6B. The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

7. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he 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. . . .

8. Welfare and Institutions Code section 4646.4, subdivision (a), provides:

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, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most

appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

9. One of the reasons cited by the Service Agency in denying the service request is that generic resources or other sources of funding are available. However, the evidence presented did not support this assertion. Mother attempted to locate medical transport to be funded through Medi-Cal, but was unsuccessful. CCS has denied the family's request for funding for the XL-Base, stating that it does not cover equipment which requires modifications to vehicles.

10. The other reason cited by the Service Agency for its denial of funding is the availability of ACCESS as an alternate means of transportation. However, the Service Agency failed to establish that ACCESS would meet Claimant's needs. Rides with ACCESS must be scheduled a day in advance, and there is no guarantee the time window sought will be available. They have a 20-minute arrival window, and generally drop off and pick up others on the way to Claimant's destination. ACCESS cannot accommodate Claimant's young siblings, and would not be suitable for family trips or errands. An ACCESS trip for a routine medical appointment could easily devolve into a day-long adventure. Moreover, only two people could accompany Claimant on an ACCESS trip, meaning Mother could not bring both of Claimant's young siblings. And ACCESS could not be used on family-unit trips.

11. Pursuant to Welfare and Institutions Code section 4620, subdivision (a), the Service Agency is responsible for providing services and supports for individuals with developmental disabilities. In doing so, the Service Agency must respect the choices made by consumers and their families under Welfare and Institutions Code

section 4502.1. Services are designed toward "alleviation of a developmental disability," and among the services and supports to be provided, under Welfare and Institutions Code section 4512, subdivision (b), are adaptive equipment and supplies, habilitation, supported living arrangements, technical and financial assistance and necessary transportation services.

12. Another important component of the delivery of services and supports is cost. Services provided must be cost-effective and efficient, and the Lanterman Act requires the regional centers to control costs as far as possible. (See, e.g., Welf. & Instit. Code §§ 4512, subd. (b), 4631, 4640.7, subd. (b), and 4646, subd. (a).)

13. In this case, Claimant established a need for the XL-Base consistent with the aforementioned provisions of the Lanterman Act. The XL-Base addresses problems in mobility caused by Claimant's developmental disabilities. Increasing his ability to access the community, and to maintain his health by accessing medical care, addresses Claimant's IPP goals and outcomes. The XL-Base is medically necessary, and is significantly more cost-effective than a more comprehensive van conversion.

14. Claimant's parents have sought funding from generic resources with no success. The evidence presented failed to establish that ACCESS is a satisfactory or sufficient alternative means of transportation. Funding for the purchase and installation of the XL-Base is not available from a generic resource and is a cost-effective use of public funds. Given the foregoing, the Service Agency's denial of funding was not justified.

ORDER

1. Claimant's appeal of the San Gabriel/Pomona Regional Center's denial of funding for the purchase and installation of the XL-Base is granted.
2. The San Gabriel/Pomona Regional Center shall fund the cost to purchase and install the XL-Base.

DATE:

LAURIE R. PEARLMAN
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.