

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

In the Matter of:

Claimant,

vs.

South Central Los Angeles Regional Center,

OAH No. 2022080737

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on December 12, 2022.

Tami Summerville, Fair Hearings Manager, represented SCLARC, the South Central Los Angeles Regional Center. Mother represented claimant. Titles are used to protect confidentiality and privacy. A Spanish language interpreter assisted in the proceedings.

This matter is governed by the Lanterman Act, that is, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on December 12, 2022.

ISSUE

Whether there is need for an increase in the Service Agency's funding of claimant's transportation services.

FINDINGS OF FACT

1. Claimant is 19 years old and eligible for services under the Lanterman Act based on a diagnosis of Moderate Autistic Disorder. Claimant lives at home with his mother and 19-year old sister. Both mother and sister testified at the hearing. Claimant is registered as a student in the Downey Unified School District. He receives at-home instruction.

2. Through the Self Determination Program, the Service Agency has funded these services for claimant: in home respite care services, 40 hours per month; PA, personal assistance hours, 200 hours per month from Behavior Respite in Action, plus an additional \$100 per month pending resolution of issues regarding school-related services; financial management services; and 262.5 hours per month of IHSS, in-home supportive services provided by mother.

Funding of Transportation Services

3. The Service Agency also funds transportation services for medical appointments, social engagements, and other opportunities for community integration and training. The transportation services are funded at the rate of \$7.59 per day. Claimant seeks funding for transportation of \$400 to \$500 per month.

4. Attached to claimant's fair hearing request is mother's August 9, 2022 letter to the Service Agency, Exhibit 1. At page A2 mother states her view that claimant needs a "direct door-to-door transportation service . . . a direct, appropriate, individual and safe service that guarantees the safety and well-being of the client as well as punctuality to each and every one of his medical appointments or activities of the community" Mother goes on to state that a \$151 payment by the Service Agency for transportation services in April and May 2022 was not enough to cover gasoline mother purchased for claimant's appointments and excursions.

5. The Service Agency sent claimant a NOPA, Notice of Proposed Action, on October 12, 2022. It cites and quotes Welfare and Institutions Code sections 4512, subdivision (b), 4646, subdivision (a), 4648.35, subdivision (a), and 4659, subdivision (a). The NOPA explains, Exhibit 2, pages A7 through A8: "You feel the rate [\$7.59 per day] is inadequate and you would like \$400-\$500 per month for gas and car maintenance. Due to SCLARC's guidelines and funding policies, your request . . . is denied."

6. Wendy Echeverria is a Program Manager at the Service Agency. She has not met claimant, but testified at the hearing in the absence of Erica Anguiano, claimant's SC, Services Coordinator, who was unavailable. The current rate of funding for claimant's transportation services is set pursuant to DDS guidelines, as Program Manager Echeverria testified.

Claimant's Disability As Related to Transportation

7. In her testimony mother corroborated the statement in the July 7, 2020 IPP, Individual Program Plan, Exhibit 3, page A17, that claimant "[r]equires constant supervision during waking hours to prevent injury/harm in all settings . . ." As the IPP

states at page A27, claimant's community integration is hindered because he becomes frustrated with others. He has had episodes of verbal and physical aggression.

8. Claimant's frustration is at times caused by long car trips. As the IPP states on page A19: "Mental health services were to be offered through Children's Hospital of Los Angeles but traffic was 2 hours long and [claimant] couldn't handle being in the car for too long."

9. Claimant has several transportation options. A February 2002 brochure from the Developmental Disabilities Area Board 10 entitled "I Need a Ride!" lists several such options. Among them are, as stated in Exhibit 7, page A56:

Access Services, Inc. . . . Los Angeles County's paratransit curb-to-curb service for riders with disabilities who meet their eligibility criteria.

1-800-COMMUTE . . . An automated system that allows you to use your phone to link to information, routes and timetables from over 40 bus, ridesharing, highway, and bicycle agencies.

Claimant's Transportation Logs

10. Exhibit A20, claimant's transportation logs September 1, 2022, through November 30, 2022, are untrustworthy. Mother certified under penalty of perjury that information in the logs, including mileage, was correct. But there is more than one entry showing 40 miles of travel between claimant's home in Downey and a shopping mall at 600 Los Cerritos Center, Cerritos, California. The actual distance between the two locations is less than 10 miles, so that a round trip would be less than 20 miles.

11. Program Manager Echeverria examined claimant's transportation logs and noted entries for claimant's visiting a collectibles store, at 17835 Gale Avenue, Rowland Heights, California, on days when the store was closed. The transportation logs have other inaccuracies or exaggerations.

12. The transportation logs reflect unexplained and unusually long trips. For instance, in the first week in September 2022, they reflect claimant traveled more than 125 miles. In the last week of the same month the logs reflect that claimant traveled over 244 miles. The other months have similar mileage totals.

13. Claimant is eligible for Social Security benefits, as Program Manager Echeverria noted. The benefits could be used to fund transportation services.

Claimant's Witnesses

14. In her hearing testimony, mother urged claimant's many pressing needs, which are constant. In her view, generic services are not suitable because of claimant's disabilities and behaviors and because he benefits only from services provided by people qualified to deal with his need for constant supervision.

15. Examples of claimant's challenging behaviors are listed in the IPP, Exhibits A1 and 3, page A23, including "Disruptive Social Behavior . . . [which] interferes with social participation almost every day [¶] Aggressive Social Behavior: Physical aggression resulting in injury occurred one time within the past 12 months [¶] . . . [¶] Running or Wandering Away: Running/wandering away occurs or is attempted at least once a month, but not every week."

16. Besides mother, there were seven witnesses who testified in support of claimant's request for transportation services, including his sister and parents of other

children with special needs. They testified that, because of claimant's disability, public transportation and generic resources are inappropriate for him.

17. Claimant submitted letters from three people who did not testify. They supported mother's and others' testimony that claimant would benefit from specialized or non-generic transportation services. Williams Martinez, M.Ed., Education Specialist, Downey Unified School District, stated in a December 1, 2022 letter that claimant benefits from individualized services of different kinds, including access to supported travel. Dr. Diane Toppel, owner of Top Tutoring, wrote on December 1, 2022, of her view that claimant needs a transportation specialist to help him travel independently. Jenny Zipkin, M.D., wrote on April 19, 2022, without mention of transportation services, that claimant needs assistance with activities of daily living.

PRINCIPLES OF LAW

1. Claimant is the party that seeks a change in the status quo. Under Evidence Code sections 115 and 500, claimant bears the burden of proof by a preponderance of the evidence.

2. Welfare and Institutions Code section 4512, subdivision (b), sets out the many types of specialized services and supports which, when determined necessary under an IPP, a Service Agency may appropriately provide or fund. Such supports and services include "travel training . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities."

3. Welfare and Institutions Code section 4646 provides in part:

(a) It is the intent of the Legislature to ensure that the [IPP] and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. [¶] . . . [¶]

(d) [IPP's] shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, . . . parents

4. Welfare and Institutions Code section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's [IPP] developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section

95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of 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 if appropriate. . . .

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

[¶] . . . [¶]

(5) Commencing October 1, 2022, consideration of information obtained from the consumer and, if appropriate, the parents, legal guardian, conservator, or authorized representative about the consumer's need for the services, barriers to service access, and other information.

5. Welfare and Institutions Code section 4648.35 provides in pertinent part:

At the time of development, review, or modification of a consumer's [IPP] or individualized family service plan (IFSP), all of the following shall apply to a regional center:

(a) A regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.

(b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.

(c) A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor.

6. Welfare and Institutions Code section 4659, subdivision (a), provides:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical

Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

ANALYSIS

1. Claimant did not meet his burden of proof to show that his disability or disabilities prevent him from any use of generic transportation resources.

2. No evidence was presented of any instances when claimant lost his way, or was unable to reach a destination, or was otherwise adversely affected as a result of his using public transportation, paratransit, or the like.

3. It is uncertain, on the facts presented, whether claimant might use public transportation or paratransit or transportation services other than from mother if he were to receive training for this purpose.

4. Mother contended that claimant must be guaranteed a transportation service that is safe, direct, door-to-door, and individual.

5. Both mother and the Service Agency, indeed all who come into contact with claimant, should be concerned for his safety. But no law requires that the Service Agency provide a guarantee such as mother wishes and it is unreasonable to expect such a guarantee.

6. Assuming proper training, claimant has several options for direct or door-to-door transportation, so that he need not rely on mother alone for transportation.

7. It is believable, as mother testified, that claimant may become agitated when others share transportation with him. The evidence indicates, however, that even a long car trip may agitate claimant with frustration. The evidence did not establish that claimant must have transportation that is individual, or provided to him alone in a vehicle with the driver.

8. The evidence is insufficient to establish that claimant must be reimbursed for all of the extensive travel reflected in his transportation logs. The evidence is likewise insufficient to establish claimant must have transportation from one driver, such as mother, reimbursed at the rate of at least \$400 per month.

9. The evidence is insufficient to show that, under POS Standards, claimant has inadequate potential for independent travel on public transportation or paratransit.

10. The evidence did not establish that this status quo should change. There was no showing the transportation services claimant has do not meet his needs. The evidence indicates that mother is able to transport claimant to a variety of destinations to meet his needs.

11. An increase in mother's compensation for the transportation services she provides is the reason for appeal of the NOPA. Based on the currently allowed daily transportation rate and the number of miles documented, mother receives approximately \$0.38 per mile or \$150 per month, for transporting claimant, an amount she maintained is significantly less than she pays for gas and related expenses. In light

of the inaccuracies and unexplained lengthy drives documented in the transportation logs, mother's contention is not credible. Even assuming claimant cannot access other form of transportation any than mother's driving him in her personal vehicle, mother did not persuasively demonstrate the costs for that are in the amount she seeks, \$400 to \$500 per month.

12. The evidence indicates that in accord with Welfare and Institutions Code section 4512, subdivision (b), claimant is receiving transportation services necessary to ensure delivery of services to him.

13. Under Welfare and Institutions Code section 4646, the transportation services as currently funded by the Service Agency are effective in meeting the goals stated in the claimant's IPP, in accord with preferences and choices of the consumer, and reflect a cost-effective use of public resources.

14. The Service Agency's funding of claimant's transportation services meets the requirements of Welfare and Institutions Code section 4646.4, including conformance with the regional center's POS Standards.

15. Under Welfare and Institutions Code section 4648.35, the Service Agency is funding not the least expensive transportation modality, but the least expensive that meets the consumer's current needs.

16. The Service Agency has complied with Welfare and Institutions Code section 4659 by identifying and pursuing all possible sources of funding for claimant's transportation services.

17. The evidence was insufficient for a change in the status quo. There was no need demonstrated for an increase in the Service Agency's funding of

transportation services that mother provides claimant, currently funded at the rate of 20 miles per trip, \$7.59 per day.

ORDER

Claimant's appeal is granted in part and denied in part. Claimant's appeal is granted only to the extent that claimant may have travel training under Welfare and Institutions Code section 4512, subdivision (b), to be funded by the Service Agency, with the goal of training claimant to travel by means other than individual driving with mother. Claimant's appeal is denied in that the current level of funding for transportation services that the Service Agency is providing need not be increased. The level of funding may be adjusted, however, if claimant receives transportation training that indicates he may safely use public transportation or paratransit or a generic resource providing transportation services.

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.