

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

In the Matter of:

CLAIMANT, v.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency

OAH No. 2020030969

DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, conducted a hearing in this matter by video conference and telephone conference on June 23, 2020.

Jessica Franey, Waterson Huth & Associates, Attorneys, represented the Frank D. Lanterman Regional Center (Service Agency or FDLRC). Claimant was represented by his mother, who is his conservator. (Claimant's name is omitted, and his mother's title is used, to protect their privacy.)

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 23, 2020.

ISSUE PRESENTED

Should the Service Agency reimburse Claimant's family for the cost of repairs to their van in December 2019?

EVIDENCE RELIED UPON

FDLRC's exhibits 1 to 9, Claimant's exhibits C1 to C7. Testimony of FDLRC employees Michele Johnson, Lusine Gambaryan, Srbui Ovsepyan, and Martha Grajeda; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 33-year-old consumer of the Service Agency who lives in the family home with his mother and father. Claimant has received services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act)¹, based on his diagnoses of profound intellectual disability, Cerebral Palsy, and seizure disorder. Claimant's parents receive funding from the Service Agency for services including respite, personal assistance, and numerous medical supplies, and FDLRC provides oversight and case

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

coordination, as noted in Claimant's Individual Program Plan (IPP), amendments, and annual review (exhibits 4, 5, 6, C1).

2. As described in the IPP documents, Claimant is quadriplegic, nonverbal, and incontinent. He requires complete and total care for all of his needs. Claimant cannot eat and receives nutrition and medication through a Gastrostomy Tube (G-Tube). Claimant's kidneys malfunction, he suffers from seizures approximately twice a year, and he is prone to bed sores. Because of the condition of his kidneys, Claimant is on a special diet, and his food is prepared at home and must be pureed for delivery via G-Tube. At the administrative hearing, Claimant's mother added that he has recently had an increased number of seizures.

3. Claimant's parents provide for a large portion of his needs and care. Claimant receives the maximum amount of care, 283 hours per month, through the county In-home Supportive Services program, and his mother is paid as his care provider.

4. Over the last several years, Claimant's medical condition has become more precarious, and he is described as fragile. He develops kidney stones and has been hospitalized for them. Bed sores are also a concern. His needs for medical supplies increased but, unfortunately, his coverage under Medicare and Medi-Cal has been reduced. The documents in evidence depict substantial and continuing efforts by mother and FDLRC, from 2014 forward, to obtain supplies from generic resources and, when that failed, to have FDLRC vendors provide the correct supplies. At the administrative hearing, Claimant's mother noted that there are recent examples of inconsistencies in the medical services and supplies provided by some providers that are vendors of FDLRC. Mother is often engaged in resolving these inconsistencies.

5. On occasion, Claimant's mother would pay for medical supplies and then seek reimbursement from FDLRC. When one of those retroactive requests was denied, Claimant's mother went to an administrative fair hearing in 2019 and received an order that she should be reimbursed. That decision and order referred to the regulation that covers reimbursement, discussed in more detail below.

6. Claimant's parents have been very active in providing care for Claimant and seeking services and supports for him.

7. There is some conflicting evidence about the extent to which Claimant presently leaves the home for activities. Mother testified credibly at the hearing that, previously, his caretakers would take Claimant into the community three or four times per week. However, in 2017, the vendor advised Claimant's mother that, due to Claimant's declining health and fragility, it was no longer safe for him to leave the home. The most recent IPP, an annual review dated October 23, 2019 (exhibits 6, C1), notes that Claimant receives a 1:1 aide five days per week in lieu of a day program and that he has been engaging in fewer community activities. Some personal assistance hours are used to cover in-home activities and short outings around the community. Other outside activities are planned, but it is unclear how often they occur. Claimant mostly engages in activities in the home, sometimes with a friend or his parents. There is no reference to transportation needs or services in the annual review from October 23, 2019 (exhibits 6, C1).

Purchase and conversion of a van in 2007; van repairs in 2019

8. In 2007, FDLRC agreed that, if Claimant's family purchased a van, FDLRC would pay for conversion of the van to be able to transport Claimant to accommodate his special needs. More specifically, in August and September 2007, an IPP amendment

was signed by FDLRC and Claimant's mother that included the following: outcomes were added that Claimant would be involved in the community, would engage in activities with his family, and would be able to leave the home for short periods of time; supports were added that FDLRC would fund for the van conversion, and the family would have insurance "and or assume all maintenance and repair costs for the van." (Exhibit 9, p. 2) The IPP amendment was sent to Claimant's mother with a cover letter that stated:

"Any costs further than the original conversion will not be covered by the Regional Center. It will be the family's responsibility to make sure there is insurance on the van, that the van is maintained, and to cover all costs for the van including repairs that may be needed to be completed on the conversion in the future. [¶] The Regional Center is willing to provide funding for the original conversion on the van and will accept no additional costs that may be needed in the future."

(*Id.* at p. 1.)

9. After the IPP amendment was signed, an invoice dated October 2, 2007, indicates that the family purchased a van and FDLRC paid \$19,995 for modifications.

10. On December 31, 2019, the van did not work. Claimant's mother had it repaired that day by Patent Enterprise Radiator & Motorcycle, including replacement of the radiator and fuel pump, at a cost of \$855.16 (see invoice, exhibits 7, C5). There was no evidence that this company is a vendor approved by FDLRC, or that there is any contract between the company and FDLRC.

Request for reimbursement; subsequent events; parties' contentions

11. On January 7, 2020, Claimant's mother telephoned his service coordinator, Lusine Gambaryan, to report the van repair and that two pieces of equipment had broken and had been replaced on an emergency basis (a blender and an air mattress). Mother requested retroactive reimbursement. FDLRC agreed to reimburse for the costs of replacing the blender and mattress, as they were necessary supports to alleviate the effects of Claimant's developmental disabilities. FDLRC did not agree to reimburse for the van repair. Ms. Gambaryan reminded Claimant's mother of the requirements for reimbursement, as they had been included in the 2019 fair hearing decision.

12. FDLRC prepared a Notice of Proposed Action, dated February 12, 2020, and a letter, dated February 11, 2020, relating to the denial of the request for reimbursement (exhibit 1). Claimant's mother submitted a Fair Hearing Request, dated March 10, 2020 (exhibit 2).

13. After an informal meeting by teleconference on March 27, 2020, Martha Grajeda, the Regional Manager for the FDLRC unit that included Claimant as a consumer, wrote a letter, dated April 6, 2020 (exhibit 3). The request for reimbursement for the van repairs was denied.

14. Claimant's mother's contentions are found in her communications with Ms. Gambaryan, many of which are summarized in Consumer Transaction notes (exhibit 8), mother's statements at the informal meeting summarized in Ms. Grajeda's letter, and mother's testimony and exhibits submitted for the fair hearing. In summary, those contentions include that Claimant's mother was concerned due to limited access to their home located on a hillside, and that the van needed immediate repair to

assure transportation in the case of a medical emergency that Claimant might suffer. Claimant may have several seizures in a day, or may need to attend a doctor's appointment. Public transportation is not readily available for him, and mother has been told that specialized transportation for those with developmental disabilities as severe as Claimant's might not be available or would require an aide to be present to assist Claimant. Claimant's mother informed Ms. Gambaryan that her boss was going to sell the company where she is employed, and that she might be reduced to part-time employment. Mother was also considering retirement. Whereas in the past the family was able to shoulder many expenses related to Claimant's care and well-being, their future financial status would not permit it. In the past, Claimant's mother would become frustrated by FDLRC processes and delays in payment, and often she would just pay the expenses herself. Further, Claimant receives limited funds from federal programs that cover only a small fraction of his expenses. Mother is preparing to request an increase in federal funds but cannot predict an outcome.

15. Other contentions raised by Claimant's mother include, but are not limited to, that she has been working with FDLRC to assure that proper medical supplies are obtained and delivered. Numerous IPP amendments were provided to show that there are numerous medical supplies and other supplies related to Claimant's health and services that have been provided. Supplies have been modified as a result of changes in Claimant's needs, insurance coverage, and providers of the supplies.

16. Claimant's primary doctor for seven years, Stan Mathioukakis, M.D., submitted a letter (exhibit C7) confirming Claimant's severe mobility restrictions, fragile health, and compromised immune system, which make public transportation a poor choice for him, particularly in case of an emergency.

17. FDLRC's contentions are summarized as follows. When the van was purchased in 2007, FDLRC agreed to pay for modifications to assist in transporting Claimant. The agreement to do so, an IPP amendment and the cover letter, specifically set forth the agreement that Claimant's family would be responsible for all further maintenance and repairs. The current IPP and amendments do not include any reference to transportation as a service for FDLRC to provide for Claimant. Claimant's needs, as identified in his IPP and amendments, are currently met by the services and supports provided by FDLRC vendors or generic resources. There were no medical appointments or emergencies between the breakdown of the van and when FDLRC was informed of the repair cost. FDLRC is required to purchase services from approved vendors when possible, but the van was not repaired by an approved vendor. Repairs to the van would not alleviate the symptoms of Claimant's developmental disability; therefore, the repairs are not a necessary service for FDLRC to provide for Claimant. Finally, retroactive reimbursement is allowed only under very limited circumstances, which are not present here.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Section 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of reimbursement for the cost of van repairs. Jurisdiction in this case was thus established. (Factual Findings 10, 11 and 12.)

2. 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.) A consumer seeking to obtain funding for a new service has the burden

to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his request for reimbursement of costs for van repairs. (Factual Findings 1-17.)

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Section 4501.) These services and supports are provided by the state's regional centers. (Section 4620, subd. (a).)

4. Transportation is included in the services available to consumers listed in section 4512, subdivision (b), described specifically as follows: "transportation services necessary to ensure delivery of services to persons with developmental disabilities." As relevant to this matter, services and supports are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of developmental disability . . ." (*Ibid.*)

The process of obtaining services and developing an IPP

5. The services and supports to be provided for a consumer are determined by a team, including parents and regional center representatives, under the guidance of various sections of the Lanterman Act, some of which are discussed below.

6. Code section 4646, subdivision (a), states:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and

supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It 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.

7. Code section 4512, subdivision (b), states in part:

The 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. The planning process is also described in section 4645.5, and includes gathering information from the family, providers of services, and others. Service

coordination, as described in section 4647, subdivision (a), includes considering all appropriate options to meet goals and “securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs”

9. Sources for funding of needed services include not only the regional centers but others, such as an insurance company, school district, Medi-Cal, other public sources, and family members. Claimant must access these other, generic sources, if available, before seeking support from RCOC.

10. The Service Agency is required to determine if the needed services can be obtained from other sources, usually denoted as “generic” sources or agencies. This legal obligation is found in several places. For example, Code section 4646.5, subdivision (a)(4), provides that the IPP should 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.

11. Developing the IPP is a collaborative process. It is not the intention of the Legislature to have IPP services, and utilization of those services, decided unilaterally, either by a consumer or his representatives, or by the regional center. The fact that Claimant’s mother has chosen a particular service provider is an insufficient basis upon

which to compel the Service Agency to fund that choice. It was not the intent of the Lanterman Act to extend to a consumer or his parents the sole discretion or an unlimited unilateral authority over choices of service providers. Rather it is the intent to assure that consumer and family choices and preferences are taken into consideration and made a part of the consumer's IPP if all other requisites are met.

Reimbursement for services obtained without FDLRC prior agreement

12. Under section 4648, subdivision (a)(3), a regional center may purchase services and supports pursuant to vendorization or a contract. Section 4648, subdivision (a)(3)(A), provides that vendorization or contracting is the process to identify, select and utilize service vendors or contractors based on their qualifications and the other requirements necessary to provide the service. Under section 4648, subdivision (a)(3)(B), a regional center may reimburse an individual or agency for services or supports if "the individual or agency has a rate of payment for vendored or contracted services established by the [Department of Developmental Services] and is providing services pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with vendorizing or contracting requirements"

13. California Code of Regulations, title 17, section 50612, subdivision (a), provides that all services purchased out of regional center funds must be pursuant to a purchase of service authorization which shall be in advance of the provision of service. The authorization shall be made before the service is provided, except:

(b)(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

(Cal. Code Regs., tit. 17, § 50612, subd. (b).)

14. There was no evidence that the company that repaired the van, Patent Enterprise Radiator & Motorcycle, was an approved vendor or was in the process of becoming a vendor for FDLRC, or had a contract with FDLRC.

15. When regional centers and consumers cannot agree on services and related issues, an administrative law judge has the authority to make appropriate orders, including retroactive payments. (*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293.) In *Harbor Regional Center*, the court upheld multiple administrative rulings ordering the regional center to fund services for the care of a client requiring intensive physical therapy, including retroactive payments for moneys paid directly by that client's mother to secure the

ongoing employment of skilled assistants. "These administrative rulings were based on Lanterman Act requirements that regional centers be flexible and innovative when designing programs for each individual disabled person they serve, and take all steps possible to keep disabled children at home." (*Id.* at p. 301.)

Determination

16. Several factors support the denial of reimbursement sought by Claimant's mother. First, when the van conversion was approved for funding by FDLRC, the IPP amendment and cover letter made clear that maintenance and repair costs were the responsibility of Claimant's family, and not FDLRC. Second, transportation can be a service if it is necessary to ensure delivery of services under the IPP. However, transportation has not been identified as a need or as a service in Claimant's IPP, and there are no goals in the IPP that are dependent on transportation. The IPP forms the contract of services to be provided, and the needs to be addressed by those services. Third, services and supports are defined as specialized and directed toward alleviation of a developmental disability. There was insufficient evidence that Claimant's needs, services and supports identified in his IPP were not being met with respect to transportation. Fourth, the repairs were not performed by an entity that was an approved vendor or contractor with FDLRC, thereby depriving FDLRC of the protections afforded by the vendorization process. Finally, unlike in *Harbor Regional Center*, Claimant is not a child and the strong preferences to provide for flexibility in the provision of services and supports to maintain a child in the family home is not applicable. Unlike the required physical therapy in that case, the transportation at issue here does not qualify as a service and support required to be provided under the Lanterman Act and the circumstances of this matter.

ORDER

Claimant's appeal of the Service Agency's decision to deny reimbursement for the cost of van repairs in December 2019 is denied.

DATE:

DAVID B. ROSENMAN

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.