

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

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2019120765

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 24, 2020, in Bakersfield, California.

Celia Pinal, MSW, Director of Client Services, Kern Regional Center, represented the service agency. Claimant was represented by his father, whose name is not given to preserve privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 24, 2020.

ISSUE PRESENTED

Should the service agency fund claimant's outbound transportation, that is, to his home from Valley Achievement Center (VAC), a vendor providing claimant after-school programs for the development of his social skills?

FACTUAL FINDINGS

1. In a November 21, 2019 Notice of Proposed Action, the service agency advised claimant it "will not fund for transportation services from after-school programming at Valley Achievement Center (VAC) to the family's home." (Ex. 1.)

2. Claimant appealed and requested a fair hearing on the issue on December 13, 2019.

3. Claimant is entitled to services by reason of autism spectrum disorder. He is 10 years old and lives with father, who is a full-time student at a college in Bakersfield. Claimant attends public school and, until December 2019, participated in after-school programming at VAC.

4. The parties participated in an unsuccessful informal meeting at the service agency on January 7, 2020, as set out in Exhibit 2, a January 10, 2020 letter from Ms. Pinal to father. Ms. Pinal wrote that the "outbound" transportation claimant sought is a parental responsibility. Ms. Pinal also cited a Payment Agreement dated November 9, 2016.

5. The Payment Agreement, Exhibit 5, recited that the service agency had paid VAC as a vendor to transport certain of the service agency's clients outbound from the latter's programs, but "[t]ransportation services cannot be offered to any

additional clients.” (Ex. 5, p. 1.) As Ms. Pinal explained, certain clients were grandfathered: if the service agency was paying for their outbound transportation before the Payment Agreement, the service agency would continue to pay for it. But a client like claimant in this matter was not in this group of clients. Payment for his outbound transportation was excluded under the Payment Agreement.

6. A May 10, 2019 Individual Program Plan (IPP), Exhibit 4, was prepared for claimant, noting that he has developed skills in self-care and home care. He has become, for instance, “more independent in picking out his clothes” (Ex. 4, p. 20.) He will benefit from attention to behavior, however, as “[w]hen upset or redirected, [claimant] will exhibit temper tantrums in the form of crying, pouting, or going to his room or hiding under a blanket.” (*Ibid.*) On the other hand, claimant “no longer exhibits any self-injurious behaviors in the form of slapping his face when he doesn’t want to do something.” (Ex. 4, pp. 20-21.)

7. The IPP provides that the service agency “will fund for 23 days per month of formal after school social skills training programming at VAC, according to KRC policies and procedures, with continued funding dependent upon review of program progress reports by the [service agency’s] Autism Team. (Ex. 4, p. 28.)

8. Regarding the services at issue, the IPP provides: “School district to provide inbound transportation to VAC. [Claimant’s] father will be responsible to provide outbound transportation.” (Ex. 4, p. 29.)

9. Until December 2019, VAC provided claimant outbound transportation of its own accord. Ms. Pinal estimated VAC’s outlay for the outbound transportation was approximately \$70 per month. In any event, the service agency did not reimburse VAC.

For a reason not in evidence, VAC decided it would no longer provide such unreimbursed outbound transportation.

10. Father described how claimant has benefitted from the after-school program at VAC. The benefits have appeared over the past several months. As he has become more familiar with staff at VAC, claimant has become more willing to communicate and otherwise engage with adults. In like fashion, as claimant got to know other children participating in the programming at VAC, he has become friendlier with them. He speaks more to other people as a result. He is calmer and happier. Father is concerned that since claimant stopped participating in the programming in December 2019, claimant has in small ways and will more and more regress, becoming more withdrawn from others and losing the progress claimant has made in his ability to communicate and interact with others that father saw slowly and steadily build before the denial of outbound transportation funding.

11. Father is willing to provide the outbound transportation that would make claimant's continued participation at VAC possible. But father cannot do so without jeopardizing his own and claimant's well-being. To complete vocational education necessary for employment, father must take specific courses taught by a specific teacher. The courses are offered only at night and will continue through December 2020.

12. Convinced that the programming at VAC has been and will continue to be beneficial to claimant, both father and the service agency have searched for alternative means of providing the outbound transportation. They continue to search.

LEGAL CONCLUSIONS

1. The burden of proof is on claimant, the party seeking to change the status quo. The evidentiary standard is proof by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.) Claimant met that burden in this case.

2. The Lanterman Act, Welfare and Institutions Code section 4500 et seq., governs here. The Lanterman Act describes "a comprehensive statutory scheme . . . to provide a 'pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.'" (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388, quoting Welf. & Inst. Code § 4501.)

3. Welfare and Institutions Code section 4512, subdivision (b), lists, among "'services and supports' . . . specialized services and supports or special adaptations of generic services and supports directed . . . toward the achievement and maintenance of independent, productive, and normal lives," chosen "through the [IPP] process." The statute specifically mentions that providing "social skills training" is appropriate.

4. Welfare and Institutions Code section 4646.4 provides:

(a) 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: [¶] . . . [¶]

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.

5. Welfare and Institutions Code section 4646.5, subdivision (a)(5), provides that the IPP process shall include:

A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. . . .

6. Welfare and Institutions Code section 4648.1, subdivision (c), provides in pertinent part:

The department, in cooperation with regional centers, shall ensure that all providers of services and supports purchased

by regional centers for their consumers are informed of all of the following: [¶] . . . [¶]

(3) The responsibility of providers to comply with conditions of any contract or agreement between the regional center and the provider

7. Welfare and Institutions Code section 4648.35, subdivision (d), provides:

A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.

8. Welfare and Institutions Code section 4659 provides in pertinent part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

9. Father did not provide the statutorily required written documentation under Welfare and Institutions Code section 4648.35, subdivision (d), to demonstrate his inability to provide claimant outbound transportation home from VAC. Father's testimony in this regard at the fair hearing, regarding his coursework and schedule, was convincing and not disputed, and satisfies the statutory requirement. The service agency is correct that generally transportation is properly considered a family responsibility. But that consideration is outweighed in these circumstances by father's having no practical way to provide the outbound transportation.

10. There is little or no doubt that claimant achieved benefits from the services, the social skills training, that VAC has provided him. He worked to achieve these benefits over many months. They provided claimant a measure of stability and steady improvement. They did so in substantial part because they were provided in a setting and among people that have become more and more familiar to claimant, and therefore more and more sources of calm and normality. Claimant has made his life more normal, at minimum, if not more independent and productive as well.

11. Transportation outbound from VAC's after-school programming is crucial. If the outbound transportation service is not provided, claimant will be deprived of the much more beneficial services that VAC provides. He will lose his achievement of social skills and his progress toward an independent, productive, and normal life will be harmed, or further harmed.

12. It is entirely appropriate, in these circumstances, that the service agency provide the means for such outbound transportation. Such a service is precisely the sort that a service agency is bound to provide under the Lanterman Act's comprehensive framework.

13. Welfare and Institutions Codes section 4648.1, subdivision (c)(3), cannot reasonably be construed to interfere with a service agency's statutory mandate to help the developmentally disabled and disadvantaged. The responsibility of the service agency to consumers' overrides responsibility by providers to comply with conditions of a contract or agreement with the service agency, for weighty reasons. There is no reason to conclude that the service agency's Payment Agreement with VAC was prepared with claimant's needs in mind. By happenstance, claimant was not among those whose transportation was "grandfathered" so that it would continue notwithstanding the Payment Agreement. This happenstance may not properly act as an obstacle to services.

14. In these circumstances, it is appropriate that the service agency make every effort to locate a transportation service to make claimant's continuing participation in the after-school programming at Valley Achievement Center possible, whether that is a driver specially paid to transport claimant, or a renegotiation of or amendment to the Payment Agreement, or some other means.

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ORDER

Claimant's appeal is granted. The service agency shall make every reasonable effort to locate, fund, and provide services for claimant's transportation outbound from the after-school programming at Valley Achievement Center in which claimant participated previously.

DATE:

THOMAS Y. LUCERO

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.