

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

In the Matter:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2020100847

DECISION

Paul H. Kamoroff, Administrative Law Judge, Office of Administrative Hearings, called OAH, State of California, heard this matter on December 18, 2020, by videoconference.

Mother and father appeared on behalf of claimant. Claimant was present during the hearing.

Daniel Ibarra, fair hearing specialist, appeared on behalf of the San Gabriel/Pomona Regional Center, Service Agency, called service agency.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 18, 2020.

ISSUE

Whether the service agency should fund a vehicle modification and ramp lift for Claimant's family vehicle?

EVIDENCE

During the hearing, the Administrative Law Judge received Claimant's exhibits A-G; service agency's exhibits 1-10; and witness testimony from Claimant's father and mother.

FACTUAL FINDINGS

Jurisdiction and Background

1. Claimant is a 12-year-old female who is a consumer of the service agency. She is eligible to receive services under the eligibility category intellectual disability.
2. Claimant resides with her adoptive family, including parents and an older sister, within the service agency's catchment area. Parents adopted Claimant in August 2014, when she was five years old.
3. In addition to intellectual disability, Claimant has Spina Bifida, myelomeningocele repaired, neurogenic bladder and bowel, Horseshoe kidney, Chronic reactive airway disease, bilateral club feet equinus contractures, hydrocephalus (treated with a ventriculoperitoneal shunt), Plagiocephaly, obesity, paraplegia, and developmental delays.

4. As a result of her disabilities, Claimant has educational, developmental, and physical delays. She is restricted in her ability to ambulate and requires a wheelchair, catheter, and comprehensive adult assistance.

5. On February 5, 2020, the service agency held an annual Individual Program Plan, called IPP, team meeting for Claimant. An IPP is designed to provide cost effective services to meet the individualized needs of persons with developmental disabilities who, like Claimant, are consumers of the service agency.

6. The IPP team's review of Claimant's daily living skills revealed that she utilizes an adaptive wheelchair and requires adult assistance to go to, get on, and get off the wheelchair. Claimant has no bladder or bowel control, requires adult assistance when toileting, and is catheterized every three hours. Catheterization requires help from Claimant's parents or other qualified adults. Claimant also requires adult assistance to dress from the waist down.

7. Claimant demonstrates emotional problems, including severe anxiety that is overwhelming and which triggers behavioral problems. She is triggered by changes in routine and can display explosive and over-controlling behaviors. During the IPP meeting, Parents agreed to a behavior intervention service agreement, to provide applied behavior analysis (a behavior modification methodology), and to arrange appointments with a behavior consultant.

8. Claimant has an Individualized Education Program, called IEP, through her school district, which provides Claimant a homeschool curriculum. All instruction and IEP services are provided online. The IEP does not provide Claimant transportation or the social and emotional support called for in her IPP.

9. As part of Claimant's IPP, her parents are responsible for transporting Claimant to all medical appointments, and to follow through on doctor's recommendations. The IPP calls for parents to use a generic resource for transportation to medical appointments.

10. Parents were also responsible for locating generic resources for respite.

11. In significant part, the IPP team was concerned regarding Claimant's ability to build relationships and develop appropriate social behavior. It is important for Claimant to engage in such activities to promote positive and healthy emotions. The IPP team agreed that it was important for Claimant's social development and emotional well-being to attend various therapy groups, social community outings, and family outings; each of which required transporting Claimant. For example, the IPP recommended that Claimant continue attending post-adoption support group therapy through Five Acres each week, with additional therapy sessions twice monthly with her mother. Five Acres provides community-based services and therapeutic behavioral services for children who are adopted or in foster care. In addition, the IPP recommended for Claimant to participate in American Heritage Girls, a girls' social group, and to go to the beach with her family, a preferred activity. Participation in family outings were a routine and important part of Claimant's development with her adoptive family.

12. Parents also agreed to provide Claimant opportunities to participate in social recreational activities in their community. The IPP designated that Parents were responsible for providing Claimant transportation for each activity. However, parents reported that they were having difficulty transporting Claimant and requested assistance from the service agency. The service agency responded that parents were responsible for transporting Claimant.

13. By letter on February 22, 2020, parents sent a letter to the service agency requesting a ramp conversion for their family vehicle, to assist the everyday transportation of Claimant.

14. Parents made several upgrades to their house since adopting Claimant, including ramps to the front and side doors of the house, a raised floor in the family room, a tiled walkway and patio for outside access, a bathroom expansion, a shower that can accommodate a wheelchair, and expanded door frames and hallway to accommodate a wheelchair. Parents have spent over \$31, 000 in modifying their home to accommodate Claimant's wheelchair.

15. Parents modified their home to provide Claimant an environment where she could move about and feel fully integrated with her adopted family. Parents exhausted their savings and requested that the service agency support their acquisition of the ramp conversion for the family vehicle, to extend Claimant's familial inclusion past the confines of their home. Parents recently replaced a 17-year-old van with a ramp with a new van that has no ramp, and requested help from the service agency in funding the ramp conversion for the new vehicle. Enclosed with Parents' letter were two separate estimates for the van conversion. The lesser of the two estimates was from Mobility Specialists, Inc., totaling \$20,900.

16. In an Exceptional Service Review Committee Note dated September 22, 2020, the service agency denied Parents' request, alleging that it was not medically necessary. The service agency recommended that Parents obtain transportation assistance through generic services.

17. On September 30, 2020, the service agency sent Claimant's parents a notice of proposed action denying their request for a vehicle modification and ramp

lift. Claimant timely appealed the denial on October 9, 2020. The service agency filed the present complaint with OAH on October 16, 2020.

18. Parents each testified during the hearing. They are loving and dedicated adoptive parents to Claimant. Claimant's father has recently retired, and her mother is a homemaker. Parents subsist on a fixed income with limited financial resources.

19. Parents require financial assistance to modify their new van so that it can accommodate Claimant and her wheelchair. Being able to transport Claimant to therapy services, social community programs, and family outings are important to Claimant and her parents. It is also called for in Claimant's IPP.

20. In addition, Claimant requires transportation to frequent medical appointments. Claimant is under the care of seven medical experts, including a neurologist, orthopedic doctor, urologist, nutritionist, phycologist, Spina Bifida specialist, and general pediatrician. Each doctor or therapist requires monthly visits, which require Claimant's parents to transport her to and from the appointments.

21. Claimant also requires transportation to weekly occupational therapy and physical therapy sessions.

22. Parents do not receive support from In-Home Supportive Services and have exhausted their family resources and finances modifying their home to accommodate Claimant and her wheelchair. Parents receive little assistance through the IPP, and believe that it is appropriate for the service agency to now help cover the costs of the vehicle modification and ramp lift.

23. The only generic resource available to Claimant regarding transportation is an Access pass, called Access. Access is a discounted or free transportation service

available to people with disabilities. For Claimant, Access operates as a group ride-sharing service. Parents described the service as untenable to meet Claimant's needs. For example, the service makes frequent and off-route stops, thereby taking several hours to drive to locations that normally require 30 minutes or less of driving time. Additionally, Access does not go directly to specific destinations, and will normally deliver riders several blocks from their desired destination. Due to its lengthy and unpredictable arrival times, and inability to go directly to a necessary location, Access is not a reliable service to transport Claimant to scheduled medical, therapy, or social community appointments. The lengthy and unpredictable drive times also impact Claimant's ability to use and change her catheter as needed. Moreover, Access only permits one individual to accompany a disabled rider, which is difficult for Claimant, as she is a young woman with feminine and toileting needs that require the assistance of her mother. However, Claimant weighs approximately 170 pounds and is too heavy for her mother to lift and care for by herself. Claimant requires the assistance of both parents to lift her into and out of the wheelchair, to change her catheter, and to dress. The nature of the Access service and its requirement that a disabled rider can only be accompanied by one individual precludes Claimant from using Access for medical appointments, therapy sessions, social community programs, and family outings.

24. Parents persuasively testified that no other generic resources exist to assist Claimant in the area of transportation. As a result, Claimant is confined to her home pending the vehicle modification. The service agency failed to present any evidence during the hearing that contradicted parent's testimony.

LEGAL CONCLUSIONS

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. 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, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The Department of Developmental Services is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. In enacting the Lanterman Act, 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.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.)

4. The “services and supports” provided to a consumer include “specialized services and supports . . . directed toward the alleviation of a developmental disability . . . or toward the achievement and maintenance of independent, productive, and normal lives” (Welf. & Inst. Code, § 4512, subd. (b).) The services and supports necessary for each consumer are determined through the IPP process. (Welf. & Inst. Code, §§ 4512, subd. (b), 4646.)

5. If a generic agency fails or refuses to provide a regional center consumer with those supports and services which are needed to maximize the consumer’s potential for integration into the community, the Lanterman Act requires the regional centers fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

6. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, §115.) As the petitioning party, Claimant had the burden of proving that the service agency should fund her family’s vehicle modification and ramp lift.

7. Claimant met her burden of proving she had an unmet need for transportation that could only be met by modifying her family’s vehicle. Claimant is severely disabled and requires significant adult assistance for mobility, dressing, and changing her catheter. (Factual Findings 4, 6 and 23.) Claimant’s ability to access medical appointments and social community programs are goals in Claimant’s IPP. (Factual Findings 9-12 and 20.) Generic transportation services, including Access, are insufficient to meet Claimant’s medical and social needs. (Factual Findings 23 and 24.) Consequently, a gap occurred in the services necessary to maximize Claimant’s potential for integration into the community and to meet the goals set forth in her February 2020 IPP. (Factual Findings 19-24.) By the above authority, the service agency is obligated to fill that gap.

8. During the hearing, the service agency did not dispute Claimant's level of disability or need for transportation services for Claimant to attend medical appointments and social community programs, consistent with her IPP. (Factual Findings 24.) The service agency also failed to dispute the failure of generic resources to meet Claimant's transportation needs. (*Id.*)

9. Based upon the foregoing, Claimant proved by a preponderance of evidence that the service agency should fund the family's vehicle modification and ramp lift.

ORDER

Within 30 days of receipt of this Decision, the San Gabriel/Pomona Regional Center, service agency, shall fund a vehicle modification and ramp lift for Claimant's family vehicle, at an amount not to exceed \$20,900.

DATE:

PAUL H. KAMOROFF

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.