

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

In the Matter of the Appeal of:

CLAIMANT

vs.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency

OAH No. 2020040684

DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 18 and 27, September 15 and 18, and October 12, 2020.¹

Claimant was represented by her mother, who was assisted by a Spanish interpreter.

¹ This matter was consolidated for hearing with claimant's appeal in OAH No. 202004080. A separate Decision addressing that appeal will be prepared pursuant to VMRC's request and California Code of Regulations, title 1, section 1016, subdivision (d).

Attorney Matthew F. Bahr represented Valley Mountain Regional Center (VMRC).

Evidence was received, the record closed, and the matter submitted for written decision on October 12, 2020. Three days later, the record was reopened to include the most recent Individual Program Plan (IPP) signed by VMRC and claimant's authorized representative, and to receive claimant's objections, if any, to the admissibility of the IPP. The Order Reopening Record is marked as Exhibit 8a. The IPP is marked as Exhibit 8b and is admitted for all purposes, without objection.

The record was closed, and the matter submitted for written decision on October 26, 2020.

ISSUE

Is VMRC required to reimburse claimant for mileage to and from ABA therapy and occupational therapy?

FACTUAL FINDINGS

Background

1. Claimant is a four-year-old girl who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder. She lives at home with her parents, older sister, and the family dog, birds, cats, and fish. She enjoys singing, reading books, and solving puzzles.

2. Claimant requires constant supervision and assistance. Claimant's mother provides all her daughter's bathing needs, although claimant can mimic some simple tasks her mother performs on herself. Claimant is currently learning to dress herself with the help of a behaviorist, but still requires prompts and reminders to complete the process. She enjoys brushing her teeth, but cannot perform the task independently. She can use the restroom without prompts or reminders, and is able to communicate her need to use the restroom. She requires prompts and reminders for washing her hands after using the restroom, and needs assistance with pulling her pants up correctly.

3. Claimant throws temper tantrums when she sees something in a store that she wants but is told she cannot have it, or when she is around certain family members. During her tantrums, she yells, cries, and screams for approximately 20 minutes. In the past, she hit her father. When her mother told her not to hit, claimant immediately stopped. The parents calm claimant by bending down to her eye level and asking her to express her feelings. Claimant can also be impatient at times.

4. Claimant receives applied behavioral analysis (ABA) therapy funded by private insurance to address behavioral and self-help needs. She currently receives ABA therapy at Behavioral and Educational Strategies and Training (B.E.S.T.) in Modesto, California, for six hours each day, Monday through Friday.

5. Claimant engages in sensory-seeking behaviors daily. She looks for pressure when excited or trying to fall asleep. She pushes her hands against her chest, the back of her knees, or under her armpits when excited. When she has trouble falling asleep, cuddling helps. Her bedtime routine involves tucking her hands and feet underneath her mother while pushing her head against the headboard. Swinging and rocking motions are calming to claimant.

6. Claimant receives occupational therapy funded by private insurance to address her sensory needs. She currently attends therapy once a week at Sutter Tracy Community Hospital in Tracy, California.

Request for Mileage Reimbursement

7. During the March 25, 2020 IPP team meeting, claimant's mother requested that VMRC reimburse her for mileage for driving to and from ABA therapy and occupational therapy. She explained that the cost of driving her daughter to and from Modesto five days a week and to and from Tracy once a week was becoming a financial burden on the family.

8. Claimant's mother asked her health insurance company, Health Plan of San Joaquin, if it would reimburse her for mileage. The insurance company explained that it pays for transportation only if it is provided by a third-party, such as a taxi, Lyft, Uber, or a neighbor or family member who does not live with claimant. Claimant's mother said she always drives her daughter to her appointments in the same car because claimant throws temper tantrums if they take a different car or nonfamily members accompany them. Claimant's mother believes that relying on a third-party service, a neighbor, or a family member for transportation is not a realistic option.

9. Emaley Escalera, claimant's Service Coordinator, agreed to draft a request for mileage reimbursement and ask her supervisor, Danielle Wells, to present the request to VMRC's Purchase of Services Exception Committee for consideration. Ms. Wells presented the request on April 3, 2020, and the request was denied four days later.

10. On April 7, 2020, VMRC drafted a Notice of Proposed Action denying claimant's request for mileage reimbursement. Claimant's mother signed a Fair Hearing Request challenging the Notice of Proposed Action nine days later.

Additional Hearing Testimony

11. Gricelda Estrada is a volunteer with Integrated Community Collaborative, a nonprofit organization that helps families with special needs members to navigate multiple systems of services and supports, and to advocate on behalf of the special needs member. She described an incident when claimant's father gave her a ride home in his truck. Claimant's father was driving, her mother was sitting in the front passenger seat, and Ms. Estrada sat in the backseat in between claimant and claimant's sister.

12. During the trip, claimant had a temper tantrum when she realized Ms. Estrada was sitting next to her. Claimant screamed, cried, and kicked Ms. Estrada. Claimant's sister and Ms. Estrada switched seats while the truck was moving, but claimant's tantrum continued. Claimant's father stopped the truck, and claimant's mother switched seats with Ms. Estrada. Claimant eventually calmed down with her mother next to her.

13. Claimant's mother argued that Ms. Estrada's testimony demonstrated why claimant's mother must be the one who drives claimant to and from ABA therapy and occupational therapy, and why claimant's mother's car must be used. Also, claimant's mother explained that her daughter's "behaviors" have improved significantly since she began attending ABA therapy at B.E.S.T. Therefore, claimant's mother does not want to switch to a provider closer to her home.

Analysis

14. A regional center is limited in its ability to fund transportation services for a minor child living in the family home; it may do so only if the child's family provides sufficient written documentation demonstrating that the family is unable to provide such transportation to the child. (Welf. & Inst. Code, § 4648.35, subd. (d).) Claimant is a minor and lives at home with her parents and sister. There was no evidence that either claimant's mother or father is incapable of driving claimant to and from ABA therapy and occupational therapy. In fact, claimant's mother was adamant that she must be the one to drive her daughter and she must do so in her car. Under the circumstances presented at hearing, VMRC is prohibited from reimbursing claimant for mileage to and from ABA therapy and occupational therapy as a matter of law.

15. In addition to the law expressly prohibiting VMRC from reimbursing claimant for mileage to and from ABA therapy and occupational therapy, the persuasive evidence established that claimant has not exhausted generic resources for transportation. It was undisputed that Health Plan of San Joaquin will fund transportation services provided by a third-party. Although Ms. Estrada's description of the incident when she sat next to claimant was credible, it was only anecdotal evidence of what could potentially happen if claimant's mother used a third-party for transportation. Claimant's mother has yet to try using a third-party for transportation, so it is currently unknown how claimant will react under such circumstances. Also, claimant's mother explained that claimant's behaviors have improved significantly since she began attending ABA therapy at B.E.S.T.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Claimant has the burden of proving by a preponderance of the evidence that VMRC is required to fund her request for mileage reimbursement to and from ABA therapy and occupational therapy. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not that VMRC is required to fund her request for mileage reimbursement. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” in order to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations].” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or her representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer's developmental needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), & (4); 4646.5, subd. (a); 4512, subd. (b); and 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP, but must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) They must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).) Regional centers are not required to provide all the services a consumer may require, but are required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.) They are specifically prohibited from funding services that are available through another publicly funded agency. (Welf. & Inst. Code, § 4659, subd. (c).) This prohibition is often referred to as "supplanting generic resources."

5. Welfare and Institutions Code section 4648.35, subdivision (d), expressly limits a regional center's ability to fund transportation services for consumers who are minors as follows:

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

Conclusion

6. Claimant is "a minor child living in the family residence," and her mother can drive her to ABA therapy and occupational therapy. As such, VMRC is precluded by law from reimbursing claimant for mileage to and from ABA therapy and occupational therapy. Additionally, claimant's mother did not demonstrate that she exhausted all generic resources for providing transportation to ABA therapy and occupational therapy. Specifically, she has not yet attempted to obtain funding for transportation from Health Plan of San Joaquin.

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ORDER

Claimant's appeal from Valley Mountain Regional Center's April 7, 2020 Notice of Proposed Action denying claimant's request for mileage reimbursement to and from a preferred ABA service provider and occupational therapy appointments is DENIED.

DATE: November 4, 2020

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)