

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

In the Matter of:

CLAIMANT,

Vs.

WESTSIDE REGIONAL CENTER, Service Agency

OAH No. 2019110041

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Culver City, California on February 7, 2020.

Candice Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or service agency). Claimant's parents represented Claimant, who was not present at the hearing.¹

¹ To preserve confidentiality, Claimant and Claimant's parents are not identified by name.

Testimony and documentary evidence was received and the case was argued. The matter was submitted for decision on February 7, 2020. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUES

1. Should the service agency continue to fund a non-private mode of transportation for Claimant's work commute at a rate of \$29.45 per day, four days per week, or should the service agency commence funding a private mode of transportation for Claimant's work commute at a rate of \$60 per day, four days per week.

2. Should the service agency continue to reimburse Claimant for mileage costs incurred in connection with her extracurricular activity at a rate of \$2.75 per round trip, 23 days per year, or should the service agency commence reimbursing Claimant for mileage costs at a rate of 800 miles per month.

FACTUAL FINDINGS

Jurisdictional Matters

1. By Notice of Proposed Action letter dated September 30, 2019, WRC denied funding for private transportation in connection with Claimant's work commute and funding for reimbursement of certain transportation mileage

incurred in connection with Claimant's extracurricular or social recreational activities.

2. On October 4, 2019, acting on behalf of Claimant, Mother filed a timely Fair Hearing Request. Thereafter, these administrative proceedings ensued.

Claimant's Background, Employment, and Extracurricular Activities

3. As set forth in her most recent Individual Program Plan (IPP), dated August 30, 2019, Claimant is a 28-year old consumer of WRC due to her qualifying diagnosis of "Mild Intellectual Disability associated with Down Syndrome." (WRC Exhibit 7 at p. 2.)

4. Claimant currently resides with her parents. She intends to move out of her parents' house when she attains age 30. Claimant is capable of attending to her self-care needs including toileting, bathing, grooming, and dressing. She is capable of meal preparation and light housekeeping. Claimant's mother, who receives in-home supportive services (IHSS) payments, assists Claimant with Claimant's needs.

5. Claimant is employed as a receptionist for an entertainment industry philanthropic entity located approximately 18.7 miles from Claimant's residence. Claimant works four days—Mondays through Thursdays—each week. According to Claimant's IPP, Claimant job responsibilities include the following:

. . . answering incoming calls, greeting guests,
maintaining mail (open, date stamp, sort, and distribute
mail; and faxes), maintaining a log of all . . . guests,

ensuring strangers and unauthorized guests and intruders are properly escorted from the suite, maintaining areas (lobby, coffee area, cop and mail rooms, employee lounge and all conference rooms), controlling inventory related to the kitchen, coffee bar, office services, storage room, etc.

(WRC Exhibit 7 at. p. 4.)

6. Claimant is an advocate for people with disabilities. She serves as ambassador, spokesperson, or board member for multiple organizations and campaigns dedicated to ending societal isolation and exclusion of people with disabilities, including Best Buddies International, Special Olympics Southern California, Delivering Jobs, and UCLA's Pathways Generation Next. Claimant delivers the keynote address and makes other presentations at conferences and corporate and philanthropic events. Claimant serves as media correspondent interviewing celebrities and athletes. Claimant is an aspiring actor in training who has appeared in public service announcements, broadcast commercials, television shows, and film. Claimant is featured in print advertisements and in journalistic profiles. Claimant has a business selling t-shirts and other items promoting respect for and inclusion of people with disabilities. She has merited numerous awards and recognition for her many accomplishments. Claimant aspires to develop a career as an advocate, activist, artist, media personality, and entrepreneur.

February 2019 Administrative Decision and Order Regarding the Funding of Claimant's Transportation Costs

7. In 2018, on behalf of Claimant, Mother requested WRC to fund private transportation services for Claimant's round trip work commute and for Claimant's monthly social-recreational activities and speaking events. WRC denied Mother's request and instead offered (a) to fund round trip transportation for Claimant's work commute through Access Services (Access), the Americans with Disabilities Act-mandated paratransit transportation program, at a rate of \$13.39 day, four days per week and (b) to provide funds for Claimant's use for transportation (through Access, Uber, or Lyft) to social-recreational activities and social events at a rate of \$2.75 per trip, for five days per month. WRC additionally offered an independent living services provider to assist Claimant with using public transportation and with arranging for transportation through the organizations sponsoring the social-recreational and speaking events in which Claimant participates.

8. Mother rejected WRC's offer, and she requested a fair hearing. An informal meeting occurred in which WRC was amenable to funding transportation costs associated with Claimant's work commute via Access at a rate of \$29.45 per day, four days per week. WRC was not amenable to funding Claimant's transportation costs associated with her social-recreational activities or speaking events. Mother, acting on Claimant's behalf, again rejected WRC's funding proposal. Thereafter, a fair hearing convened.

9. In the resulting February 12, 2019 Decision, *In the Matter of Claimant vs. Westside Regional Center*, OAH No. 2018120882, Administrative Law Judge

David B. Rosenman made detailed findings regarding Claimant's "extensive history of notable experiences in education, acting, awards and speaking engagements and other activities." (WRC Exhibit 5 at p. 2.) ALJ Rosenman also detailed Claimant's receipt of travel training for using public transportation and Access as well as WRC's reimbursement for transportation actually provided through Access to enable Claimant's attendance at her university as well as Claimant's voice, acting, and dance classes consistent with the goals of a then-applicable 2016 IPP and accompanying annual progress reports. (*Id.* at pp. 4-6.) ALJ Rosenman further detailed Mother's concerns that Claimant's transportation needs are varied, extensive, and complex: "Mother explained that Claimant's need for transportation is extensive and often complicated. Among the factors she testified to are that, if [she] drives Claimant to and from work, each is a two-hour round trip for mother. Further, there are some days when Claimant needs to be transported from work to another activity or from activity to activity, and may need transportation back home as well. . . . While mother has been willing to provide for some, and sometimes all, of Claimant's transportation, she now requests that WRC fund for all of Claimant's transportation, except for [certain specifically enumerated activities no longer at issue]." (*Id.* at pp. 6-7.)

10. The February 12, 2019 Decision dismisses Mother's appeal on Claimant's behalf and adopts, in its Order, WRC's proposal to fund transportation for Claimant's work commute at a rate of \$29.45 per day for a maximum of \$690 per month. The Order directs WRC to conduct and complete a transportation assessment of Claimant's needs and to convene a meeting with Claimant, her family, and WRC representatives after completion of the assessment to review Claimant's transportation needs and appropriate response. Pending completion of

the assessment, the Order directs WRC to “fund for Claimant’s special events at the rate of \$2.75 per trip, for a maximum of 23 days of transportation per year, for Claimant to attend any special events.” (*Id.* at p. 13.)

11. A notification accompanying the February 12, 2019 Decision advises the Decision is final, WRC and Claimant are bound by its terms, and either WRC or Claimant may appeal the Decision to a court of competent jurisdiction within 90 days of receiving notice of the Decision. Neither WRC nor Claimant appealed the February 12, 2019 Decision to a court of competent jurisdiction.²

Implementation of the February 2019 Administrative Decision and Order

12. In May and June, 2019, Diverse Journeys, Inc. (Diverse Journeys) conducted an assessment of Claimant’s mobility skills and transportation needs. The resulting assessment report, dated August 19, 2019, memorializes the following findings:

Public transportation is challenging for [Claimant]. She has a tendency to fall asleep while riding in vehicles. [Claimant] has had some training on using public

² This administrative proceeding is not a proper appeal of ALJ Rosenman’s February 12, 2019 Decision, a summary of which serves only to provide historical context. The substance of Claimant’s Exhibit 5 titled *February 25, 2019 Rebuttal to Judges [sic] Order* is therefore not addressed in this administrative proceeding.

transportation . . . She had some success with learning basic local routes. However, the training stopped due to [Claimant's] busy life.

She uses Uber and Lyft now and again to get home from work.

[Claimant] uses ACCESS every Saturday for her acting class in the San Fernando Valley. She has a standing order for this ride to and from class. She has had some negative experiences with ACCESS. She has been left waiting and never picked up. She has been late many times to scheduled events and activities. And even, when on a standing order, there have been occasional problems with lateness or cancelled rides.

(WRC Exhibit 6 at p. 12.)

13. The August 19, 2019 assessment report lists several recommended courses of action. Claimant "should continue to use Uber or Lyft as needed in case of emergency[,] [i]f for example Mom cannot pick her up from work due to an urgent matter." Consider "[a] new pilot project called Access to Work (ATW)," which offers scheduled trips to ensure its users get to work on time. Alternatively, Claimant should give consideration to "[a]nother new program that Los Angeles County recently rolled out . . . called New Freedom Door Assistance Transportation program [New Freedom]," which offers same-day transportation services to medical appointments, education, employment, and recreation within Los Angeles

County at no cost. Additionally, Claimant should consider “[n]egotiating for transportation for [Claimant’s] speaking events. Most consultants and/or public speakers negotiate for transportation to and from speaking engagements.” (*Id.* at p.13). The August 19, 2019 assessment report additionally provides Claimant “needs alternative transportation option to and from her work and public speaking engagements. [Claimant’s] Mom feels that she is overwhelmed with all of the driving for all of these engagements. She does not wish to continue to do this due to her health and quality of life.” (*Id.* at p. 23.)

14. Claimant’s August 30, 2019 IPP references the August 19, 2019 assessment report stating, among other things, “The report indicates that [Claimant] would benefit from proper travel training ‘to develop a greater comfort level and mastery of public transportation’ and she would also benefit from additional training in personal safety.” The August 30, 2019 IPP further states, “There is a reported concern [Claimant] tends to fall asleep on route, so apps such as Google Share or alarms could be used to reduce the risk of [Claimant] getting lost. [Claimant] had received a limited amount of mobility training, but due to [Claimant’s] extremely busy schedule [Claimant’s] mother and Supported Living agencies that have worked with her over the last several years report it’s difficult to meet with [Claimant] to accomplish further training.” (Exhibit 7 at pp. 6-7.)

15. The August 30, 2019 IPP notes the IPP planning team reached the following conclusions: Claimant’s community integration and participation could be safe and enhanced through the use of public transportation services; generic transportation services are available and accessible; and Claimant will need mobility

training aides en route, or other supports to access public transportation safely. (*Id.* at p. 7.)

16. The August 30, 2019 IPP provides for several WRC-funded services and supports including (a) support living services through Level Up Solutions (Level Up) “to provide transportation and assist/train [Claimant] on public transportation in order to support her in her extracurricular activities and community integration” and (b) training in acting, performance, and the entertainment field through Performing Arts Studio West (PASW) and Born to Act Players (BAP). (*Id.* at p. 12.)

17. Regarding modality of transportation and transportation costs, the August 30, 2019 IPP provides the following:

[Claimant] will use Access Services to get to her work, PASW, and Born to Act Players classes.

[Claimant’s] mother or another chosen driver will provide transportation as needed and as they are able when Access Services/public transportation cannot be utilized.

[¶. . . ¶]

WRC will fund for mileage reimbursement to provide round trip transportation to work, at a rate of \$29.45/day for a maximum of \$690/month, effective 8/1/19 through 7/31/20, in accordance with the Fair Hearing Decision of 2/12/19. [¶. . . ¶]

WRC will fund . . . reimbursement for Access Services to provide round trip transportation to her various extra curricular (*sic*) activities for 23 days per year, at a rate of \$2.75/trip, effective 8/1/19 through 7/31/20, in accordance with the Fair Hearing Decision of 2/12/19.

(*Id.* at pp. 12-14.)

18. At the administrative hearing, WRC Program Manager Myriam Garcia explained several difficulties implementing the February 2019 Decision and its Order as required by Claimant's August 30, 2019 IPP. Due to Claimant's activities and speaking engagements mobility training providers were unable to work consistently with Claimant. Claimant has not completed mobility training for her safe use of public transportation. Level Up detailed those difficulties to WRC as follows:

When we first started working with [Claimant], she agreed to meet . . . every Monday after work. This was working consistently for 1-2 months, but then her mom stated that she was too tired from work and wanted sessions to be at their home . . . on Fridays. Although this was not part of the original plan, we were able to identify and assign staff to fulfill the request and our staff started working with [Claimant] in her home on Fridays. Our staff reached out to [Claimant] and her mom once a month in advance to get [Claimant's] availability for the following month. [Claimant's] schedule is very busy and allowed her

to meet with our staff 1-3 times per month in the beginning, but this quickly turned into 0-1 times per month. [Claimant's]mom then requested weekend hours when [Claimant] was in town and if staff could drive her to her work (*sic*) events. We explained that we did not have staff available at the times she was requesting and that our staff are not authorized to transport participants. Ultimately, we assigned the staff to work with other participants that could meet on a consistent basis. Our staff notified [Claimant's] mom of this decision in September [2019].

(Exhibit 18.)

Mother's Advocacy

19. At the administrative hearing, Mother advocated for WRC-funded private transportation for Claimant's work commute at a rate of \$60 per day, four days per week. Mother objected to transportation by Access citing to a 2018 incident report. According to the incident report, on January 12, 2018, Claimant told a support living service instructor that one or two years' prior, i.e. 2017 or 2016, a male driver for Access "touched her thigh and back on the outside of her clothes." (Claimant Exhibit 2.) Claimant's parents were informed about the incident. The 2018 incident report states, "On 1/11/18 [Claimant] informed her parents who are taking the incident seriously, but noted that [Claimant] may be making up the story to be part of the recent #metoo movement which she has been following in the media." (*Id.*) At the administrative hearing, Mother acknowledged she was aware of the 2018 incident

report prior to the hearing culminating in the February 2019 Decision, but she “didn’t bring it up initially because I was in denial; it was raw.”

20. Mother objected to transportation by Access for Claimant noting the early hour Claimant must awake to ready herself for pick up from her home and the number of hours required for Claimant’s work commute. Without doubt, the tribulations accompanying daily commute throughout large metropolitan regions, including the one in which Claimant resides and works, are challenging, unfortunate facts of everyday living. They are experienced by all and they are not unique to any individual, including Claimant.

21. Mother further objected to transportation by Access testifying that Claimant’s wait for Access at Claimant’s place of employment is unsafe because “there are homeless people in the alley.” No evidence establishing homelessness as an inherent threat to Claimant’s safety near Claimant’s work environs was offered at the administrative hearing. WRC confirmed Claimant’s place of employment is located in a building with a secured lobby, which provides a safe space for Claimant to wait for transportation after work.

22. Mother maintained WRC should reimburse for Claimant’s round-trip transportation at a rate of 800 miles per month to participate in the speaking engagements, auditions, and advocacy set forth in Factual Finding 6 because those activities constitute “career development.” Without doubt Claimant’s speaking engagements, auditions, and advocacy, which are separate from her actual employment as a receptionist, may enrich and better position Claimant for fulfilling other career goals or aspirations. The acquisition of knowledge, skills, and talent through participation in activities separate from work duties and responsibilities is not an uncommon path to career growth and fulfillment. Nonetheless, such a

career path does not change the character of Claimant's activities. The service agency correctly regards Claimant's speaking engagements, auditions, and advocacy as extracurricular or social recreational activities, which WRC is prohibited from funding, unless those activities are a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimant's developmental disability or are necessary to enable Claimant to remain in her home.³ The evidence offered at the administrative hearing did not establish any such exemption from that funding prohibition.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) "Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

2. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability

³ See Welfare and Institutions Code section 4648.5

or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (*Id.*, § 4512, subd. (b).) Services and supports relevant to this matter include "training," "daily living skills training," "travel training," and "transportation services necessary to ensure delivery of services to persons with developmental disabilities." (*Id.*)

3. The Lanterman Act mandates "the cost effective use of public resources" (*id.*, § 4646, subd. (a)) and the "[u]tilization of generic services and supports when appropriate" (*id.* § 4646, subd. (a)(2)) in connection with the provision of services and supports to individuals with developmental disabilities.

4. An individualized program planning process, taking into account the needs and preferences of the individual and, where appropriate, the family, is required to determine the services and supports to be funded. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.) The planning process includes gathering information and conducting assessments. (*Id.*, § 4646.5, subd. (a).)

5. In this matter, Claimant's IPP provides for WRC-funding for Claimant's round-trip transportation to work using Access. Claimant's IPP additionally provides for WRC-funding for mileage reimbursement for Access to transport Claimant to her various extracurricular activities. A number of objections and concerns have been raised in connection with Access. Diverse Journeys recommended Claimant consider ATW or New Freedom as alternative modes of transportation for at least Claimant's work commute. No evidence Claimant has used ATW or New Freedom for her work commute was offered at the

administrative hearing. Consequently, there is no evidence Claimant has exhausted these alternate transportation modalities.

6. Mother has been transporting Claimant to Claimant's work as well as to Claimant's extracurricular activities. It is not uncommon to provide transportation for a family member. More importantly, WRC cannot fund private transportation services provided by Mother or another person or entity in contravention of the Lanterman Act, which, in pertinent part, specifically provides the following regarding transportation services:

- (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.

(*Id.*, §4648.35.)

7. Claimant's August 30, 2019 IPP provides for assisting or training Claimant to use public transportation in order to support her extracurricular activities and community integration. Claimant has not yet completed training to safely access and use public transportation as provide in her IPP. No evidence of any determination regarding the availability of that transportation was offered at the administrative hearing. In the absence of any finding regarding Claimant's ability to safely access and use public transportation, and in the absence of any

finding regarding the availability of that transportation to Claimant, WRC is prohibited from funding private specialized transportation services for Claimant.

8. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence her entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has not met her burden.

9. By reason of Factual Findings 3 through 22 and Legal Conclusions 1 through 8, cause does not exist to grant Claimant's appeal.

ORDER

1. Claimant's appeal is dismissed.

2. The service agency shall continue funding a non-private mode of transportation for Claimant's work commute at a rate of \$29.45 per day, four days per week in accordance with Claimant's August 30, 2019 IPP until it has been determined through the individualized program planning process that such services are neither necessary, appropriate, or effective to meet Claimant's transportation needs.

3. The service agency shall continue to reimburse Claimant for mileage costs incurred in connection with her extracurricular activity at a rate of \$2.75 per round trip, 23 days per year in accordance with Claimant's August 30, 2019 IPP until

it has been determined through the individualized program planning process that such services are neither necessary, appropriate, or effective to meet Claimant's transportation needs.

DATE:

JENNIFER M. RUSSELL
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.