

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH Nos. 2021010057 and 2021010058

DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard the above-entitled matters by videoconference on March 1, 2021. The parties agreed the ALJ would issue one decision for both matters.

Claimant was represented by his mother (Mother).¹

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

¹ Claimant and his family members are identified by titles to protect their privacy.

Oral and documentary evidence was received. The record was held open until March 5, 2021, for Mother to submit transportation records she referred to at the hearing as Exhibit N, and for both parties to submit written closing briefs. Service Agency timely submitted its closing brief, which was marked and admitted as Exhibit 11. Mother timely submitted her closing brief, which was marked and admitted as Exhibit O. Mother also submitted a written statement and emails indicating Service Agency was unable to provide records of billed services for transportation. The written statement and emails were collectively marked and admitted as Exhibit N.²

At the hearing, Service Agency presented signature pages and attachments for claimant's individual program plan (IPP), which were marked and admitted as Exhibit 7. Exhibit 7 also included an incomplete copy of the IPP. During the hearing, at the ALJ's request, Service Agency filed a complete copy of the IPP (35 pages). The complete copy of the IPP is hereby marked and admitted as Exhibit 10.

The record closed and the matter was submitted for decision on March 5, 2021.

ISSUES

The parties agreed the following issues are presented for decision:

² Mother's written statement also included a request for an audit of all services provided to claimant, with dates of service, purchase of service, and transportation authorizations for all locations. The ALJ has no jurisdiction in this fair hearing to consider Mother's request for an audit. The request is denied.

OAH Case No. 2021010057

1. Should Service Agency be required to adjust the rate from per day to per mile for claimant's transportation auto driver service provided by Mother?
2. May Service Agency terminate claimant's transportation auto driver service?
3. Should Service Agency be required to fund claimant's transportation auto driver service pursuant to the Medi-Cal DD Waiver Program?

OAH Case No. 2021010058

4. Should Service Agency be required to fund general anesthesia and sedation for dental work claimant may need in the future if his private insurance does not provide coverage?
5. Should Service Agency be required to include such preapproval in claimant's IPP?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-11; claimant's exhibits A-O.

Testimonial: Monica Romero, SGPRC Manager of Family Services; Dara Mikesell, SGPRC Associate Director of Community Services; Nancy Ojeda, SGPRC Service Coordinator; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a three-year-old boy who is eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), based on his diagnosis of Autism Spectrum Disorder.

2. By a letter dated December 17, 2020, and a Notice of Proposed Action (NOPA) dated November 16, 2020, Service Agency notified Mother of its decision to deny her request to adjust the reimbursement rate for claimant's transportation auto driver service and to terminate the service. On December 22, 2020, Mother filed a fair hearing request to appeal Service Agency's decision.

3. By a letter dated December 14, 2020, and a NOPA dated December 9, 2020, Service Agency notified Mother of its decision denying her request to fund general anesthesia and sedation for dental work claimant might need in the future, and her request for such preapproval to be written in claimant's IPP. On December 22, 2020, Mother filed a fair hearing request to appeal Service Agency's denial of her requests.

Claimant's Background

4. Claimant lives at home with Mother, his father, his two older brothers (ages 14 and 15), and his sister (age 5). Claimant's father works outside the home. Mother is the primary caregiver for claimant and his siblings.

5. Prior to age three, claimant received early intervention services from Service Agency under the Early Start program, which provides services to eligible

infants and toddlers from birth up to age three.³ Claimant turned three years old on June 24, 2020. At that time, his case transitioned from SGPRC's Early Intervention Unit to the Family Services Unit, which handles cases for families with children ages three through 13 who are eligible for services under the Lanterman Act.

6. Nancy Ojeda was assigned as claimant's service coordinator in the Family Services Unit. On July 1, 2020, Ms. Ojeda contacted Mother to introduce herself and to request a date and time for holding the initial IPP meeting for claimant. During this conversation and ensuing conversations, Mother indicated she wanted to wait for assessments to be completed before holding the IPP meeting. Mother also indicated she needed more information on the IPP process so she could be well prepared for the meeting. Service Agency offered Mother a variety of supports to learn more about the IPP process, including a training session with SGPRC's Outreach Specialist. Eventually, a planning team meeting to develop claimant's initial IPP was held on September 28, 2020. Mother signed the IPP in February 2021.

7. Regarding transportation services, the IPP states: "Due to financial hardship consideration, [Service Agency] will begin temporarily funding for mileage reimbursement via auto driver for [Mother] to drive [claimant] to his OT, Speech and PT therapies offered through Kaiser Permanente.⁴ Parent would like to ensure alternative transportation will be available for [claimant], should she not be available to provide it. She prefers In Motion to provide alternative transportation, if available."

³ See California Code of Regulations, title 17, section 52020.

⁴ OT stands for occupational therapy. PT stands for physical therapy.

Transportation Auto Driver

8. "Transportation Auto Driver" is a service designated by regulation as Service Code 890 and defined as follows: "A regional center shall classify a vendor as transportation auto driver if the vendor provides the transportation to authorized services identified in the consumer's IPP and the vendor: [¶] (A) Is an individual who is actually providing the transportation service; [¶] (B) Possesses a valid California driver's license; and [¶] (C) Has evidence of maintenance of adequate insurance coverage." (Cal. Code Regs., tit. 17, § 54342, subd. (a)(82).)

9. Under SGPRC's Purchase of Service Policy (POS Policy), transportation for children living at home is considered a parental responsibility. The POS Policy provides that Service Agency does not purchase transportation for children living at home unless the family provides sufficient documentation to demonstrate they cannot provide or arrange transportation. The POS Policy states:

For minors living at home, the regional center shall take into account the family's responsibilities for providing transportation services similar to those provided for a child without disabilities. Parents, legal guardians, or care givers are expected to provide for routine transportation, such as to medical appointments, from afterschool programs, to and from Saturday programs, and to and from programs during times when public schools are not in session. The regional center may provide transportation to the above services if the family provides sufficient documentation to demonstrate they cannot provide or arrange transportation.

(Exh. 9, p. 36.)

10. The POS Policy allows Service Agency to “purchase transportation for under school-age children to a required early intervention service or program other than a public school as required by Early Start program regulations.” (Exh. 9, p. 36.)

Auto Driver Rate Adjustment

11. On June 16, 2020, eight days before claimant’s third birthday, Mother requested Service Agency to continue providing transportation services so he could continue attending his therapy appointments. (Exh. 8, p. 1.) Service Agency notified Mother transportation would not be provided after claimant’s third birthday because it was provided to assist claimant in attending services under the Early Start program. (*Id.*) Service Agency also notified Mother “[f]amilies with school aged children 3-22 are not eligible for auto driver vendorization.” (*Id.*)

12. On June 29, 2020, Monica Romero, Manager of the Family Services Unit, spoke by telephone with Mother regarding claimant’s case. During this phone conversation, Mother asked about the status of her request for auto driver services. Mother explained she requested auto driver services because in-person therapy sessions would be starting at any time and she wanted the service to start prior to the development of claimant’s IPP. Mother further explained the basis of her request as follows:

She [i.e., Mother] shared that she believes she has a financial hardship as only one parent works and she has a large family, transportation options are limited due to covid, and she has been overwhelmed with the mileage that was being incurred. Some of her son’s services were

proposing to restart sessions in clinic now (sometime next week possibly). She requested to begin the vendorization process for this.

(Exh. 8, p. 4.)

13. On July 1, 2020, Ms. Romero spoke by telephone with Mother to discuss her transportation request. During this conversation, Ms. Romero advised Mother of SGPRC's POS Policy and that transportation for minor children was considered a parental responsibility. Nonetheless, as an exception due to financial hardship, Service Agency agreed to "authorize auto driver temporarily, but there would be a review of needs at IPP and that services should be provided by generic resources, when available." (Exh. 8, p. 5.) Mother agreed to request transportation services through her medical insurance with Kaiser Permanente. Mother was informed and understood she would need to complete the vendorization process before the auto driver service could be provided. Mother also understood the service was being provided on a temporary basis.

14. By letter dated July 8, 2020, Service Agency notified Mother that her "request for vendorization for Transportation-Auto Driver (Service Code 890) has been approved effective July 6, 2020." (Exh. B, p. 2.) The letter also notified Mother of her vendor number for this service.

15. On October 30, 2020, Mother signed a Payment Agreement with Service Agency regarding the auto driver service she would be providing for claimant. The Payment Agreement provided a rate of payment of \$13.20 per day, roundtrip. The Payment Agreement stated: "The provider [i.e., Mother] agrees to accept the rate of payment for the service named above as payment in full." (Exh. 3.) The Payment

Agreement was signed by Dara Mikesell on behalf of Service Agency on November 2, 2020.

16. Dara Mikesell is the Associate Director of Community Services. Her duties include overseeing the vendorization process and transportation services.

17. Ms. Mikesell testified the \$13.20 daily rate set forth in the Payment Agreement is based on the rate set by the California Department of Developmental Services (DDS) for transportation. The DDS daily (per day) rate corresponds to zones, not mileage. The zones are one-way distances of travel. For example, the rate shown in the Payment Agreement is based on the Zone 2 rate. Zone 2 corresponds to one-way travel distances of 7.1 to 15 miles. Service Agency was informed the one-way travel distance for claimant's therapy appointments was 11 miles. Ms. Mikesell testified the one-way rate for Zone 2 is \$6.60. For a roundtrip, the rate is doubled to \$13.20, which is the roundtrip rate shown on the Payment Agreement.

18. Starting around mid-November 2020, email communications ensued between Mother and Service Agency regarding the rate of payment for claimant's auto driver service. Mother requested the rate of payment should be stated as 88 cents per mile instead of \$13.20 per day, roundtrip. Mother calculated 88 cents per mile by dividing the \$13.20 daily rate by 15 miles (the maximum Zone 2 distance). Mother claimed the roundtrip distance for claimant's therapy appointments was 22 miles, which she felt should be reflected in the Payment Agreement. Ms. Mikesell agreed to authorize the higher zone rate of \$19.36 per roundtrip. (Exh. F.) Ms. Ojeda informed Mother that Service Agency would authorize the higher zone rate of \$19.36 per roundtrip for claimant's auto driver service.

19. Mother interpreted the higher zone rate of \$19.36 as Service Agency's agreement to change her auto driver rate to 88 cents per mile, which she calculated by dividing \$19.36 by 22 miles. In Mother's November 19, 2020 email to Ms. Ojeda, Mother reiterated she wanted her auto driver rate to be per mile, not per day, in order to have flexibility to bill for the actual miles traveled.

20. On November 19 and 20, 2020, Ms. Mikesell and Mother exchanged multiple emails regarding Mother's request to adjust her auto driver rate to 88 cents per mile. (See Exh. G, pp. 2-5.)

21. In her emails to Mother, Ms. Mikesell explained the basis for the auto driver rate. Ms. Mikesell's email sent on November 19, 2020, explained:

The mileage rate for Auto Driver is .44 per mile. This is a set rate and we do not have the ability to increase it. The one-way mileage of \$6.60 allows for transportation mileage up to 15 miles from the program site (one way only) to the destination. If the route takes 12 miles due to a[n] unforeseen circumstance instead of the normal 11 miles, you are still covered within that 15 miles. If the need changes and the mileage is greater than 15 miles you can address the issue with Nancy [Ojeda] and she can address that need accordingly.

Currently there is no other rate methodology available and the rate of .44 per mile is the set rate for all of our auto drivers. As this service requires you to become a vendor, vendor rates are either set by the DDS or regulated by DDS

which prohibit the ability to adjust to a higher amount. We are regularly audited by DDS to ensure we are following these rates.

(Exh. G, p. 5.)

22. In an email on November 19, 2020, Mother asserted Ms. Mikesell had agreed to change the rate to 88 cents per mile with a daily rate of \$19.36. (Exh. G, p. 4.) Ms. Mikesell responded there was no agreement to change the rate to 88 cents per mile. When Mother continued to insist the rate in the Payment Agreement was set at 88 cents per mile, Ms. Mikesell responded with an email sent on November 20, 2020, which stated:

I'm not sure where the .88 per mile is coming from as there is no option for that rate. The \$19.36 is a round trip rate for anything over 15 miles and there is no option for anything higher. For example, if your round-trip route is 20 miles or 100 miles [,] it will remain at the \$19.36 round trip rate. This rate was offered to you, but you declined.

The rate of \$6.60 was given to you for one-way mileage since your one-way mileage is under 15 miles. You expressed concern that your mileage may exceed the 11 miles but with this rate [it] gives you up to 15 miles as a buffer. You declined this option as well.

I am prohibited, based on regulatory requirements to offer any rate higher than the rates offered above.

(Exh. G, pp. 2-3.)

23. At hearing, Ms. Mikesell testified the rate schedule used by Service Agency to determine the rate for transportation services is not accessible to the public. Ms. Mikesell testified Service Agency cannot adjust rates that have been established for certain services, including the rate for auto driver. Ms. Mikesell testified the DDS rate for transportation is subject to a rate freeze that has been in effect for 12 years and has not been lifted. Mother has not provided any justification for a health and safety exemption. Ms. Mikesell sent a letter to Mother dated December 1, 2020, explaining the basis for Service Agency's denial of her request for a rate adjustment pursuant to Welfare and Institutions Code section 4648.4. (Exh. 4.) The letter stated, in part: "We acknowledge your concerns regarding the auto driver rate you agreed to accept. As stated above, the Regional Center cannot adjust rates that were established before or on June 30, 2008 that includes the auto driver rate you are currently assigned and agreed to accept." (*Id.*)

24. In its denial letter to Mother dated December 17, 2020, Service Agency summarized the basis for the denial of her request for a rate adjustment, as follows:

You were vendored for auto-driver on 7/6/20, but due to the pandemic, there were no in-clinic therapies until 10/20/2020. At that time, you were informed of the rate at which you would be reimbursed for taking [claimant] to his therapies. On 11/15/20 you stated in writing that you disagreed with the rate offered to you and requested a higher rate. You spoke to several members of SGPRC leadership team on this matter. Your request is denied. Auto Driver is a service type with an established rate

applicable to all entities within that category and the existing rate is not appealable as it is frozen pursuant to WIC Section 4648.4(b). [¶] Based on assessment and review of [claimant's] transportation delivery needs, SG/PRC does not support a health and safety exemption request.

(Exh. 1, p. 1, underlining in original.)

25. Mother contends Service Agency should be required to adjust the rate for her auto driver service. Mother contends the roundtrip distance for claimant's OT and PT appointments is 22 miles, which exceeds the allotment of 15 miles in the Payment Agreement and should be corrected. Mother feels a flat rate of \$13.20 per day should not be imposed because claimant may have multiple trips in one day for his therapies, but the total reimbursement for the day would not exceed \$13.20. However, according to Ms. Mikesell, if claimant had, for example, two round trips in the same day, Mother would be paid \$13.20 for each trip. Mother contends that, prior to the COVID-19 pandemic, she was driving over 400 miles per month to transport claimant to his therapy appointments. Mother contends the family is unable to provide or arrange claimant's transportation due to the financial impact of having to drive 400 miles per month for his appointments.

26. At the hearing, when the ALJ gave Mother the opportunity to address the health and safety exception under Welfare and Institutions Code section 4648.4, subdivision (b), Mother responded she had nothing to say about the rate being needed for claimant's health and safety.

27. Mother contends the auto driver rate is a negotiated rate between herself and Service Agency and not subject to review or approval by DDS, based on

California Code of Regulations, title 17, section 58540. She contends Service Agency has not allowed her to negotiate the rate for her auto driver service. Mother contends the Payment Agreement references a negotiated rate. The Payment Agreement states: "The provider [i.e., Mother] affirms that, if applicable, during the rate negotiation SG/PRC provided information about the applicable median rates (W&I 4689.8(b))." (Exh. 3.) Mother contends Service Agency has not provided her with information regarding the "applicable median rate" as required under section 4689.8, subdivision (b).

Termination of Auto Driver Service

28. Service Agency contends the temporary funding of claimant's transportation services should be terminated. Service Agency contends claimant is not eligible for transportation services under the POS Policy and Welfare and Institutions Code section 4648.35, subdivision (d), both of which provide that a regional center shall not fund transportation for a child living in the family home unless the family provides sufficient documentation demonstrating it is unable to provide transportation for the child. Service Agency notes Mother has been providing transportation services for claimant, which demonstrates she is able to transport claimant. Mother submitted a letter of financial hardship due to the expense of driving claimant to all of his therapy appointments, which Mother claimed required 400 miles per month of driving. Ms. Romero and Ms. Ojeda testified no financial documentation to support the letter of financial hardship was submitted by Mother, nor any other documentation to justify Service Agency making an exemption for claimant's transportation.

29. Mother testified that, from July 2020 to October 2020, claimant's therapies were provided remotely, by telehealth, which did not require driving. Service Agency's records show Mother provided auto driver services one time in October 2020

and four times in November 2020 and was paid a total of \$66 for the five trips. (Exh. N.) Mother feels the auto driver service should not be terminated because transportation will be needed once claimant's therapies resume in-clinic appointments.

30. Mother contends the auto driver service (service code 890) is available to claimant under the DD Waiver Program. The DD Waiver Program refers to a program under the Medi-Cal Home and Community Based Services Waiver Program. (See Exh. L.) Medi-Cal is a public program that provides health care services to Californians who are low-income or have disabilities. The DD Waiver Program may be a source of funding for services provided by regional centers. Regional center consumers receiving Medi-Cal may be eligible for the DD Waiver Program if a waiver slot is available. The DD Waiver Program allows the state to waive some federal rules that usually apply to the Medi-Cal program. The services available under the DD Waiver Program include Transportation Auto Driver, Service Code 890. (Exh. M, p. 4.)

31. At hearing, the respective testimonies of Ms. Romero and Ms. Ojeda established that all service requests, regardless of whether or not the consumer is under the DD Waiver Program, must be evaluated and considered through the IPP process and the requirements of the Lanterman Act and SGPRC's POS Policy. Service Agency contends claimant does not meet the requirements under the Lanterman Act or SGPRC's POS Policy for transportation funding.

Pre-Approval for Dental Sedation

32. In or about December 2020, Mother requested that if and when claimant requires sedation for a dental procedure, and if his insurance denies funding for sedation, Service Agency should fund the sedation. Mother requested claimant's IPP include a statement that Service Agency approves the funding now and not if or when

the need for sedation may arise in the future. Mother asked for preapproval because she feels the process for making a future request may delay claimant receiving treatment. Service Agency denied Mother's request. The denial letter explains: "The IPP reflects current known needs of [claimant], it cannot guarantee services in the future for unknown and non-specific situations. If [claimant] requires dental treatment with sedation in the future that is denied by his insurance providers, [Mother] should notify [claimant's] service coordinator. Regional Center may then consider the specific request and related need at that time to determine whether funding is appropriate." (Exh. 6.)

33. Ms. Romero testified that for any service request, Service Agency determines the available funding sources to provide the service. If there is a request for dental sedation, Service Agency has a dental coordinator to review available resources and make recommendations. A request for dental sedation must be considered through the IPP process. Ms. Romero explained that funding for a possible future need, as Mother requests here, is not included in an IPP because Service Agency cannot guarantee the funding. SGPRC's dental coordinator and dental clinic determines available resources and makes recommendations on how to support consumers' dental needs.

34. Ms. Ojeda testified she has not had a case where preapproval for dental sedation was requested and placed in an IPP. Ms. Ojeda explained that an IPP is snapshot providing a present view of what the child can do at the time of the IPP meeting. Ms. Ojeda noted an IPP includes discussion of the child and family's hopes for future but not preapproval for potential future needs. Ms. Ojeda testified Mother has been referred to SGPRC's dental clinic. Ms. Ojeda testified if claimant has an

urgent emergency need as Mother hypothesizes, Service Agency can provide an expedited response.

35. Mother testified regarding her request for preapproval for dental sedation. Claimant's family has private dental insurance. Mother testified regional center funding is required only if the family's private insurance denies coverage. Mother recounted that, on a prior occasion, claimant had a dental treatment in 2020 that required sedation. Claimant's private insurance covered sedation only in a hospital. Although Medi-Cal typically does not cover dental sedation, Mother requested and obtained an exemption from Medi-Cal to cover the sedation. The exemption was granted due to the COVID-19 pandemic. Mother testified she is trying to avoid any delay in claimant receiving treatment. To be proactive, Mother requests preapproval for regional center funding of sedation to be included in the IPP, in case claimant has a dental treatment that requires sedation for which private insurance and Medi-Cal deny coverage.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Act governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)⁵ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and

⁵ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-3.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (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.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) In this case, claimant has the burden of proving by a preponderance of the evidence that he is entitled to the requested services and funding. (Evid. Code, § 500.)

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) 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).) While a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible desire but must provide a cost-effective use of public resources.

4. Pursuant to section 4646.4, subdivision (a), when purchasing services and supports for a consumer, a regional center shall ensure the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

5. Pursuant to section 4659, regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, including Medi-Cal, and private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. (§ 4659, subd. (a)(1), (2).)

6. Pursuant to section 4646.5, subdivision (b), "[f]or all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in section 4646, as necessary, in response to the

person's achievement or changing needs, and no less often than once every three years." If the consumer or consumer's family requests an IPP review, the IPP "shall be reviewed within 30 days after the request is submitted." (*Ibid.*)

7. Section 4648.35, subdivision (d), provides: "A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child."

8. Section 4648.4, subdivision (b), provides in pertinent part:

(b) Notwithstanding any other provision of law or regulation, except for subdivision (a), no regional center may pay any provider of the following services or supports a rate that is greater than the rate that is in effect on or after June 30, 2008, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization: [¶ . . . ¶] (2)
Transportation, including travel reimbursement.

9. The exception under section 4648.4, subdivision (a), provides that the rates for the services listed in section 4648.4, subdivision (b), which includes transportation, "shall be increased by 3 percent, subject to funds specifically appropriated for this increase in the Budget Act of 2006"; "[t]he increase shall be

applied as a percentage, and the percentage shall be the same for all providers”; and “[a]ny subsequent change shall be governed by subdivision (b).”

Analysis

10. Regarding Issue 1, Service Agency shall not be required to adjust Mother’s transportation auto driver rate from per day to per mile. (Factual Findings 11-27.) The rate was established by DDS and has been subject to a rate freeze which has not been lifted. (§ 4648.4, subd. (a).) The auto driver rate set by DDS is the maximum rate a regional center may pay to all vendored auto driver providers.

11. Pursuant to section 4648.4, subdivision (b), Service Agency may not pay a vendor of transportation services “a rate that is greater than the rate that is in effect on or after June 30, 2008” except in two circumstances. The first circumstance is when “the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008.” That circumstance does not exist in claimant’s case. Mother and Service Agency had no contract in effect on June 30, 2008. Mother did not become vendored until July 2020, and she did not sign the Payment Agreement with Service Agency until October 2020. The second circumstance is when “the regional center demonstrates that the approval is necessary to protect the consumer’s health or safety and the department [i.e., DDS] has granted prior written authorization.” Mother presented no evidence or argument that an adjustment to her auto driver rate is necessary to protect claimant’s health or safety. The second circumstance was not established.

12. Mother contends the auto driver rate is a negotiated rate between herself and Service Agency and not subject to review or approval by DDS. She relies on California Code of Regulations, title 17, section 58540. Mother’s contention is without

merit. Section 58540 is not applicable to claimant's case because it pertains to negotiated rates for transportation services for providers vendored under service code 875 (transportation companies), service code 880 (transportation – additional component), and service code 883 (transportation broker). Mother is vendored as an auto driver under service code 890. Furthermore, Mother cannot avoid the rate provisions of section 4648.4 by relying on contradictory laws or regulations. The provisions of section 4648.4, subdivisions (a) and (b), apply "[n]otwithstanding any other provision of law or regulation."

13. Mother also contends Service Agency did not allow any rate negotiation and did not provide her with information regarding the "applicable median rate" as required under section 4689.8, subdivision (b). This contention is also without merit. Section 4689.8 is not applicable to claimant's case because it pertains to rates that may be negotiated and paid to providers of supported living services, which are services to assist consumers who are at least age 18 to live independently in their own home. (Cal. Code Regs., tit. 17, §§ 58613, 58614.) Furthermore, the Payment Agreement signed by Mother specifies section 4689.8, subdivision (b), is considered only "if applicable," which it is not in claimant's case.

14. Regarding Issue 2, Service Agency may properly terminate claimant's transportation auto driver service. (Factual Findings 28-29.) The preponderance of the evidence established claimant is not eligible for transportation funding under SGPRC's POS Policy and section 4648.35, subdivision (d). Mother is able to provide claimant's transportation to his therapy appointments, which she had been doing prior to the COVID-19 pandemic. Mother has not provided Service Agency with sufficient documentation to justify Service Agency making an exemption for claimant's

transportation. If and when claimant's therapy appointments resume in-person, claimant's need for transportation will be reviewed through the IPP process.

15. Regarding Issue 3, Service Agency is not required to fund claimant's transportation auto driver service pursuant to the Medi-Cal DD Waiver Program. (Factual Findings 28-31.) The DD Waiver Program provides a possible source of funding for claimant's transportation services under section 4659, but only if he first meets the requirements under the Lanterman Act and the POS Policy to receive transportation services. Claimant does not meet those requirements.

16. Regarding Issues 4 and 5, Service Agency properly denied Mother's funding request for general anesthesia and sedation for dental work claimant may need in the future, in the event the family's private insurance does not provide coverage. Claimant does not have an actual, existing need for dental sedation at this time. The scenario Mother seeks to address by her request is speculative. Claimant has dental coverage through insurance. There is no provision in the Lanterman Act that allows Service Agency to provide the funding preapproval for dental sedation requested by Mother. As such, Mother's request to include such preapproval in claimant's IPP is moot. (Factual Findings 32-35.)

17. Based on the foregoing, claimant's appeals shall be denied as set forth in the Order below. (Factual Findings 4-35; Legal Conclusions 1-16.)

ORDER

1. Claimant's appeal in OAH Case No. 2021010057 is denied. Service Agency is not required to adjust the rate for claimant's auto driver service from per day to per mile and may terminate the service.

2. Claimant's appeal in OAH Case No. 2021010058 is denied. Service Agency is not required to provide funding preapproval for general anesthesia and sedation for dental work claimant may need in the future that is not covered by private insurance.

DATE:

ERLINDA G. SHRENGER

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.