

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2020010498 (PRIMARY)

OAH No. 2020010499 (SECONDARY)

DECISION

Laurie Gorsline, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 16 and 30, and November 4 and 16, 2020.

Candance Hein, Fair Hearing Specialist, appeared for Westside Regional Center (WRC or Service Agency). Claimant's mother and conservator represented Claimant. Claimant was present for two days of hearing.

The parties agreed that OAH Case No. 2020010498 and OAH Case No. 2020010499 could be heard together and that the ALJ could issue one decision for both cases.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 20, 2020.

ISSUES

Issue 1: Is WRC required under the Lanterman Act to reimburse Claimant's Mother for her contribution toward the cost of repairing or replacing a broken cellular phone owned by an employee?

Issue 2: Is WRC required under the Lanterman Act to reimburse Claimant's Mother for cost of private transportation to and from Claimant's day program after WRC's vendor quit serving the route between Carson, California and the day program?

EVIDENCE RELIED UPON

Documents: Service Agency exhibits 1P through 4P, and 1S through 8S, 13S through 19S, and 21S through 25S and Exhibit A.

Testimony: Claimant's mother; Candance Hein; and Julien Hernandez.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, a 28-year old conserved woman, is an eligible consumer of WRC based on her diagnosis of intellectual disability. Claimant has also been diagnosed with Angelman's Syndrome, scoliosis, and seizure disorder. Sometime in or around November 2017, Claimant transferred to the WRC from another regional center with services already in place. Claimant's mother is her conservator, and the two live together within WRC's catchment area.

2. On December 13, 2019, WRC issued two Notices of Proposed Action, denying reimbursement for a payment for a cellular phone and for private transportation. Claimant requested reimbursement for monies Mother paid a WRC transportation vendor toward the repair or replacement of a cellular phone owned by the vendor's driver after Claimant threw it out the window. Claimant also sought reimbursement for private transportation paid for by Mother after the vendor stopped serving the route between Carson and Claimant's day program.

3. Claimant submitted Fair Hearing Requests on January 15, 2020, to appeal the Notices of Proposed Action.

Background

4. According to Claimant's November 16, 2017 Individual Program Plan, known as an IPP, Claimant had difficulties performing most motor skills activities. She was ambulatory with support but was only able to take two to three independent steps before requiring assistance to maintain her balance. Claimant was non-verbal but made facial expressions to communicate. Claimant was easily distracted and needed

constant redirection to remain on task. She did not know the function of money and did not take public transportation. She required constant supervision during waking hours to prevent injury or harm in all settings.

5. At the time the IPP, Claimant was receiving 30 hours per month of in-home respite services, and 140 hours per month of personal attendant hours for care and supervision from Premiere Healthcare Services. Claimant was receiving Social Security benefits and 283 hours per month of In-home Supportive Services, known as IHSS hours. Mother was Claimant's IHSS care provider. Claimant was also attending an Easter Seals La Tijera day program located within the WRC catchment area five days per week between 8:30 AM and 2:00 PM.

6. The IPP required the WRC to provide transportation for Claimant to her Easter Seals La Tijera day program. It identified Comfort Transit as the transportation vendor, and that Claimant was picked up and dropped off daily from her Aunt's house in Carson, California. Claimant's home and Easter Seals La Tijera were within WRC's catchment area. Carson was outside WRC's catchment area.

7. The IPP planning team concluded that generic transportation services were not available and accessible, and that Claimant was unable to safely access public transportation due to the severity of her disability. WRC agreed to continue to fund the respite care and personal attendant care. WRC also agreed to fund the Easter Seals La Tijera day program, Easter Seals Supplemental Program Support, and the transportation services through Comfort Transit.

8. Between at least November 2017 and July 2019, WRC provided roundtrip transportation to Claimant between her Aunt's house in Carson to Easter Seals La Tijera through a WRC vendor. Until sometime in 2018, the vendor was Comfort Transit;

after that, the vendor changed to Avastar Transportation. Each weekday morning Mother dropped Claimant off at her Aunt's house in Carson before Mother went to work because the transportation vendor could not pick up Claimant at home early enough for Mother to leave her home and get to work on time. Each weekday afternoon, the transportation vendor returned Claimant to her Aunt's house in Carson, where Mother would pick her up after Mother got off work.

2018 Cell Phone Incident

9. Sometime in the fall of 2018, Mother was informed by the owner of Avastar Transportation that Claimant had thrown the driver's cell phone out of the window and it broke. The owner informed Mother that although she did not believe that either of them were responsible, replacement of the phone would cost \$180 and she asked Mother to pay for half. Mother initially declined because the incident happened outside of her care and she had previously informed the driver to have Claimant in the back of the transportation vehicle because Claimant could be a distraction in the front seat.

10. After the incident, Mother contacted the WRC service coordinator Daniel Brewster, who informed her an incident report must be submitted by Avastar Transportation, along with a receipt regarding the repair or replacement of the cell phone for a reimbursement claim to be presented to WRC. Mother claimed that Brewster agreed she would be reimbursed for the telephone, but her testimony was not convincing in light of the other evidence presented.

11. Avastar's owner showed Mother some sort of documentation indicating that it cost \$225 to fix or replace the phone. On October 24, 2018, Mother gave Avastar's owner \$112 for half the cost of the replacing or repairing the cell phone.

Mother gave the money to the owner because the owner paid up front to have the phone repaired or replaced and because the driver only worked two hours a week and did not have the money to pay for the cell phone.

12. Mother testified she gave the receipt to Brewster, but her testimony was unclear and inconsistent. The record does not include a copy of the receipt for the cell phone. After October 2018, Mother testified she followed up with Brewster frequently about the cell phone but heard nothing from him. On July 17, 2019, she sent him an email thanking him and informing him that she would discuss the phone issue with the driver's supervisor. At hearing Mother claimed she was thanking Brewster for letting her know that the purchase of service committee was still working on the phone issue and he did not know when they would reimburse for it. Mother testified she repeatedly followed up in September and October 2019, but her testimony was not specific.

Transportation Vendor Stopped Serving the Carson Route

13. On July 18, 2019, Avastar Transportation informed the WRC that it would no longer service the route between Carson and Easter Seals La Tijera. WRC sent emails to Mother informing her that Avastar Transportation had stopped serving the Carson route and that beginning on July 22, 2019 Claimant would be transported by a new transportation vendor, Time to Go.

14. On July 19, 2020, Mother spoke to Time to Go who told Mother the pickup was at the home address, and that they would not do the pickup in Carson. Mother informed WRC that Time to Go had the wrong pick up address for Claimant, specifically that Time to Go had been informed that the pickup and drop off address

was the home address instead of the Carson address. Mother requested that WRC correct this error.

15. On July 19, 2019, WRC service coordinator Brewster, explained to Mother that WRC vendors would be reluctant to want to drive to Carson because that area is serviced by another regional center. Brewster spoke to the WRC Transportation Manager about getting Claimant back in the transportation queue to explore whether another vendor would be able provide roundtrip transportation to the Carson address. Brewster and Mother agreed that Mother would provide transportation to and from Easter Seals La Tijera for a few days during the week of July 22, 2019 until WRC was able to find a new vendor or another arrangement appropriate for Claimant.

16. On July 23, 2019, WRC Service Coordinator Kenny Lorenzo informed Mother that if someone could supervise Claimant at the family home, personal attendant hours could be utilized. Lorenzo also contacted WRC transportation coordinator Humberto Maldonado and inquired about the possibility of transportation reimbursement for Claimant. The same day, Mother informed Lorenzo that on a temporary basis she could find someone to supervise Claimant but required more personal attendant hours while she attempted to find a more permanent solution. Mother also requested in the interim additional personal assistance hours for two weeks because Claimant would not be attending the program during that time. A purchase of service request was thereafter submitted for additional personal assistance hours in lieu of the day program, which WRC authorized for an additional 48 hours from July 22 to July 31, 2019.

17. On July 24, 2019, Mother proposed using Midwest Transportation, but it was not a WRC vendor and its daily transportation rate was too high. WRC Director of Client Services Cesar Garcia approved offering additional personal attendant hours for

someone to assist Claimant at the home address for the transportation pickup and drop off to accommodate Mother's work schedule.

18. On July 25, 2019, Mother inquired whether WRC could fund transportation through HopSkipDrive, a private transportation vendor for people who needed additional assistance. Lorenzo informed Mother that this funding was not likely because of price. Lorenzo reiterated the availability of the additional personal attendant hours that Claimant could use in the home so that Time to Go could do the pickup and drop off at Claimant's home, but Mother indicated she was not interested. Mother also informed him that Claimant had not been able to attend the program. Lorenzo informed Mother that transportation through Time to Go had been available since July 22, 2019 from the home address and that additional attendant hours had been authorized to supervise Claimant while a solution was found. The WRC interdisciplinary notes indicated that Lorenzo mentioned auto-driver reimbursement from the home to the program, but Mother did not appear receptive to this arrangement. Mother stated she wanted to make a formal request for transportation reimbursement for HopSkipDrive, and that she was willing to cover costs above the typical WRC rate. At hearing, Mother denied that she was ever told about auto driver option. WRC chronicled events in a client's case through interdisciplinary notes, referred to as ID notes.

19. On July 26, 2019, informed WRC that Claimant was not attending her day program because of the transportation issues. Mother requested a continuation of six additional hours of personal attendant time if WRC was unable to find a vendor to transport from the Carson address, and requested reimbursement for HopSkipDrive. She stated she considered using Premier Healthcare Services to obtain a personal

assistant in the home, but she would need to ensure the person was reliable and that she was able to have a camera in Claimant's room.

20. Around July 26, 2019, Mother spoke to WRC Director of Client Services Hillary Kessler. Kessler agreed to reimburse for HopSkipDrive for the week of July 29, 2019. At hearing, Mother testified that the agreement was for eight days or two weeks.

21. On July 30, 2019, Mother inquired of WRC if the additional personal assistant hours were ongoing after July 31, 2019, requested additional personal assistance hours or reimbursement until such time as a transportation vendor was found.

22. On July 30, 2019, Kessler wrote to Mother, informing her that they had reached out to every transportation company WRC contracted with, and that none of them would agree to pick up and return in Carson. She also informed Mother that pursuant to their discussion, if Mother could identify a provider or allow one of WRC's contracted agencies to send potential providers to interview with Mother, WRC would fund for a caregiver to stay with Claimant in the morning until transportation arrived and in the afternoons until Mother got home from work. Kessler also inquired if Claimant's Aunt would agree to be this caregiver in Claimant's home. Kessler informed Mother that WRC could not reimburse for on-going car service and that pursuant to a conversation she had last week with Mother, Kessler would approve reimbursement "for this week only." Kessler asked Mother to let Brewster know if she was willing to consider personal attendant funding for Claimant to remain home in the mornings and afternoons or suggested continuing to discuss creative ways to find a solution.

23. On July 31, 2019, Mother wrote an email to Kessler, Brewster and Brewster's supervisor, project manager Julien Hernandez. Mother stated that she

spoke to Hernandez and sorted out the transportation issue. Mother stated she had agreed to accept the additional four hours of personal attendant hours, and that her caregiver agreed to care for Claimant and provide transportation to and from the program beginning on Monday [August 5, 2019]. Mother stated that she would schedule an IPP with Brewster. WRC thereafter authorized funding for an additional 135 hours of personal attendant services by Premiere Healthcare Services for the period between August 5 and September 6, 2019.

24. Between August 5 and August 20, 2019, Mother's neighbor provided transportation services to Claimant to Easter Seals La Tijera in the form of personal assistance hours, which WRC funded. Mother told WRC that this was only a temporary solution to the transportation issue until her neighbor went back to work. At hearing, Hernandez admitted this was not a long-term plan.

2019 Annual Progress Report

25. An Annual Progress meeting was held on September 5, 2019, attended by Mother and service coordinator Brewster. During that meeting they mainly discussed the transportation issue and developed a plan, which included WRC looking for another transportation vendor to pick up the Carson route, or look into transferring Claimant to another day program closer to her Aunt's house to resolve the issue. Brewster asked for 30 days to work on the matter.

26. A written report was completed on September 20, 2019. The report stated that the IPP Planning team reviewed the November 2017 IPP and concluded that it remained appropriate and that no new services or supports were required. The Annual Progress Report stated that Mother indicated that all her needs were being met and she was not interested in additional support at that time. Per the report, WRC

agreed to continue to fund Easter Seals, respite services, in addition to 170 hours of personal attendant hours per month effective July 1, 2019 through November 30, 2019. The Annual Report did not specifically address transportation.

27. At hearing, Mother explained that the 2019 progress report had improperly omitted transportation, she never told Brewster all needs were being met or that she was not interested in additional support at that time. At hearing, Hernandez conceded that transportation should have been included if it was discussed, but that did not preclude transportation being provided to Claimant, because her IPP required it.

Mother's Requests for Reimbursement

28. On October 8, 2019, Mother wrote an email to the WRC requesting an update on the transportation issue or enrollment of Claimant into a different program. Mother stated she was unable to continue to flex her work schedule to transport Claimant, and that she would be sending WRC receipts for reimbursement for Uber, Lyft, and Hop skip Go. She stated she was unable to find someone trustworthy to care for Claimant and provide transportation, and indicated she was uncomfortable with selecting a caregiver from a registry list.

29. Brewster responded that he would try to obtain an update from the other program. He also stated that transportation between Claimant's home and Easter Seals La Tijera, a distance of 2.1 miles, could be provided if a route was available which he did not see as a problem. He also asserted that the WRC was not required to provide transportation from Carson because it was outside WRC's catchment area.

30. In or around October 10, 2019, project manager Hernandez spoke to Mother. They discussed that the Easter Seals location near Carson was not able to take Claimant because they could not meet her needs. They also discussed using a vendor who could transport from the home, and the use of a personal attendant when Mother was not home. Mother stated she did not want to have a personal attendant or Claimant's Aunt in her home. They also discussed using Access Transit with pick up and drop off in Carson, but Mother stated that Access was a shared service and dangerous. They also discussed having a personal attendant for travel to and from Carson and having a personal attendant with Claimant all day, including travel. Mother did not want a "stranger" personal attendant, claimed that Uber was safer. WRC ID notes reflect that the service coordinator had submitted a request for travel to vendors that would stay active until vendor was available, and that most vendors were passing due to pick up/drop off outside the area.

31. On November 26, 2019, Mother wrote an email to Kessler, complaining about the manner the transportation issue had been handled. She stated she had been told her request for reimbursement regarding the cell phone was denied, and requested a written denial explaining the reasons for the denial. There was nothing in Mother's email about a prior agreement to reimburse Mother for the cell phone. Mother also requested reimbursement for HopSkipDrive, Uber and Lyft, and requested that WRC pay for ongoing transportation.

32. On November 26, 2019, Kessler informed Mother that she would like to formally present her request at the purchase of services committee the next week and that she would ensure reauthorization of 170 hours per month of personal attendant hours. Kessler also explored transferring Claimant to the Easter Seals Torrance location.

33. On December 4, 2010, the ID notes reflect that service coordinator Jose Reyes spoke to Mother to discuss her reimbursement requests. Mother reported that she and Avastar Transportation's owner had each paid one-half the cost of the cell phone. Reyes told her that he needed all the receipts which Mother agreed to send, and that her request for a continuation of 170 hours per month of personal attendant hours had been approved.

34. Sometime in or around December 2019, Hernandez told Mother that the cell phone was the client's responsibility, but he would make a request for reimbursement on her behalf and requested a receipt. Mother never provided him with a receipt. Hernandez and Mother also spoke about the option of using personal attendant hours to assist Clamant to get to the program, during the program and returning home.

Purchase of Service Requests for Reimbursement for Cell Phone and Transportation

35. In December 2019, a purchase of service request for reimbursement for the cell phone was submitted by Hernandez on Mother's behalf. The purchase of service request stated that the amount was not specified, but that Mother wanted to proceed with the request without a receipt and amount.

36. On December 11, 2019, Mother informed Hernandez that she was making a purchase of service request for reimbursement of her HopSkipDrive, Uber and Lyft transportation charges to and from the Easter Seals La Tijera day program. Mother stated that she would provide the receipts later, and there was no specific reimbursement amount.

37. At hearing, Mother claimed she submitted the receipts to WRC around November and December 2019 and she was told they were insufficient. At hearing, Hernandez testified he received the receipts from Mother in or around December 11, 2019, and that he gave most or all of them to Kessler so she could present them to the purchase of service committee. Hernandez also testified that a few of the receipts fell within the one-week time that WRC agreed to reimburse Mother for HopSkipDrive.

38. Mother submitted to WRC receipts for transportation costs for HopSkipDrive between Carson and Easter Seals La Tijera for the period from July 31 through August 2, 2019 in the sum of \$178.68.

39. For the period beginning from July 22, 2019 through January 21, 2020, Mother submitted one other receipt from HopSkipDrive for \$27.39, which was dated August 2, 2019 and for service between Easter Seals La Tijera and a location in Gardena. All the other receipts submitted by Mother were for dates falling between August 20 and December 12, 2019 for Uber and Lyft. There were no receipts for many days falling in this period and there were no receipts with dates after December 12, 2019. Of the receipts submitted, many were incomplete, missing dates, and/or the pickup or drop off locations. Many in this group reflected pick up or drop off locations other than the address for Claimant's Aunt in Carson or Easter Seals La. Tijera. Mother testified that some of the pickup locations were at places other than the Carson address because it was cheaper for Mother to have Claimant picked up from another address.

40. On December 11, 2019, the purchase of services committee met regarding Mother's requests for reimbursement regarding the cell phone and private transportation.

Notices of Proposed Action

CELL PHONE REIMBURSEMENT

41. By letter dated December 12, 2019 from Hernandez, the Service Agency notified Claimant that her request for reimbursement regarding the cell phone was denied by Purchase of Services on December 11, 2019. Hernandez stated that reimbursement of this sort was considered an individual's responsibility for which generic resources could be used. Hernandez explained that Welfare and Institutions Code section 4512(b) states that specialized serviced and support must be directed toward the alleviation of the developmental disability and that paying for a broken phone cannot be considered a service or support a regional center provides. On December 13, 2019, WRC sent Claimant a Notice of Proposed Action confirming its denial of reimbursement to Mother for the property damage to the van driver's phone.

TRANSPORTATION REIMBURSEMENT

42. By letter dated December 12, 2019 from Kessler, WRC notified Claimant that her request for transportation reimbursement for travel between Carson and Easter Seals La Tijera was denied by Purchase of Services committee on December 11, 2019. Kessler explained that it was unable to secure a transportation company for the Carson route because it was out of the area and that WRC was not required to fund transportation from a location other than Claimant's residence. Kessler stated that WRC had proposed various options, including funding a caregiver in the home to provide supervision for Claimant. Kessler stated that WRC had agreed to reimburse Mother for the expenses incurred the week following the end of Claimant's prior transportation and before Mother stated her caregiver would begin to provide this support. Kessler also stated that only one receipt for July 31, 2019 in the amount of

\$45.77 fell within that period, and that Mother needed to submit receipts for the period from July 22 through July 30, 2019 to obtain reimbursement for them.

43. WRC sent Mother a Notice of Proposed Action dated December 13, 2019, confirming its denial of reimbursement for private transportation costs. The stated reasons were that the Service Agency could not provide transportation out of area; could not fund private transportation on an on-going basis; and must use cost-effective resources, citing Welfare and Institutions Code sections 4620, subdivision (a), 4646, 4648.35, and 4659 as authority for its denial.

Fair Hearing Requests

44. Mother filed a Fair Hearing Request on January 15, 2020, requesting reimbursement from the Service Agency for the money she paid to Avastar's owner for the cell phone. Mother filed a second Fair Hearing request the same day, requesting reimbursement for private transportation after Claimant's transportation to and from Carson ended in July 2019.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) All statutory references are to the Welfare and Institutions Code unless otherwise specified. An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the Service Agency is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of her request for reimbursement for her contribution to the cost of repairing or replacing a broken cell phone owned by a vendor's employee. Claimant also requested a fair hearing to appeal the Service Agency's denial of her request for reimbursement

for private transportation after the agreed upon vendor quit serving the route between Claimant's day program and her Aunt's house in Carson. Jurisdiction in this case was thus established.

2. When one seeks government benefits or services, the burden of proof is on him. (See e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789; *Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, Claimant requests reimbursement for the payment toward a broken cell phone that the WRC has not before agreed to provide, and therefore she has the burden of proving by a preponderance of the evidence that she is entitled to that reimbursement. Claimant also requests reimbursement for transportation that the Service Agency had previously provided, and therefore the Service Agency has the burden of proving by a preponderance of the evidence that Mother was not entitled to reimbursement. In enacting the Lanterman Act, the Legislature assumed responsibility to provide for the needs of developmentally disabled individuals, so that individuals eligible for services and supports receive the services and supports identified in the individual program plan. (§ 4501.)

3. "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).)

4. The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The services and supports that may be listed in an IPP include, but are not limited to, personal care, day care, community integration services, supported and sheltered employment, community support, respite, travel training, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (§ 4512, subd. (b).) Other service and support options which planning teams are required to consider are the use of paid roommates, neighbors, personal assistance, technical and financial assistance, and all other service and support options that would result in greater self-sufficiency for the consumer and cost-effectiveness for the state.

5. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, utilization of generic services and supports when appropriate and utilization of other services and sources of funding as contained in Section 4659. (§ 4646.4, subd. (a)(2) and (3).) Regional centers are required to identify and pursue possible sources of funding for consumers receiving regional center services, which shall include but is not limited to governmental entities or programs or private entities and prohibits funding of services otherwise available from governmental sources or private insurance. (§4659. subd. (a) and (c).) Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (§ 4648, subd. (a)(8).)

6. At the time of review development, review, or modification of a consumer's IPP, all of the following apply: First, 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. Second, a regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP. Third, 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. (§ 4648.35.)

Cell Phone Reimbursement

7. At hearing, Mother contended that WRC should be required to reimburse her for the \$112 she paid to the owner of Avastar Transportation for the driver's broken cell phone. WRC denied the claim because the requested reimbursement sought by Claimant was not for the alleviation of Claimant's development disability and was considered Claimant's responsibility.

8. Claimant failed to prove by a preponderance of the evidence that the Service Agency should be required to under the Lanterman Act to reimburse Mother for her contribution for the cost of replacing or repairing the cell phone. Mother failed to prove that the phone reimbursement was for the purpose of the alleviation of Claimant's developmental disability, Claimant's social, personal, physical, or economic habilitation or rehabilitation, or Claimant's achievement and maintenance of an independent, productive, and normal life. Mother's testimony and the documentary evidence established that she made the payment because she believed that the driver could not afford to pay for the cell phone. Although Mother's motives in paying for the telephone were certainly laudable, the purpose of the payment was not to alleviate

Claimant's developmental disability. Furthermore, the record does not include a written receipt for the repair or replacement of the cell phone, which WRC indicated was necessary to proceed with the reimbursement request. Mother's testimony that she submitted a receipt for the cell phone to the Service Agency prior to December 2019 was not persuasive. Therefore, the evidence did not establish an obligation on the part of WRC to reimburse Mother for the payment.

9. Although Mother claimed that WRC representatives agreed to reimburse her prior to paying Avastar's owner in October 2018, that part of her testimony was not convincing considering all the other evidence. Mother testified that a WRC representative agreed to pay for the cell phone but presented no evidence to corroborate her testimony. There was also no evidence referencing any alleged reimbursement agreement in the documentary evidence presented at hearing. Although the ID notes did not capture every contemporaneous interaction or event pertaining to Claimant or Mother's communications with WRC representatives, none of the numerous ID notes or other documentary evidence mention a prior agreement to reimburse Mother for the cell phone. The fact that the purchase of service committee did not consider the request a year later, also suggests there was no prior agreement.

10. The Lanterman Act does not require the Service Agency to reimburse Mother for her contribution toward the cost of replacing or repairing the cell phone owned by the vendor's employee. Claimant's appeal regarding OAH Case no. 2020010498 is denied.

Transportation Reimbursement

11. Mother contends that she should be reimbursed for the cost of private transportation to and from Claimant's day program after Avastar ceased serving the

Carson route. At hearing, Mother clarified that for the period between July 18 and August 5, 2019, she was only seeking reimbursement for the transportation provided by HopSkip Drive, and that she had been paid nothing. Mother also clarified that she was not seeking reimbursement for the period between August 5 and August 20, 2019, when she had access to an additional 135 hours of personal assistant time in which her neighbor provided transportation services to and from the Easter Seals La Tijera. Mother seeks reimbursement for the private transportation costs she incurred for the period beginning August 20, 2019 and ending on January 21, 2020.

12. The Service Agency's position was, among other things, that it explored many options with Mother, including funding for a caregiver in the home to supplement its offer for a WRC vendor to transport Claimant from her home to Carson. It also stated that it would agree to reimburse for private transportation expenses between July 22 and July 31, 2019. It claimed that only one receipt for July 31, 2019 in the sum of \$45.77 coincided with that period. WRC contends that no reimbursement beyond that is required.

13. The Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See

e.g., *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

HOPSKIPDRIVE

14. The preponderance of evidence established that WRC agreed to reimburse Mother for HopSkipDrive transportation costs between Carson and Easter Seals La Tijera for the week of July 31 to August 2, 2019. In its denial letter, WRC took the position that it had only agreed to reimburse for HopSkipDrive for the period between July 22 and July 31, 2019, however, that position conflicted with the evidence. Mother and WRC agreed that Mother herself would provide transportation for a few days during the week of July 22, 2019 while other options were explored. WRC also funded additional hours of personal assistance time for July 22 through July 31, 2019 in lieu of Claimant attending the program. It was not until July 25, 2019, Mother inquired if WRC would fund for HopSkipDrive and on July 26, 2019 requested reimbursement for HopSkipDrive while she waited for another WRC transportation vendor to be found. On or about July 26, 2019, Kessler agreed that she would reimburse Mother for HopSkipDrive. In a letter dated July 30, 2019, although not the model of clarity, Kessler reiterated the agreement with Mother was for "for this week only." Significantly, even Hernandez admitted that a few of the receipts provided to Kessler back in December 2019 fell within the one-week that WRC agreed to reimburse Mother for HopSkipDrive. The only receipts Mother submitted to Hernandez between July 22 and August 5, 2019 were for July 31, August 1 and August 2, 2019. WRC's position that only one receipt for \$45.77 dated July 31, 2019 fell within the agreed upon period was erroneous.

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15. Although Mother was uncertain about the length of the reimbursement agreement, Mother was reasonable in concluding that it at least covered the period between July 29 through August 2, 2019. Not only did Kessler's July 30, 2019 correspondence indicate it was for the week of July 29, 2019, Mother did not use HopSkipDrive during the week of July 22, 2019, and the additional 135 hours of personal assistant time did not begin until August 5, 2019.

16. Based on WRC's agreement to reimburse for HopSkipDrive, Mother is entitled to reimbursement for transportation between Carson and Easter Seals La Tijera for the period of July 29 through August 2, 2019. The only receipts in the record falling within this category total \$178.68. Accordingly, Mother is entitled to reimbursement in the sum of \$178.68. Mother is not entitled to reimbursement of the receipt from HopSkipDrive dated August 2, 2019 for \$27.39 because that receipt reflects travel to a Gardena address and there was no adequate explanation provided at hearing which justifies reimbursement of this amount.

OTHER REIMBURSEMENT AFTER AUGUST 19, 2019

17. As to reimbursement for transportation after August 19, 2019, WRC proved by a preponderance of the evidence that it was not required to reimburse Mother for private transportation costs for the Carson-Easter Seals La Tijera route. Section 4648.35 provides that a regional center shall fund transportation, when required, "from the consumer's residence" and Claimant did not reside in Carson. In addition, the preponderance of evidence established that WRC repeatedly offered Claimant roundtrip transportation from her home after Avastar Transportation stopped serving the Carson route. This offer was first made on July 18, 2019 with an identified provider, Time to Go. The evidence established that roundtrip transportation between Claimant's home and Easter Seals La Tijera was available to Claimant at all relevant

times beginning on July 22, 2019, and that WRC repeatedly explored the option of also having a personal attendant in the home to supervise Claimant in the mornings and afternoons to accommodate Mother's work schedule so Claimant would not be left alone while waiting for transportation to pick her up or after being dropped off. The fact that Mother had misgivings about the trustworthiness of potential caregivers did not obligate WRC to provide roundtrip transportation from Carson.

18. The Lanterman Act did not require WRC to reimburse Mother for the cost of private transportation between Carson and Claimant's day program at Easter Seals La Tijera after August 19, 2019. Mother is not entitled to reimbursement of private transportation costs for this period.

ORDER

1. Claimant's appeal in OAH Case Number 2020010498 in Issue 1 is denied.
2. Claimant's request for reimbursement for her contribution to the cost of the broken cell phone owned by a vendor's employee is denied.
3. Claimant's appeal in OAH Case Number 2020010499 is granted in part and denied in part.
4. Claimant's request for reimbursement for the cost of HopSkipDrive in the amount of \$178.68 for July 31, August 1 and August 2, 2019 is granted.
5. Within 30 days of this Decision, WRC shall reimburse Claimant's Mother in the total amount of \$178.68, less any amounts, if any, already reimbursed Mother for private transportation for HopSkipDrive for the period from July 18, 2019 through August 2, 2019.

6. The appeal of WRC's denial of reimbursement for private transportation for the period from July 18, 2019 through January 21, 2020 is otherwise denied.

DATE:

LAURIE GORSLINE
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.