

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

OAH No. 2022040445

DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 24, 2022.

Stephanie Zermeño, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Adeyinka Glover, Attorney at Law, Office of Clients' Rights Advocacy, Disability Rights California, represented claimant, who was present.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on May 24, 2022.

ISSUE

Is IRC required to fund claimant's request for an out-of-state day program and related transportation; social recreation services of a bowling league annual fee and league fees; social recreation services of a gym membership; speech therapy and related transportation; personal assistance services; and transportation for medical appointments?

FACTUAL FINDINGS

1. The following factual findings are derived from documentary evidence submitted by IRC and claimant, and the testimony of David Ledesma, claimant's consumer services coordinator; Hoang Nguyen, an IRC program manager; and claimant's father.

2. Claimant qualifies for regional center services based on a diagnosis of moderate intellectual disability. He is also diagnosed with Down's Syndrome.

3. An Inter-Regional Center Transmittal, dated April 12, 2021, reported claimant's father called Kern Regional Center on February 10, 2021, asking for claimant's case to be transferred to IRC. Claimant's father stated his apartment in Bakersfield was destroyed in a fire. He and claimant stayed at hotels while they searched for housing. They finally received a call from an apartment manager in Needles who offered them affordable housing, so they moved there. IRC confirmed the transfer on July 20, 2021.

4. According to claimant's Individual Program Plan (IPP), dated February 17, 2022, claimant's Outcome #5 of "community and social" states he will "build upon

physical fitness and independence in all social settings”; Outcome #6 of “work/career education” states he and his father “would like [claimant] to attend a day program 5 days per week”; Outcome #7 of “transportation” states he “would like to have safe passage to and/or from their home, day program, community activities or medical appointments”; and Outcome #11 of “specialist” states he is “to receive appropriate specialist care as needed.” Claimant receives support through Supplemental Security Income (SSI) in the amount of \$311.72 each month, Social Security Disability Income (SSDI) in the amount of \$663 each month, and In Home Supportive Services (IHSS) in the amount of 44 hours each month with his father as his IHSS caregiver.

5. On March 1, 2022, IRC sent claimant a Notice of Proposed Action (NOPA) that his request to fund bowling league and gym membership fees was denied because “these expenses are elective and would be the responsibility of any individual who would want to join a bowling league or a gym”; his request to fund transportation to and from the bowling league were denied because it would be a “personal responsibility”; and his request to fund speech therapy was denied because “speech therapy is offered to consumers who have a demonstrated need, and who do not qualify for such services through generic services such as Medi-Cal.”

6. On March 4, 2022, IRC sent claimant a NOPA that his request to fund transportation to and from medical appointments out of the area was denied because “it is not a specialized service or support needed for [claimant] to attend an IRC-funded program or school.” The NOPA set forth a correction to the March 1, 2022, NOPA, and stated an IPP interdisciplinary team telephone meeting took place on February 17, 2022, not February 18, 2022, with claimant, claimant’s father, Bianca Rosales - claimant’s advocate from Clients’ Rights Advocacy, and David Ledesma – claimant’s IRC Consumer Services Coordinator (CSC).

7. On April 1, 2022, claimant filed a fair hearing request. He asked that IRC "fund services in my area of Needles so I may have access to the services and support I need." He requested a hearing because:

I do not agree with the NOA dated: 3/1/2022 and 3/4/2022.

Following my IPP meeting I was denied services I requested: transportation funding [s/c], social recreation [s/c] funding, speech services, day program, personal assistance. These services were not listed on the ammended [s/c] notice of action 3/4/2022.

8. David Ledesma, IRC CSC, testified at the hearing, which is summarized as follows: He has worked as a CSC at IRC for almost 6 years. He meets with clients and families, and tries to understand their needs and goals, advocates for services, and makes referrals to appropriate resources. Due to COVID-19, he has not had an in-person meeting with claimant and/or claimant's father. He has spoken on the phone with claimant's father about six times and he has been claimant's CSC for about 10 months. None of claimant's funded services at Kern Regional Center transferred to IRC because they had been "terminated." Claimant is not receiving any IRC funded services at this time. He has generic services in place including SSI, SSDI, IHSS, Medi-Cal, Medicare, and TRIP Program transportation up to 500 miles each month. Claimant's father was upset because there were no services in Needles, and he requested social activities of bowling and a gym membership, transportation to those activities and medical appointments, speech therapy, and a day program in Nevada or Arizona.

Concerning bowling, Mr. Ledesma explained claimant's father would like funding for a bowling league at Riverside Hotel, in Laughlin, Nevada, but this hotel is not a vendored provider with IRC. There are no bowling alleys in Needles. Riverside

Hotel has the closest bowling alley in distance from Needles. It is about 65 miles roundtrip.

Concerning social activities, Mr. Ledesma explained that due to COVID, most activities are "virtual" but claimant's household does not have a computer, although the public library has six computers for public use.

Concerning gym membership, Mr. Ledesma asked if claimant can safely engage at a gym, and he stated the closest gym is at a shopping center in Needles, although its phone number is disconnected.

Concerning speech therapy, Mr. Ledesma explained claimant received speech therapy in the past because a speech therapist came to his day program in Kern County - Chateau de Bakersfield. However, speech therapy was not a funded service by Kern Regional Center. Mr. Ledesma referred claimant to Medi-Cal because it will cover the 20 percent co-pay of the cost of speech therapy services, and Medicare will cover 80 percent of the cost.

Concerning transportation to/from medical appointments, Mr. Ledesma reported the hospital in Needles is more of an urgent care clinic so patients go to Nevada or Arizona for hospital care and medical appointments. The generic options for transportation are a Needles Senior Citizen Van service that will take claimant to medical appointments in Arizona that charges a fee, runs on Thursdays and Tuesdays, and charges a fee for companion riders; a Dial A Ride program that will take him around Needles for shopping and provides free accompaniment for a family member; IEHP transportation services; MTM transportation for non-emergent transportation; and NAT public transportation to Mojave Valley/Bullhead City in Arizona which is

about 22 miles from Needles. In addition, claimant's currently family utilizes the TRIP Victor Valley Transit Program that allows mileage of up to 500 miles per month.

Concerning a day program, Mr. Ledesma explained there are no day programs in Needles. He contacted Billet Home Health to ask if it would start a day program, and he contacted Pacific Clinics about a clubhouse, but they ended up not starting a clubhouse in Needles. He was not aware if IRC had funded out-of-state day programs in the past.

Concerning personal assistance services, Mr. Ledesma contacted Maxim Healthcare, an IRC vendor, but they did not have any providers in Needles. He spoke with 24-Hour Homecare, another IRC vendor, and they also had no staff for personal assistance in Needles. He spoke with In-Roads, another IRC vendor, and they also had no staff in Needles. He also spoke with "Bob" from Pathways, an IRC vendor, who was having problems with staffing at the moment. Each of these vendors offered to hire a family member or friend to provide personal assistance services to claimant.

9. Hoang Nguyen, IRC Program Manager, testified at the hearing and the following is a summary of her testimony. She obtained a master's degree in public policy. She has over 14 years of experience in case management at IRC, and she has been a Program Manager at IRC for six years. She oversees IRC case managers and support staff, and assists them in connecting clients with services. She is familiar with claimant's case, as she issued the two NOPAs to claimant.

Concerning social and recreational services, Ms. Nguyen stated the goal is for clients to socialize in their natural settings, and develop social skills with their peers and the general public. It is not intended to be a long-term service, and the service would fade out once the client has met their goal. The bowling league requested by

claimant is out-of-state and IRC tries to align its services within the State of California. Also, the bowling league is an elective activity and any person who participates in it should be responsible for paying for it. The bowling alley at Riverside Hotel is not a vendored service, and there is not on-site "coaching" for a consumer's measurable goals to be met. The same reasoning applies to a gym membership. In addition, IRC's Purchase of Service policy for funding social/recreational services, effective July 20, 2021, was just approved by the Department of Developmental Services (DDS) on May 3, 2022, and IRC's next step is to secure vendors to provide social and recreational services. However, Ms. Nguyen remarked that Needles is in a "very remote area," and IRC has been "very unsuccessful" in getting service providers in that area for its consumers. Typically, IRC is prohibited from funding out-of-state services, but IRC can "look at that possibility" by submitting a detailed plan to DDS for approval, and if approved, and IRC can fund a time-limited service that would be reviewed at least every six months.

Concerning speech services, Ms. Nguyen reported this service was denied for claimant because there was no documentation showing he had a medical need, and IRC only recently learned of a referral by claimant's physician. This is typically a medical insurance covered benefit, and if it is denied, then families are encouraged by IRC to appeal to Medi-Cal. IRC has no documentation that claimant has pursued these steps.

Concerning transportation for medical appointments, claimant has generic services available to provide him with adequate transportation.

Concerning personal assistance service, a completed assessment would help to determine if the service is appropriate for the claimant, and based on the vendor's assessment, the appropriate hours would be recommended.

Concerning a day program, Ms. Nguyen indicated IRC has no vendored programs in the Needles area, and IRC reached out to multiple personal assistance vendors to see if they can provide a day program service but they declined. However, Ms. Nguyen remarked there are instances when IRC can fund a day program that is out of state, and IRC has flexibility as long as the day program is within 50 miles of the California border. She just learned, in February 2022, from her director, about this flexibility. She emphasized a vendor would have to be secured. She was asked about an adult day program called Milemarkers in Arizona, which is about 17 miles from Needles. She would have preferred IRC had been told about Milemarkers earlier, so it could have inquired if Milemarkers would be willing to pursue vendorization. IRC can reach out to Milemarkers to ask if it is willing to become a vendor, and connect it with IRC's resource development department. A day program usually runs Monday through Friday for about five to six hours each day.

10. Claimant's father testified at the hearing and the following is a summary of his testimony. He is claimant's conservator. He is called "Mr. Mom" by claimant because he has raised him since he was a baby. Claimant was born with no closure of the mouth flap and could not speak the first 12 years of his life. Claimant underwent a spinal fusion at UCLA when he was 12-years old, and a year later he underwent surgery to close the mouth flap. In December 2020, he and claimant were visiting relatives in Flagstaff, Arizona, when his landlord called to say his apartment was on fire. He lost everything in the house except for what was in claimant's bedroom. They looked for other housing in Bakersfield but became homeless because they could not find anything affordable. He went to Barstow looking for housing with no luck. On his drive to Flagstaff to stay with relatives, he stopped in Needles and submitted a housing voucher application. To his surprise, Needles accepted his housing application on January 26, 2021, and he and claimant moved there.

Claimant's father explained that claimant had been receiving "services" since infancy until they moved to Needles when claimant was 34 years old. Claimant received services from Kern Regional Center for 13 years, and was never denied any services. Claimant attended Chateau de Bakersfield, a day program, five days a week, which offered exercise and gym equipment, speech therapy, cooking classes, money management classes, and other continuing education courses. Chateau de Bakersfield provided transportation to and from the day program, and claimant ate breakfast and lunch there. Claimant's father discovered Milemarkers, the day program in Arizona, when he was bowling at Riverside Hotel and a fellow bowler who works at a carwash in Arizona told him she hired a few clients from Milemarkers for vocational training. She told him Milemarkers was a great program. Claimant has regressed in his speech and gained 45 pounds since they moved to Needles. Claimant has never gone on a city bus alone, as claimant's father was told when claimant was a baby to always keep an eye on claimant because he is a "target for people who do bad things." Claimant's father and Ms. Rosales called Medi-Cal for approval for speech therapy services, and received a referral but the nearest speech therapy program is in Mojave Valley, Arizona – 12 miles from Needles – and not covered by Medi-Cal because it is out-of-state. Medicare will cover 80 percent of the cost, but claimant's father will have to cover the remaining 20 percent of \$20 to \$40 per session. Claimant's father was an avid bowler and he taught claimant how to bowl. Claimant enjoys bowling and socializing with the other bowlers – who enjoy his company, as well. Claimant's father is no longer able to exercise rigorously or bowl more than three rounds with claimant because he is getting older and has COPD. They were finally able to join the nearest bowling league at Riverside Hotel, in Nevada, and claimant's father knows it has been very good for claimant. He hopes that IRC can help fund the bowling league fees for claimant. When claimant's father read the first NOPA, all he could think was "negative everything."

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

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

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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 independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

9. A regional center is authorized to purchase services and supports for a consumer pursuant to vendorization or a contract in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3); Cal. Code Regs., tit. 17, § 50612, subd. (a).)

10. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

11. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

12. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

13. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage."

Evaluation

14. The evidence established that IRC shall fund some of the services requested by claimant but not all of them.

15. Concerning a day program and related transportation, Ms. Nguyen reported IRC has flexibility to fund a day program if it is within 50 miles of the California border. Just a few days before the hearing, claimant's father randomly learned about Milemarkers – a day program in Arizona that is 17 miles from Needles. There are no day programs in Needles. Claimant has resided in Needles since January

2021, and IRC accepted the transfer of claimant's regional center case in July 2021. Claimant and his father were displaced from their apartment due to a fire in December 2020. Hence, it has been nearly a year and a half since claimant has received the support services from a day program – which he had received continuously for 13 years. Ms. Nguyen offered to reach out to Milemarkers to inquire if they are willing to become an IRC vendor, and if so, to connect them with the vendorization unit for processing. While there is no guarantee that Milemarkers will become an IRC vendor, this is a promising resolution for claimant. While there is no day program in Needles at this time and Milemarkers is 17 miles from Needles, IRC cited various generic service transportation options for the Needles area and in Arizona and Nevada. In addition, claimant is currently a recipient of TRIP Victor Valley Transit Program, which covers mileage of up to 500 miles each month. As such, IRC is not required to provide transportation services to a day program or medical appointments, as generic service transportation options are available.

16. Concerning speech therapy, claimant was provided a referral to speech therapy by his physician. Medicare and Medi-Cal have appeal processes if either insurance does not cover its portion of such services, in particular the 20 percent co-pay that would be billed to Medi-Cal. After claimant exhausts the appeal processes of these generic resources, claimant can submit a separate request for IRC to fund any portion not covered by these general resources.

17. Concerning personal assistance services, IRC indicated it has no vendors because its vendors have been unable to secure workers who will provide such services in Needles. While this is unfortunate for claimant, IRC cannot control vendors and their workers' availability in Needles. IRC has made many attempts to secure personal assistance services for claimant, and IRC should continue with these efforts.

18. Concerning social and recreational services of bowling league fees and a gym membership, the issue of these services not being available in Needles is again a problem for claimant. He knows how to bowl because his father taught him, and he enjoys it. He and his father joined the nearest bowling league at Riverside Hotel, in Nevada, just a few miles across the California border. Ms. Nguyen remarked that IRC always tries to stay within the policies, but there is room to explore funding a social and recreational service out-of-state considering the new POS that was approved by DDS in May 2022. As such, IRC shall explore this option of funding bowling league fees for claimant and/or a gym membership. Any transportation to and/or from the bowling league and/or gym is not required to be funded by IRC, as there are generic resources in transportation available.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund services of out-of-state day program and related transportation, social and recreational services of a bowling league fees and a gym membership and related transportation, speech therapy and related transportation, personal assistance services, and transportation for medical appointments, is partially granted and partially denied, as follows:

1. IRC shall issue an IPP addendum to address a day program for claimant and the pursuance of vendorization of Milemarkers, an out-of-state day program within 50 miles of the California border.
2. IRC is not required to fund transportation to a day program or medical appointments, as generic resources in transportation are available.

3. IRC is not required, at this time, to fund speech therapy services. Claimant must pursue the Medi-Cal appeals process for coverage of the 20 percent co-pay. After claimant exhausts the appeal process of this generic resource and any other generic resource, claimant can submit a separate request for IRC to fund any portion not covered by these generic resources. IRC is not required to fund transportation to speech therapy services, as generic resources in transportation are available.

4. IRC shall issue an IPP addendum to address social and recreational services including an out-of-state bowling league and/or a gym membership. IRC shall explore funding such services, as permitted by the recently approved POS by DDS in May 2022, if such providers become IRC vendors. IRC is not required to fund transportation to a bowling league and/or gym, as generic resources in transportation are available.

5. IRC shall continue to attempt to secure personal assistance services for claimant where he resides in Needles. IRC is not required to fund personal assistance services if none are available in Needles.

DATE: June 10, 2022

JAMI A. TEAGLE-BURGOS
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.