

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER**

**OAH No. 2022030933**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 23, 2022.

Stella Dorian, Fair Hearing Representative, appeared on behalf of the Service Agency, North Los Angeles County Regional Center. Claimant was represented by his wife. Titles instead of names are used for the privacy and confidentiality of the family.

This matter is governed by the Lanterman Act: the Lanterman Developmental Disabilities Services Act, codified as Welfare and Institutions Code sections 4500 through 4885. The hearing was conducted with the assistance of a Spanish language interpreter.

Testimony and documents were received in evidence. The record remained open until May 31, 2022, for each party to submit documentation and until June 6, 2022, for each party to respond to the other's submissions.

The Service Agency timely submitted a May 16, 2022 email from Claimant to Ms. Dorian, among others, which was marked Exhibit 17. Exhibit 17 was received in evidence without objection but, as set out in the Analysis below, its relevance is limited.

Claimant submitted two emails from him and his wife to the Service Agency from April, though the year is not stated. The emails are in both English and Spanish. At the top of each a note states: "English version by Google Translate." The emails were collectively marked Exhibit E and received in evidence without objection. Like Exhibit 17, these emails are of limited relevance.

The record closed and the matter was submitted for decision on June 6, 2022.

## **STATEMENT OF THE CASE**

Claimant has had difficulties with transportation, whether by public bus or riding his bicycle. At least in part because of Claimant's ASD, Autism Spectrum Disorder, there have been altercations and misunderstandings between Claimant and other people who use public transportation. Claimant has at times opted to travel by bicycle, but has been hurt when struck by vehicles, and at times the weather in Lancaster, California, where he lives, is too hot or too cold to make travel by bicycle practical. Accordingly, Claimant seeks funding for transportation by Uber and Lyft. The Service Agency contends that instead of private transportation, Claimant should avail

himself of mobility training and generic resources offering curb-to-curb transportation, which Claimant has rejected.

## **ISSUES**

Whether, to facilitate Claimant's medical appointments, errands, and outings in the community, the Service Agency must fund private individual transportation services such as Uber and Lyft, or whether funding should be limited to mobility training and the generic transportation services, such as Access and Dial-A-Ride, which mobility training is designed to enable consumers to use.

## **FINDINGS OF FACT**

1. On March 16, 2022, Claimant sought a fair hearing following the Service Agency's May 17, 2022 Notice of Proposed Action denying funding for private transportation services.

2. Claimant's ASD diagnosis makes him eligible for services under the Lanterman Act.

3. Claimant will turn 59 years old in 2022. Not under conservatorship, Claimant lives with his wife and three children, two of whom are Service Agency consumers, in Lancaster, a city in the high desert in north Los Angeles County. Claimant works on becoming more independent, and has help with daily activities from his wife, a homemaker, who prompts him regarding such things as appropriate dress and toileting at times when, overfocused on a computer program, Claimant is liable to have accidents.

4. Claimant is skilled in computers, photography, and the Photoshop software program. He has been employed at times in locations that required long commuting times. At the time of his September 27, 2021 IPP, an Individual Program Plan, Claimant was working part time from home as a graphic designer. The family's income is supplemented by the food stamp program and social security payments to the children.

5. Claimant's CSC, Consumer Services Coordinator, is Andrea Mojica, who has worked as a CSC for a year and a half. Her duties include individual program planning, evaluating consumers' needs, identifying generic resources to meet a consumer's needs, advocating for consumers, and coordinating services.

6. Months before the hearing, the parties discussed transportation at some length. The discussion included Claimant's plan to explore whether he might live independently in a group home. CSC Mojica testified at the hearing to the same discussions detailed in the September 27, 2021 IPP, Exhibit 2:

[Claimant] and his family do not own a vehicle but their most common form of transportation is their own personal bikes. Reportedly in the past, [Claimant] has been hit by a vehicle 3 or 4 times when crossing the street, however, no supporting documents were provided. Additionally, [Claimant] reports that he has attempted to get a driver's license through the DMV before, but has not been successful. [Claimant] . . . does not like using public transportation services because he does not have the ability to advocate for himself, easily gets lost, feels anxiety being in tight enclosed spaces with other people around and he

tends to behave in inappropriate behaviors that may include staring, invasion of people's space and touching other people's clothing inappropriately without their consent if they are wearing clothing that strikes his interest in their graphic design/material.

These reasons for Claimant's request for transportation services are followed by proposals the Service Agency offered as part of the IPP process:

[Claimant] meets the eligibility requirements to receive mobility training with an aide enroute for roundtrip transportation services. [Claimant] can learn how to safely cross the streets when riding his bike, can learn how to navigate routes on his own using public transportation and in addition, can have an aide en route to support [Claimant] not interfere with the public's personal space, prompt [Claimant] not to stare at people uncomfortably and help [Claimant] manage his anxiety when he feels he is in a tight enclosed area.

As the IPP notes, Claimant declined the services proposed "due to him ultimately not wanting to use public transportation. As a result, the IPP team agrees [Claimant] has access to generic resources such as Access Transportation and his own bicycle."

7. Claimant has had difficulties with bicycle transportation. The weather in the high desert where he lives is often not suited to this form of transportation, either too hot on summer days or too cold, even at times snowy, in the winter. In addition, Claimant has been injured in collisions with automobiles.

8. The IPP, Exhibit 2, notes Claimant's interest in independent living in a group home, pertinent here in a limited way because such homes may include transportation among their services:

In addition to SEP and Transportation services, [Claimant] is requesting Residential Placement. In response to his inquiry, [Claimant] was informed that many Residential Homes offer round-trip transportation and as a result, [Claimant] may be able to schedule services for reasons such as doctor appointments and/or grocery shopping. During the time that [Claimant] is waiting for the approval of his residential placement, [Claimant] has requested SLS services to begin meanwhile a final answer is given. A referral packet for such service can only be generated once [Claimant] has attended the mandatory SLS orientation. CSC will keep [Claimant] informed regarding his status on Residential Placement and in addition, his status for SLS if applicable.

9. Claimant withdrew his request for a home placement. His wife was opposed to any placement and the home where he wished to reside is not equipped for his care.

10. Claimant objected to communications from the Service Agency in English, such as Exhibit 17. CSC Mojica speaks Spanish, the language in which she and Claimant and his wife communicated. Except for Exhibit 17 and the bilingual emails, Exhibit E, the English versions of the latter generated by the Google Translate software, there was no evidence that Claimant or his wife communicated with or could effectively communicate with Service Agency personnel in English.

## **LEGAL PRINCIPLES**

1. The party that asserts a claim or seeks to change the status quo generally has the burden of proof in administrative as in other types of proceedings. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) Claimant is such a party and bears the burden of proof in these proceedings. Under Evidence Code sections 115 and 500, the evidentiary standard Claimant must meet is proof by a preponderance of the evidence.

2. The Lanterman Act, and more specifically Welfare and Institutions Code section 4646, states that in providing services and supports, a Service Agency must take into account the needs and preferences of the consumer and, to the extent appropriate, the consumer's family. The Service Agency is charged with integrating the health, stability, and productivity of both the community and the consumer, who should be made as independent as practicable. The IPP describes how the consumer's life may be improved based on continuing dialogue between consumer and Service Agency. The IPP also expresses the parties' agreement, including a list of agreed-upon services.

3. Welfare and Institutions Code section 4646, subdivision (j)(1), states that the Service Agency must communicate in the consumer's native language during the IPP process.

4. Among the provisions of Welfare and Institutions Code section 4646.4 is that the Service Agency must ensure that the IPP and the internal process that leads to it comply with laws and regulations. In the purchase of services, the statute states the Service Agency must ensure conformance with policies of the Service Agency as approved by DDS, the Department of Developmental Services. The policies in this case

are the Service Standards, Exhibit 10, which DDS approved on November 16, 2018. The statute further provides that generic services and supports must be used when appropriate.

5. Welfare and Institutions Code section 4646.5 states that the IPP planning process must include, among other things, gathering information and conducting assessments and a statement of goals based on the needs, goals, and choices of the consumer, with a statement of specific, time-limited objectives for implementing the goals and addressing the needs. The statute also requires a schedule both of the type and amount of services and supports the Service Agency is to purchase and the generic resources to be used from identified providers.

6. Regarding transportation specifically, Welfare and Institutions Code section 4646.5, subdivision (a)(7), states that the IPP must include:

(A) The development of a transportation access plan for a consumer when all of the following conditions are met:

(i) The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services.

(ii) The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services.

(iii) The planning team has determined that generic transportation services are available and accessible.



(B) To maximize independence and community integration and participation, the transportation access plan shall identify the services and supports necessary to assist the consumer in accessing public transportation and shall comply with Section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

7. Welfare and Institutions Code section 4647 states in part that coordination of services must include activities necessary to implement an IPP. The required activities include:

assurance that the planning team considers all appropriate options for meeting each [IPP] objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

8. Welfare and Institutions Code section 4648 states that to implement an IPP the Service Agency must, with exceptions not pertinent here, work with vendors or contract with providers that the Service Agency and a consumer or consumer's family have determined will best accomplish the IPP's implementation.

9. Welfare and Institutions Code section 4659 provides that the Service Agency must seek funding for services and supports from any governmental program, such as Medicare, or private entities, such as insurers, obligated to provide funding. The Service Agency is the payor of last resort.

## **ANALYSIS**

1. The Service Agency's evidence did not establish that Claimant is proficient in English. Given that Claimant and his wife are Spanish-speaking, and Spanish was their preferred language in communications with the Service Agency, it was incumbent on the Service Agency to use Spanish in significant communications with them, in compliance with Welfare and Institutions Code section 4646, subdivision (j)(1).

2. There is, however, no significant issue regarding language or clear communications between the parties. CSC Mojica's communications with Claimant and his wife were in Spanish and were thorough-going. In explaining transportation options with Claimant and his wife, CSC Mojica covered all the points of significance, including as set out in Exhibit 17. This is not a case of misunderstandings based on language differences.

3. There was evidence at hearing regarding Claimant's possible placement in a home, away from his family, but the parties acknowledged such placement is no longer an issue. It is relevant only to the extent it shows that, had such placement been feasible, Claimant had some flexibility and willingness to use transportation services other than Uber and Lyft.

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4. Claimant is in need of transportation services, as the Service Agency acknowledged. The Service Agency, and CSC Mojica in particular, also acknowledged that Claimant is not receiving transportation services. The dispute in this case concerns how best to meet Claimant's need.

5. Claimant cannot be expected to rely on his bicycle. He runs the risk of serious injury if he uses only a bicycle for transportation. The risk of injury is inherent in all transportation by any means whatever, whether bicycle, private automobile, or public transportation, whether buses, trains, taxis, or others. But Claimant's evidence is enough to establish that he is particularly susceptible to accident and injury on a bicycle, and that his city of residence experiences weather that is unusually challenging for those exposed to the elements, like pedestrians and bicyclists.

6. The Service Agency understandably considers bicycling a viable transportation option in at least some circumstances, since Claimant has successfully used this option in the past. But at the same time the Service Agency has proposed options, like Access and Dial-a-Ride, that operate as curb-to-curb transportation for one or few passengers. Such options go far in meeting Claimant's objection that, because of his ASD, he cannot tolerate public transportation.

7. The Service Agency has gone farther, however. It proposes mobility training. To the degree that Claimant might encounter uncomfortable or challenging circumstances while using public transportation, such training is designed to help him overcome his discomfort or difficulties. It is a reasonable option that should at least be tried.

8. If Claimant were to try the option of mobility training, he might as a result of successful training find himself enabled to use all sorts of public

transportation, not just Dial-A-Ride and the like, but perhaps even public systems like buses, trains, and light rail. If he tried the mobility training option unsuccessfully, he would still have the opportunity to pursue other options, like such limited use of public transportation as might be indicated by the training, even though it was largely unsuccessful. It is, in a sense, premature to order that the Service Agency fund private transportation services like Uber and Lyft as the primary or exclusive transportation options for Claimant at his discretion.

9. Claimant has rejected mobility training, but it is not clear why. Instead, Claimant has simply expressed a preference for the services of Uber and Lyft. Such a preference is not unreasonable. Claimant has had some bad experiences with public transportation. Private services like Uber and Lyft are available shortly after being summoned with a computer app, and are thus quite convenient. On the other hand, though Access and Dial-a-Ride may not be as readily or quickly available, they can be summoned by telephone and routes regularly taken may be pre-arranged. In any event, choosing a transportation option, like choosing any service or support, is not to be based primarily on preference.

10. Under the Lanterman Act, a Service Agency must have some respect and consideration for the preferences of a consumer and the consumer's family. But the law also requires the Service Agency's use of generic resources when possible. This requirement is not simply to achieve the important goal of cost savings. The law also promotes integration into the community. Generic resources are typically available to or shared by the whole community and as such, promote community and the individual's integration into the community.

11. It is also a feature of the Lanterman Act that Service Agencies and consumers work cooperatively for the good of the individual consumer and the

consumer's family and larger community. Here, it appears that cooperation of the parties has broken down, largely because Claimant is unwilling to discuss matters fully and then carefully to consider reasonable proposals by the Service Agency. As a matter of policy, it is best that the parties be returned to their positions when they were still discussing options cooperatively.

12. Claimant did not meet his burden of proof. Past discussions led to the suggestion that Claimant could benefit from mobility training. It is the most reasonable course going forward.

## **CONCLUSIONS OF LAW**

The Service Agency need not at this time fund private individual transportation services, such as Uber and Lyft. To facilitate Claimant's traveling to keep medical appointments, run errands, and enjoy outings in the community, it is sufficient that at least in the present circumstances the Service Agency provide funding for Claimant's mobility training, the training for generic transportation services which Claimant may thus be enabled to use to his advantage.

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## **ORDER**

Claimant's appeal is denied.

DATE:

THOMAS LUCERO

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.