

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

and

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022010488

DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 23, 2022, via video conference.

Claimant was represented by her mother (Mother), and also at times by her father (Father). North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Monica G. Munguia, M.A., Educational Advocate.

Leyla Arenas served as interpreter, translating English into Spanish and vice-versa, to assist Mother and Father.

Documentary and testimonial evidence was received and the record was closed on the hearing date.

The ALJ hereby makes his factual findings, legal conclusions, and order.

ISSUE PRESENTED

The issue is whether the Service Agency should fund transportation services for Claimant so that she may go to the park or to medical appointments.

EVIDENCE RELIED ON

The evidence relied on is found in exhibits 1-8, 11, 13, 14, 15, 16, 18, 21, 25-27, 30-36, 40, CL-1, CL-12, and CL-14, along with the testimony of Mother, Father, Yesenia Lomeli, Magali Espinoza, and Vilma Ruvalcaba.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant is a 16-year-old girl who receives services from NLACRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act or the Act), California Welfare and Institutions Code, section 4500 et seq. (All statutory references are to the Welfare and Institutions Code, unless otherwise noted.) She is eligible for services because she has Autism Spectrum Disorder (ASD), an eligible condition under the Act.

2. On December 27, 2021, NLACRC issued a Notice of Proposed Action (NOPA) denying funding for transportation services. The NOPA form was accompanied by a letter bearing the same date, further explaining the Service Agency's action. (Ex. 1, pp. A33-A37 [English language version].)

3. The NOPA stated that Claimant's request for transportation services was denied because she is a minor and generic resources are available to her family. The letter expanded on that provision in the NOPA, stating, in essence, transportation was an obligation of the parents, that there was no exceptional care need for specialized transportation, and that Claimant had a card that would allow her to utilize ACCESS Services, and she could use other generic resources, such as public transportation. (Ex. 1, p. A35.) ACCESS Services is a public entity serving disabled persons in Los Angeles County. The NOPA letter spoke to other issues than those encompassed by this proceeding.

4. Mother submitted a Fair Hearing Request which was received by the Service Agency on January 10, 2022.

5. This proceeding ensued, all jurisdictional requirements having been met.

Claimant's Background

6. Claimant lives with her parents, an older brother, and a younger brother in the Antelope Valley, which is part of the Service Agency's catchment area. Her older brother was described as "(presumptively) eligible for Regional Center services" in an IPP document dated October 14, 2020. (Ex. 7, p. A85.) At the time of the August 2017 Individual Program Plan (IPP) meeting, when Claimant was 11, Father was not working, and Mother was identified as a homemaker. The 2017 IPP notes that the family had no natural supports where they resided.

7. A series of IPP annual reviews or amendments have occurred since 2017. An Annual Progress Report dated September 23, 2021, indicates Claimant's parents were receiving In Home Support Services (IHSS) of 21.17 hours per month, and that Claimant continued to be eligible for Medi-Cal for medical and dental care. She was receiving special education services (described below). The Service Agency was providing Adaptive Skills Training (AST) and 30 hours per month of respite services, but at the time of the recent IPP reviews the respite services were not being utilized due to Covid concerns. Remote social skills training was being provided as well.

8. During the September 2021 IPP meeting, it was indicated Claimant ate with her fingers, and she would sometimes put nonedible things in her mouth. She needed reminders to drink or eat during the day, as well as to use the toilet. However, she could use the toilet, but needed prompting to not waste water when washing her hands. Claimant could perform personal care activities but needed some help. Claimant also needed constant supervision, as she would not sleep through the night, and there were issues with Claimant eloping, which might occur or be attempted on a daily basis.

9. Parents reported during the September 2021 meeting that Claimant had disruptive behaviors that interfered with social interaction, and pertinent to this case, it was reported Claimant "gets anxious and dislikes waiting for shared transportation (public/ACCESS) and will engage in emotional outburst." (Ex. 8, p. A92.) It appears from the IPP that emotional outbursts were not just a product of waiting for transport; it was reported they occurred at least once per week, and Claimant's parents believed this happened due to Claimant's inability to express herself in terms of her emotions, wants, and needs.

10. The various IPP documents indicate that Claimant is in good health, without any physical handicaps.

11. Claimant's Individual Education Plan (IEP) from September 13, 2019, was received in evidence. (Ex. 40.) It indicates Claimant was eligible for special education services because of her autistic-like behaviors, which were impeding her educational endeavors. She was described as being very quiet, polite, and with potential, with oral skills in the average range. She was also described as "very cooperative and putting forth best efforts." (Ex. 40, p. Z 19.) However, the IEP also shows poor grades in several classes, which very much appeared to be a function of incomplete assignments. At that point, Claimant was being home schooled. The IEP noted a history of inability to use oral communication, and a history of "extreme withdrawal or relating to people inappropriately." (*Ibid.* at p. Z 9.) No problems with adaptive or daily living skills were noted in the IEP.

12. Results from testing with the Woodcock-Johnson IV Tests of Achievement indicated that Claimant demonstrated average ability in almost every area, with subcomponents ranging from low average to high average, depending on the area assessed. Thus, in the Broad Reading category, her score was 103, in the average range. However, Letter-Word identification yielded a score of 87, low average, but Sentence Reading Fluency scored at 114, or high average. (Ex. 40, p. Z 7.) However, Math Calculation Skills were low, with a score of 76 overall, with math facts fluency at a score of 64. (*Ibid.*)

13. Another IEP meeting took place in May 2021. The IEP from that time was not moved into evidence, but the September 2021 IPP document referenced parts of it, noting Claimant was enrolled in three academic special day classes, and one

behavioral special day class. She remained eligible for round trip transportation for school and extended school year services.

Transportation Issues

14. The family does not own a car. Thus, they must walk, ride a bicycle, or take public transportation to get anywhere they might need to go, such as the market, a medical appointment, or the Service Agency's office. However, Claimant's school district was providing transportation to and from school when Claimant was attending school on a campus.

15. The nearest bus stop to the family home is just over one mile away. Thus, to take public transport, a journey on foot for that distance is necessary. During inclement weather that is a less-than-comfortable journey. Claimant introduced evidence that the temperatures near their home can exceed 100 degrees during summer months, and recently the area was over 100 degrees for a record 58 days. During the winter months, the area can be very cold, and Claimant introduced a photo of snow in her neighborhood. (Ex. CL-1, p. B4.) Claimant's parents attested that the weather does not just affect Claimant and their family if they walk to the bus stop. It impacts a bicycle ride as well, and the weather can be an adverse element if Claimant and family members must wait outside for a long period for an ACCESS vehicle.

16. Typical destinations for Claimant, such as the Service Agency office, potential medical providers, or the YMCA, require travel of approximately 2.5 to 6.5 miles. By far the longest trips have been to obtain medical care in Huntington Park, near the family's former residence, and where Claimant's long-time doctor, dentist, and optometrist are available. That trip is approximately 82 miles each way. Claimant introduced evidence that using ACCESS Services to attend medical or dental

appointments in Huntington Park required a round trip of anywhere from 16 to 18.5 hours. In the latter circumstance, the family left their home at 4:30 a.m. and did not arrive home until 11:00 p.m. The trips involved Claimant and her family taking one ACCESS Services vehicle to Valencia, where they would wait for another vehicle for the rest of the ride to Huntington Park. The Valencia layover would be repeated on the way home. Claimant took such trips on February 14 and 16, and March 8, 2022. As the ALJ noted on the record, he has been able to travel from the San Fernando Valley to Dublin, Ireland, in the amount of time spent by Claimant and her family in their trek to the dentist or doctor.

17. According to Claimant's parents, Claimant may exhibit behavioral problems when frustrated with travel problems, such as waiting for a bus or ACCESS ride. She does not like going out in the hot weather. She exhibits anxiety. While the family sometimes uses bicycles, Father pointed out that they have had flat tires, or even accidents that caused scrapes and cuts. (According to the August 2017 IPP, Claimant could ride a bicycle. [Ex. 3, p. A52.]

18. Father testified that he has taken Claimant to a physician and to a dentist in the Antelope Valley, but was dissatisfied with their care and treatment. He attributed this to their lack of experience treating an autistic child. He adduced evidence that the local dentist gave his daughter a clean bill of dental health, but her long-time dentist detected several cavities.

19. The Service Agency provided evidence that, as a Medi-Cal patient, Claimant can obtain transportation from that source so that she can attend medical and dental appointments.

Other Matters

20. The Service Agency desires to have in-home assessments of Claimant's need for further AST services, or for behavioral interventions. It appears that they have not been able to do so. The more recent IPP documents indicate that Claimant's parents are worried about Covid19 infections, a matter exacerbated by Claimant's distaste for wearing a mask.

21. It is not clear that the Service Agency was aware of Mother and Father's desire to utilize their family's doctor, optometrist, or dentist in Huntington Park. Medical professionals experienced with working with children with disabilities may be available in the Antelope Valley, or in the area of Valencia, a matter which the parties may explore.

22. The Service Agency has service policies in place, which have been approved by the Department of Developmental Services. Among those service policies are policies pertaining to transportation services. (See ex. 11, pp. A180-A181.) In the main, the transportation policy pertains to the provision of transportation for adult consumers to day programs if the consumer cannot safely access and utilize public transportation, and when it does so it will utilize the least expensive means of transportation.

23. The transportation policy also provides that:

NLACRC may fund transportation services to minor children 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. Transportation for consumers

of school age to education sites or to related education services is the responsibility of the school district that serves the consumer.

The consumer, family member or service provider is responsible for the consumer's transportation to medical, dental or therapy appointments, discretionary transportation for community excursions, shopping trips, recreational activities, after school programs, camp or respite services, and to and from work when the consumer is actively employed.

(Ex. 11, p. A181.)

24. The transportation service policy provides that exceptions may be granted by the executive director of NLACRC upon appropriate grounds when the planning team requests an exception. Just what might be exceptional circumstances are not set out in the policy. In any event, while Claimant's parents have requested that their situation be deemed an exception, the planning team has not, and thus the team has not requested an exception.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 5.

2. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (See Evid. Code, §§ 115 & 500.) 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.) Therefore, Claimant bore the burden of proving her entitlement to the requested transportation services.

General Rules Applicable to Resolving Service Disputes

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

4. The California Legislature enacted the Lanterman Act "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." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.)

5. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and

conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

6. Regional centers must develop and implement IPP's, which shall identify services and supports "on the basis of the needs and preferences of the consumer or, where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1), (2).) The IPP must be updated at least every three years. (§4646.5, subd. (b).)

7. 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 life as possible for the consumer. (§ 4646; *ARC v. DDS, supra*, 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646; 4646.5, subd. (a)(1), (2) and (4), 4512, subd. (b); and 4648, subd. (a)(6)(E).)

8. Section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" broadly, as meaning

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 habilitation or

rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life.

9. Section 4512, subdivision (b) provides a list of services that may be provided, in appropriate circumstances, to a consumer of regional center services. The services and supports that may be provided are not limited to those set out in the statute. The list is extensive, running the gamut from diagnosis to advocacy to supported and sheltered employment to paid roommates. Regarding transportation services, the statute provides for "transportation services necessary to ensure delivery of services to persons with developmental disabilities."

10. Other statutes, and regulations, may impinge upon the provision of the services set out in section 4512, subdivision (b). One rule that can limit the obligation of a regional center to provide services is the general rule that the regional centers may not supply services and supports available from generic services. (§§ 4648, subd. (a)(8); 4659, subd. (a), (c).)

11. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many people and families.

12. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the disabled individual or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

13. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible" In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

14. In developing or modifying an IPP, a regional center is obligated to have a process that ensures compliance with applicable laws and regulations, and when purchasing services and supports, a regional center is to ensure that it is acting in conformity with its approved policies, that generic resources are being utilized where appropriate, and there must be compliance with section 4659, which requires regional centers to pursue generic resources.

15. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with

developmental disabilities. . . . Assessments shall be conducted by qualified individuals Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies." (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer's needs, it is plain that assessments must be made so that services can be provided in a cost-efficient manner.

16. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4501, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (2), 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, subdivision (a), each regional center is to assist consumers and families with services and supports that "maximize opportunities and choices for living, working, learning, and recreating in the community."

17. Reliance on a fixed policy "is inconsistent with the Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities. (§ 4501.)" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer are to be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at 388.)

18. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and

economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), 4791).

19. Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those services and supports should foster “the developmental potential of the person and be directed toward the achievement of the most independent, productive and normal lives possible.” (Subd. (b)(1).) There is also a right to dignity, privacy and humane care. (Subd. (b)(2).)

20. The regional centers are to pursue generic services as part of service coordination. The core rule has long resided in section 4648, subdivision (a)(8), which provides that “Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” Traditionally, generic services or agencies were defined as those described above, agencies using public funds to serve members of the general public. Hence, public schools were and are generic sources.

21. Section 4659 has long provided that the regional centers shall identify and pursue all possible sources of funding for consumers receiving services. Section 4659 underwent substantial revision in 2009. The statute retained its mandate for the regional centers to pursue sources of funding for their consumers, such as generic resources (school systems, Medi-Cal, etc.). The statute now provides that the regional centers shall not purchase services that could be obtained by the consumer from traditional generic resources, as well as “private insurance, or a health care service plan when a consumer or family meets criteria of this coverage but chooses not to pursue that coverage.” (§ 4659, subd. (c).) Absent from the list of sources that must be

pursued before a regional center must provide funding as payor of last resort are charities and non-profit organizations.

22. There are other limits imposed on the planning process. First, the regional centers are obligated to assure that IPP's conform to the regional center's purchase of service policies as approved by the Department of Developmental Services. (§4646.4, subd. (a)(1).) Further, the regional center must consider 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." (§4646.4, subd. (a)(2).)

Dispositive Legal Conclusions

23. Section 4512, subdivision (b), authorizes "transportation services necessary to ensure delivery of services to persons with developmental disabilities." (See Legal Conclusion 9.) This would appear to delimit transportation services to destinations such as a park or concert, unless there was some service being provided at that destination.

24. As noted in Legal Conclusion 22, section 4646.4, subdivision (a)(1), requires IPP's to conform to a regional center's approved service policies. Here the NLACRC transportation policy mainly allows transportation services for adults to attend programs. (Factual Findings 22, 23.) The Service Agency's transportation policy is consonant with the portion of section 4512, subdivision (b), quoted in Legal Conclusion 23.

25. The obligation to use generic resources before utilizing a regional center's resources is an obligation of long standing, and that obligation has been expanded in legislative enactments. (See Legal Conclusions 10, 14, 20, and 21.) Generic resources remain available to the Claimant.

26. Service Agency asserted that the responsibility to transport Claimant to some destination, such as the park or a doctor's office is the same for Claimant as it is for her siblings. That argument is sustained by section 4646.4, subdivision (a)(2), which requires her family to shoulder the responsibility of transportation for activities that any regularly-developing child might have, such as doctor's appointments or attending a concert.

27. Claimant must continue to utilize generic services that are available to her. This includes transportation to medical appointments and therapies which are available to her through Medi-Cal. It also includes ACCESS Services. It is noted that Claimant was able to ride for many hours back and forth to Huntington Park for medical and dental treatments without any disclosed behavioral incidents; the arduous trips were not derailed by Claimant's anxiety or outbursts. That ACCESS is a less than perfect system does not remove it from the list of generic services.

28. Claimant has not carried her burden of proving that some exception to the transportation policies exists based upon her circumstances as demonstrated in this case.

29. Based on the record in this matter, Claimant's appeal must be denied.

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ORDER

The appeal of Claimant is denied, and the Service Agency shall not be required to provide the requested transportation services.

DATE:

JOSEPH D. MONTOYA
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.