

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

In the Matter of:

CLAIMANT,

vs.

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,
Service Agency.**

OAH No. 2020070086

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 17, 2020.

Monica G. Munguia, Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC or Service Agency). Claimant's authorized representative, Brian Allen, represented Claimant, who participated in the hearing by videoconference. ¹Testimony and documentary evidence was received. The matter was submitted for decision on August 18, 2020, to allow Service Agency to submit an

¹ To preserve confidentiality, Claimant is not identified by name.

additional exhibit, Exhibit 26. Claimant's authorized representative indicated at the hearing he did not object to admission of the exhibit, and Exhibit 26 was admitted into evidence.

ISSUE

Should Service Agency fund Claimant's transportation to and from a supportive employment job placement?

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 25, 2020, in his Fair Hearing Request, Claimant requested Service Agency to provide him with supportive employment through the Desert Haven Enterprises Program (Desert Haven), transportation to and from a Desert Haven employment placement, and a 1:1 personal attendant while he was at the Desert Haven placement. (Exhibit 1, p. 018.) A mediation was held on July 30, 2020, which Service Agency representatives, Claimant, and Mr. Allen attended. The parties reached an interim agreement whereby the only issue remaining for hearing was Claimant's transportation request articulated in the Issue identified above. This administrative hearing followed.

Claimant's Background

2. Claimant is a 39-year old consumer of NLACRC due to his qualifying diagnosis of Mild Intellectual Disability. (Exhibit 4 at p. 7.) He has also been diagnosed with psychosis, depressive disorder, and fetal alcohol syndrome at birth.

3. Claimant is not conserved and currently resides with his friend and authorized representative, Mr. Allen, and Mr. Allen's son. Claimant pays rent and lives independently. He is capable of attending to his self-care needs including toileting, bathing, grooming, and dressing. He is also capable of meal preparation and light housekeeping. He is safe most of the time. Claimant sometimes forgets to take his medication and has some difficulty with budgeting and other financial decisions. Claimant also at times has temper tantrums, uses vulgar language, and is resistive in certain situations. Claimant receives 45 hours per month of services provided by Los Angeles County In Home Support Services (IHSS); Mr. Allen is Claimant's IHSS provider.

4. Claimant is currently unemployed. He receives SSI monthly benefits as well as SSA funds. He also receives Medi-Cal and Medicare benefits.

5. Claimant recently expressed interest in finding supportive employment opportunities. He applied to Desert Haven, which assists participants to seek, obtain, and maintain fully-integrated, competitively paid employment. He also requested that Service Agency fund his travel to and from any job provided through Desert Haven. However, Desert Haven denied Claimant's application, and thus Claimant did not require transportation to any Desert Haven job site.

6. After the Desert Haven denial, Service Agency referred Claimant to Social Vocational Services, Inc. (SVS), a program that provides a variety of employment and job-coaching opportunities, and the Department of Rehabilitation (DOR), to assist in Claimant's job search. SVS has recently communicated with Claimant to schedule an intake interview; the interview had been delayed because of the disruptive effects of the Covid-19 pandemic. Claimant's assigned interviewer also had been on sick leave for several days as a result of an injury. As the intake interview has yet to be initiated, it is not known whether Claimant will be accepted by the SVS supportive employment

program. Even if accepted into the SVS program, Claimant still needs to find a suitable job placement. DOR has not yet contacted Claimant in response to Service Agency's referral. Both SVS and DOR offer services that may assist Claimant in locating transportation to bring him to and from work.

Transportation Issues

CLAIMANT'S TRANSPORTATION NEEDS

7. Claimant has had difficulties in accessing transportation to allow him to travel independently and safely in his community. Since 2018, as described more fully in Factual Findings 8 through 13, Service Agency and Claimant have discussed at several meetings Claimant's transportation needs and whether the Service Agency should provide Claimant transportation to a supported employment placement.

8. According to a March 15, 2018 progress report prepared by Developing Skills for Independence (DSI), the independent living support (ILS) provider assisting Claimant at the time, Claimant "continues to be encouraged to increase his transportation means in the Antelope Valley." (Exhibit 2, p. 3.) The DSI report notes that Claimant had not made an evaluation appointment with ACCESS or applied for Dial-A-Ride services. The DSI report also notes that Claimant has become "more receptive to the idea of using the city bus and has done so independently in the recent months." (*Id.*, p. 4.) In Claimant's 2018 Individual Program Plan (IPP), dated August 28, 2018, the IPP planning team concluded that Claimant was unable to safely access public transportation due to the length of time it takes to reach Claimant's place of residence, Lancaster. (Exhibit 4, p. 6.) By that time, Claimant had ended his relationship with DSI and had not sought any assistance for his transportation needs. No transportation goals or programs were identified in the IPP.

9. In a September 25, 2019 meeting with NLACRC, Claimant reported he had been hired by Magic Mountain and needed assistance with transportation to and from work. (Exhibit 5, p. 4.) According to the notes of the meeting, Claimant's request for transportation assistance was the subject of a fair hearing request. (*Ibid.*) No other transportation goals or programs were identified or discussed at the meeting.

10. In a December 18, 2019 meeting with NLACRC, Claimant reported that he had not been hired by Magic Mountain and did not have ACCESS transportation. The Service Agency provided Claimant with an application for ACCESS services.

11. In a March 9, 2020 meeting with NLACRC, Claimant and NLACRC expressly discussed Claimant's ability to access public transportation. Claimant asserted he could not use the public bus because he had been attacked more than once on the bus. (Exhibit 6, p. 2.) Claimant also reported his application to ACCESS had been denied, although he had not appealed the denial or reapplied. In response to Claimant's request, NLACRC agreed to refer Claimant for an assessment of Claimant's mobility skills and transportation needs. NLACRC also informed Claimant that he would be responsible for his transportation to and from a supported employment placement. According to the Progress Notes, Claimant understood he needed to arrange for his transportation to any job he may secure through a supported employment program. (Exhibit 7, p. 3.)

12. On March 27, 2020, several changes were made to Claimant's IPP goals because of his interest in securing a job in the community with the assistance of a supported employment agency and his inability to travel independently. Service Agency and Claimant added a new outcome to the IPP stating that Claimant would "learn to travel safely using public transportation in the community to meet his needs of securing employment and to access the community." (Exhibit 8, p. 1.) To meet this

outcome by the target date of April 7, 2020, to May 31, 2020. NLACRC agreed to fund a three-hour mobility and transportation assessment of Claimant's mobility skills and transportation needs with Roman Empire Living Skills, Inc. (Roman Empire). (*Ibid.*)

ROMAN EMPIRE ASSESSMENT AND SUBSEQUENT SERVICES

13. Roman Empire conducted Claimant's transportation assessment.² Its report, dated April 9, 2020, contained the following findings:

[Claimant] requires assistance in this [transportation] domain. He expects to start a work program at Social Vocational Services in the near future and would like to learn how to travel to-and-from work and home. [Claimant] needs help with completing his ACCESS application and would also benefit from applying for other disability transportation services. Educator will help him obtain a disabled AVTA card. [Claimant] experiences a high level of anxiety when leaving his home. He feels that others will "attack him" or "beat him up" due to previous negative experiences in the community.

[Claimant] lives in a rural community and his commute to and from work would be around 2.5 hours by taking the bus

² Roman Empire also conducted an assessment regarding Job Seeking Skills and Maintenance. (Exhibit E.) However, NLACRC did not seek this assessment or fund such services from Roman Empire.

or 30 minutes by driving. [Claimant] would benefit from understanding how to schedule ACCESS transportation, so that he can get to work in a timely manner. Educator will help him gain confidence when taking public transportation through becoming more familiar with different bus routes and being able to confidently respond to emergency situations that may occur. [Claimant] will also need help with exploring other disability services, such as Dial-A-Ride.

(Exhibit 9, p. 3.)

14. Roman Empire's assessment recommends that Claimant receives 20 hours per month of ILS services to meet the following goals: learn how to safely take public transportation; learn how to safely walk around his community and to cross the street on his own; learn how to respond to emergencies; learn how to give directions to others; improve his confidence in taking public transportation; obtain support for looking up different bus routes on his own; applying for ACCESS transportation; learn how to use Dial-A-Ride services and public transportation independently, and; assist Claimant in applying for reduced fare and disability transportation. (Exhibit 9, p. 3.)

15. Based on Roman Empire's assessment, Service Agency authorized Roman Empire on April 23, 2020, to provide 25 hours of training per month for five months so that Respondent could access and safely travel using public transportation, ACCESS, or any other specialty transportation services. (Exhibits 10, B.) Service Agency required Roman Empire to provide a progress report after three months and a final report at the five-month deadline. Services were expected to start on May 1, 2020.

16. Although IPP Agreements dated June 11 and June 24, 2020, confirm NLACRC's agreement to provide 25 hours per month of ILS transportation training Roman Empire on an ongoing basis, the Agreements note that further resolution is required regarding Claimant's request for specialized transportation services. (Exhibits B and D.)

17. Since May 1, 2020, Claimant reports he has only been able to meet with a Roman Empire educator one time, which was not enough time for Claimant to gain the mobility and transportation skills he requires to travel independently and safely. According to Mr. Jesus Rivera, Claimant's current Case Service Coordinator, Roman Empire had problems locating educators to assist Claimant and their efforts have been complicated by the Covid-19 pandemic, which has made face-to-face training difficult. In addition, when Roman Empire did manage to locate educators, those educators were only available in the evenings and on weekends; the educators were not available to provide services during normal workday hours, the times when Claimant would most likely be available to use transportation services.

18. According to Mr. Rivera, Roman Empire has made efforts to improve its responsiveness. He has also given the Claimant the option to start with a new mobility training provider but Claimant has refused for fear that starting with a new agency will further delay his training. Mr. Rivera indicated that he is closely monitoring the situation and Service Agency will continue to offer Claimant the transportation training until Claimant meets his stated goals.

NLACRC Transportation Service Standards

19. NLACRC Service Standards, adopted by the Board of Trustees on May 9, 2018, and approved by the Department of Developmental Services on November 16,

2018, describe the philosophy, policy, and procedures of NLACRC in providing transportation services. According to the Service Standards, "It is the philosophy of NLACRC that individuals with developmental disabilities have the same access to public and para-transportation services as non-disabled individuals." (Exhibit 24, p. 66.)

20. The Service Standards provide that NLACRC will fund transportation services for adult consumers to primary program sites if the consumer cannot safely access and utilize public transportation or other appropriate personal or public resources. The Service Standards also provide that the consumer, family member, or service provider is responsible for the consumer's transportation to and from work when the consumer is actively employed. According to the Service Standards, NLACRC will grant exceptions to its policies for "unique" individual needs not addressed in the Service Standards. (Exhibit 24, p. 66.)

Parties' Contentions and Testimony

21. NLACRC asserts that Claimant's request for transportation services is premature because Claimant has not yet been accepted into the SVS program nor has he been placed in any job. NLACRC further asserts that it is precluded from providing transportation services to and from Claimant's place of work by its Service Standards and the provisions of the Lanterman Developmental Disabilities Act (Lanterman Act). Ms. Gabriella Eshrati testified in support of NLACRC's assertions.

22. Ms. Eshrati is the branch supervisor for NLACRC. According to Ms. Eshrati, providing travel training to regional center consumers is consistent with NLACRC Service Standards and the Lanterman Act. Ms. Eshrati stated, however, that the regional center is not required to provide transportation to a supported job site. Instead, the regional center expects its consumers to get to and from work on their

own. Ms. Eshрати further testified that a consumer is expected to use generic transportation resources to travel in the community and to a designated job site. She asserted that Claimant had not demonstrated that he cannot access public transportation or that generic resources were unavailable. She also pointed out that if Claimant was accepted into the SVS or DOR programs, those programs could assist Respondent with finding transportation to any job placement.

23. Claimant testified on his own behalf and asserted Service Agency should provide him with transportation services. He explained that being able to travel independently and safely is important to him. He noted that accessing public transportation is difficult from where he lived as the bus stop was two miles away from his home. He also explained that he was afraid of riding the bus because he had been beaten up on the bus several times. As a result, Claimant has had to rely on Mr. Allen for his transportation needs, and Mr. Allen is not always available to take him places. Claimant also expressed his frustration in not being able to participate in the transportation training funded by Service Agency. He acknowledged he had not completed a Dial-A-Ride application or filed a new application for ACCESS services.

LEGAL CONCLUSIONS

1. In enacting the 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.”

(Ibid.)

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 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.” (Welf. & Inst. Code, § 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.” *(Ibid.)*

3. The Lanterman Act mandates “the cost effective use of public resources” (Welf. & Inst. Code, § 4646, subd. (a)) and the “[u]tilization of generic services and supports when appropriate” (*id.*, § 4646.4, subd. (a)(2)) in connection with the provision of services and supports to individuals with developmental disabilities.

4. The IPP process must consider the needs and preferences of the individual and, where appropriate, the family, to determine the services and supports to be funded. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, 4648.) The planning process includes gathering information and conducting assessments. (*Id.*, § 4646.5, subd. (a)(1).) The IPP’s goals and objectives “should maximize opportunities for the consumer to “be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over the consumer’s life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.” (*Id.*, § 4646.5, subd. (a)(2)) Services and supports are to be “flexible and individually tailored to the consumer.” (*Id.*, § 4648, subd. (a)(1).)

5. The Lanterman Act prohibits the funding of private specialized transportation services for an adult consumer who can safely access and utilize public transportation when public transportation is available. (Welf. & Inst. Code, § 4648.35, subd. (a).) If the regional center does fund transportation for a consumer, it is required to fund the "least expensive transportation modality that meets the consumer's needs" as stated in the consumer's IPP. (*Id.*, § 4648.35, subd. (b).)

6. It is premature to determine what kind of transportation assistance, if any, NLACRC is required to provide Claimant. As set forth in Factual Findings 12 through 19, NLACRC, in compliance with the provisions of the Lanterman Act and its Service Standards, has provided transportation training to Claimant. Although the training was delayed for a variety of reasons, Claimant has had at least one session and NLACRC is closely monitoring the service provider to ensure such training proceeds as stated in Claimant's IPP. However, until Claimant completes the training, NLACRC cannot evaluate his ability to safely access and use public transportation as provided in his IPP. Nor has Claimant applied for Dial-A-Ride services or re-applied for ACCESS services, both generic resources that might serve Claimant's transportation needs.

7. Claimant also has yet to secure a supported employment job position. He has not been accepted by either SVS or DOR, and no job placements have been made. Until such time, it cannot be determined the kind of transportation assistance, if any, Claimant would require to go to and from work, and whether SVS or DOR could provide transportation assistance and the nature of such assistance. While the Lanterman Act and the NLACRC Service Standards prohibit the funding of private specialized transportation services for an adult consumer who can safely access and utilize public transportation, Claimant's ability to safely access and utilize public transportation to a specific job site or whether public transportation is available to that

site cannot yet be determined. Thus, the evidence is insufficient to evaluate whether Claimant would qualify for an exemption under the Lanterman Act or NLACRC Service Standards that would permit funding of any specialized transportation service.

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 his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Because Claimant has not identified a supported employment placement or demonstrated an inability to use public transportation or generic resources to travel to any such placement, Claimant has not met his burden.

9. By reason of Factual Findings 2 through 24 and Legal Conclusions 1 through 8, cause does not exist to grant Claimant's appeal.

ORDER

Claimant's appeal is dismissed.

DATE:

CINDY F. FORMAN
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.