

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

In the Matter of the Fair Hearing Request Regarding:

CLAIMANT,

vs.

REGINOAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2021020282

DECISION

Deena R. Ghaly, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 23, 2021 via videoconference.

Fair Hearing and Mediation Manager Paula Noden appeared for Regional Center of Orange County (Regional Center or RCOC). Claimant's mother and father (Mother and Father) appeared for Claimant, who was not present. (Claimant and his parents are referred to by title to preserve their privacy.)

Testimony and documentary evidence was received. The record was closed, and the matter was submitted for decision on the hearing day.

ISSUE

Should RCOC fund home gym equipment and a driving assessment for Claimant?

FACTUAL FINDINGS

Background and Requests for Supports and Services

1. Claimant is 24 years old and an RCOC consumer based on his diagnosis of autism spectrum disorder. As a regional center consumer, Claimant receives RCOC's assistance in securing services and supports intended to maximize his independence and integration into mainstream society.

2. Regional centers establish the services and supports to be provided to a consumer through a planning process resulting in an agreement known as an Individual Program Plan (IPP). According to Claimant's current IPP, he receives respite care, independent living skill training, and parent support to help the family navigate receipt of generic supports available to Claimant. The IPP states that among his goals, Claimant wants to live independently in his own home, be employed, and learn to drive. (Exh. 4, p. 2/14.)

3. When he is distressed, Claimant is prone to self-stimulation including injurious behavior such as plucking at his eyebrows and eye lashes. When he is frustrated or angry, Claimant is prone to emotional outbursts. These behaviors have increased because of the isolation and limits to his daily routines resulting from the ongoing pandemic.

4. Claimant resides with his parents. Mother was recently diagnosed with cancer and is receiving chemotherapy treatment. Her immunity is compromised, and all family members are taking extra precautions to limit her exposure to pathogens, including the COVID-19 virus. Mother's illness has also limited her ability to assist Claimant as she has in the past. Father is the family breadwinner. His working day lasts an average of ten hours, so he too is limited in assisting Claimant.

5. A. Claimant's uncle (Uncle) serves as Claimant's respite care worker as well as his informal job coach. Uncle holds a Ph.D. in biochemistry and biology and is the senior director of vaccine development at a pharmacology company. Due to the pandemic, he works almost exclusively from his home and so can spend most of his day with Claimant.

B. Uncle has helped Claimant identify job opportunities and conducted mock interviews with him. Together, they attended a virtual work fair for neuro-diverse job seekers organized by Stanford University. Some of the job possibilities Uncle and Claimant identified include working for a conservation group that surveys land to create mapping grids. The grids are then used to find animals the group monitors. Such jobs would require that Claimant drive company vehicles during his workday in remote areas.

6. While assisting Claimant, Uncle noticed that Claimant loses focus frequently. To address this, Uncle directed Claimant to take short exercise breaks, using home gym equipment in Uncle's home. Uncle noticed that after a few minutes lifting weights or similar activities, Claimant was able to return to the task at hand. Claimant had also incorporated exercise sessions into his routine when he was in school. According to Mother and Father, these sessions were instrumental in keeping

Claimant focused and productive in his academic endeavors, as well as improving his health.

7. A. Mother testified that, in her experience, the complications of using public transportation exacerbate Claimant's symptoms, sometimes causing him to give up on various plans or missing opportunities. For instance, the Access service, designed for disabled commuters, requires making reservations in advance and only provides rides to designated areas, which are not always convenient for reaching Respondent's ultimate destination. The multiple steps involved in reaching a particular destination or just getting sufficiently close to it have been more than Claimant could tolerate. Mother also stated that she had been able to assist Claimant with his transportation needs but her health condition and many medical treatments now prevented her from doing so.

B. Regarding Claimant's opportunities to exercise, Mother maintained that a local gym where Claimant used to regularly visit, is not now available because of pandemic restrictions. Mother also stated Claimant fears being out in public generally because he fears anti-Asian discrimination, which has increased since the onset of the pandemic.

8. St. Jude Center for Rehabilitation and Wellness provides a driver's assessment program for disabled individuals. According to its brochure, the assessment is appropriate for former drivers who have suffered an illness or injury such as a stroke or head trauma as well as disabled individuals who have never driven before, requires a physician's prescription, is generally not covered by health insurance, and, with a customarily awarded discount, costs \$560. (See Exh. D., p. 8.) Claimant and his family have not provided a prescription for the assessment to RCOC, and did not submit one at the hearing.

9. The family has researched the cost of buying home gym equipment comparable to the equipment Claimant has used in the past. The total cost of the equipment, comprised of a barbell squat rack, barbells, and weight plates, total \$748.44. (See Exh. A.) A note from Claimant's primary doctor, John Le, states that home gym equipment should be considered for Claimant to help with his increased anxiety and obsessive-compulsive disorder symptoms during the pandemic. (Exh. B.) The parents also submitted medical records which show Claimant has elevated cholesterol and is overweight.

Regional Center's Position

10. On February 23, 2021, Mother and Father met with RCOC personnel to discuss the requests for home exercise equipment and the driver's assessment. RCOC's final decision regarding these requests was set out in its March 1, 2021 Notice of Proposed Action (NOPA).

11. A. The NOPA stated the RCOC denied the driving assessment request:

Regional centers are directed by the Lanterman Act to provide needed supports and services that are specialized and directed toward the alleviation of a developmental disability, per Welfare and Institutions Code . . . [§] 4512 (b). A driver's license is neither a needed support nor service and the right to a driver's license is not absolute. Driving is a privilege afforded to those individuals that the Department of Motor Vehicles deems as passing the requirements to obtain a driver's license.

(Exh. 2, p. 1.)

B. The NOPA also addressed an alternate source of driver assessment and training, the Department of Rehabilitation (DOR). DOR assists individuals with disabilities receive training and other supports to help them attain employment.

12. In the NOPA, RCOC also denied the request for home gym equipment: "The equipment you are requesting is not required to treat any condition associated with or resulting from [Claimant's] developmental disability." (Exh. 2, p. 2.) Purchasing such equipment, considered "generic" because it "can be used by non-disabled as well as disabled individuals" would violate RCOC's internal purchase of service guidelines and applicable law. (*Ibid.*)

13. Kimberly Benner, Claimant's service coordinator at RCOC, provided additional information about RCOC's denial of the driving assessment. Ms. Benner maintained that, as part of Claimant's efforts to join the work force, the driver's assessment is more appropriately funded by DOR. RCOC currently collaborates with DOR in helping Claimant become work-ready; however, because he is at the "discovery" stage of the process, a time when he is identifying potential types of employment that would be suitable to him rather than actively interviewing for jobs, his request for a driving assessment is not considered a needed support by either agency. Ms. Benner, who worked at DOR for ten years before beginning to work at RCOC, stated that DOR would likely assist with Claimant's efforts to learn to drive, possibly including funding a driving assessment once Claimant had finished identifying potential job types and actively seeking employment.

14. Christina Genter is RCOC's behavioral specialist. At the hearing, she testified that RCOC had recently approved behavioral services to assist Claimant regulate his emotions and "learn to learn," i.e., help Claimant organize his thoughts and efforts to help him accomplish his objectives. According to Ms. Genter, these

services will help Claimant establish routines for all aspects of his life, including exercising regularly and independently. Ms. Genter also noted that there are many exercise options that can be performed with little or no equipment.

15. A. Dr. Peter Himber is RCOC's medical director. His duties at RCOC include implementing the Center for Disease Control's regulations for controlling the spread of Covid-19. Dr. Himber noted that, as of the time of the hearing, gyms are open and therefore, available for Claimant's use.

B. Dr. Himber also testified that RCOC does not fund for generic equipment, the type of equipment Claimant has requested.

LEGAL CONCLUSIONS

1. The Lanterman Act, codified at Welfare and Institutions Code section 4500, et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. Services and supports provided under the Lanterman Act are those "directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive and normal lives." (Welf. & Inst. Code, § 4512, subd. (b).)

2. Determining appropriate services and supports requires balancing the consumer's needs and preferences with regional centers' obligations to control costs and to use generic or alternate governmental resources whenever possible. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4648, subd. (a)(1), 4651, subd. (a), 4659, & 4697.) Additionally, since July 1, 2009, amendments to the Lanterman Act suspend service agencies' authority to purchase social recreation activities and nonmedical

therapies except under extraordinary circumstances. (Welf. & Inst. Code, § 4648.5, subd. (a)(2) and (4), (c).)

3. The Lanterman Act provides for an administrative fair hearing to determine the respective rights and obligations of the consumer and the regional center when there is a dispute. (§§ 4700-4716.) In administrative proceedings, the moving party – here, the claimant - has the burden of proof. (See *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

4. A. Claimant has not met his burden of proof to establish that RCOC must fund home exercise equipment. There are multiple sources of exercises and exercise routines available for little or no cost allowing Claimant to exercise at home. Additionally, as noted by Dr. Himber (see Factual Finding 13B, restrictions closing gyms have been recently lifted). Because there are sufficient cost-free or nearly cost-free exercise options for Claimant, investing public funds in home gym equipment cannot be justified.

B. On the other hand, Claimant's request for funding a driving assessment is consistent with his IPP goals (see Factual Finding 5) and is a support not otherwise available. It is also an important step in achieving the autonomy and dignity inherent in many of his other goals, such as becoming employed and living independently. (*Ibid.*) Moreover, RCOC's position that the question of whether Claimant can safely drive is solely a matter for the Department of Motor Vehicles (see Factual Finding 9A) is not persuasive. Given Claimant's ASD and its manifestations, including challenges with regulation of his temper and mood and ability to

concentrate, safety concerns justify a “deep dive” into whether he has the attributes to safely begin the process of learning to drive. An assessment designed specifically to answer this question is an appropriate first step.

C. Nonetheless, Claimant’s request for RCOC to fund the driving assessment is premature. He has not presented the required prescription and has not determined whether his medical insurance provider would pay the fees for the assessment. (Factual Finding 8.) Consistent with the order below, RCOC will fund the driver’s assessment when Claimant provides a prescription from one of his treating doctors and only to the extent the fees for the assessment are not covered by his health insurance or other generic services.

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ORDER

1. Regional Center of Orange County's denial of Claimant's request to fund for home gym equipment is upheld.

2. Regional Center of Orange County's denial of Claimant's request to fund a driver's assessment is reversed. Upon receipt of a valid doctor's prescription for a driver's assessment and proof of noncoverage or partial coverage from Claimant's health insurance provider, Regional Center of Orange County will pay the outstanding fees for Claimant's driver's assessment.

DATE:

DEENA R. GHALY

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.