

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022090428

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 1, 2022.

Michael Nelson, Program Manager, represented the Westside Regional Center (WRC or service agency). Mother represented Claimant, who was not present. Mother and Claimant are not specifically identified to preserve their privacy and maintain confidentiality.

Mr. Nelson and Mother testified. Documents marked Exhibit 1 through Exhibit 8 and Exhibit A through Exhibit C were received in evidence. The record closed, and the matter was submitted for decision at the conclusion of the hearing.

ISSUE FOR DETERMINATION

Whether WRC should provide funding for Claimant's driver's education and training.

FACTUAL FINDINGS

Jurisdictional Matters

1. On a date not established by the evidence, Mother requested funds from WRC to pay for Claimant's driver's education and training.

2. By letter and Notice of Proposed Action dated August 8, 2022, WRC denied the request explaining it "can pay for a driver's licenses assessment" but it "cannot fulfill your request to fund all of the driving classes." (Exh. 2 at p. 3 [A12].) In support of its proposed action, WRC cited a provision from its service standard titled *Transportation and Mobility Services-Adult: amended driver's training service standard (Amended Driver's Training Service Standard)*, which is discussed below.

3. On August 25, 2022, Mother filed a Fair Hearing Request on behalf of Claimant.

4. All jurisdictional requirements are met.

Claimant's Background

5. Claimant, a 19-year-old female, presents with a diagnosis of Other Disorders of Psychological Developmental, which renders her eligible for services and supports pursuant to the Lanterman Developmental Disabilities Services Act

(Lanterman Act), Welfare and Institutions Code section 4500 et seq. Claimant additionally presents with Attention-Deficit/Hyperactivity Disorder and Anxiety diagnoses. She attends a community college. She has a job. She resides with Mother and her sibling.

6. Previously, Claimant received Lanterman Act services and supports from Harbor Regional Center (HRC). Two of Claimant's HRC individual program plans (IPP), dated April 8, 2021 and September 15, 2020, were admitted in evidence as Exhibits A and B, respectively. They contain no provision for HRC-funded driver's education and training. (See Exh. A.)

7. In 2022, Claimant transferred from the HRC to the WRC catchment area. Claimant's WRC IPP, dated March 28, 2022, was admitted in evidence as Exhibit 6. It contains no provision for WRC-funded education and training.

Claimant's Request for Funding for Driver's Education and Training

8. Mother first requested funding for Claimant's driver's education and training from HRC. According to Mother's testimony, HRC recognized Claimant "did require driving school" but "because of COVID it never came to be, and our case was transferred." According to Mother, "Thye had a person who provided it. Then she quit, then COVID struck. When COVID eased up I requested a courtesy vendor and they reached out to WRC, which has California Driving School as a vendor."

9. Mother explained Claimant "wants to be as independent as possible; she wants what her non-disabled peers have—the opportunity to transport herself independently." Mother maintained Claimant has "areas of needs that make it difficult for her to pass her driving test without receiving driving school" and Claimant has "specific needs" such that "public transportation isn't a viable option." Mother

identified Claimant's specific needs as "the way she gets easily disoriented when surrounded by a lot of people due to anxiety" and "trouble regulating her emotions when in stressful situations." Mother reported Claimant "had bad incidents where she did try to take public transportation and she ended up lost and crying and having a panic attack in a very bad part of town and I had to chase her down, race to get her, before she kept getting into a worse part of town."

10. In sum, Mother maintains public transportation is not convenient to get Claimant from school to work and other activities or services. Mother asserted having a driver's license is "part of being a normal adult" and Claimant requires WRC-funded driver's education and training to live an independent and productive life.

WRC's Position

11. Mr. Nelson explained there are 21 regional centers throughout California, which includes WRC, and each has its own service policies and standards to meet the needs of consumers in its respective catchment area. The policies and standards are approved by the Department of Developmental Services (Department). WRC's service policies and standards for driver education classes, as set forth in its *Amended Driver's Training Service Standard*, provide WRC will assist with the fees for driver education classes under the following circumstances:

1. The planning team has determined that the consumer has the ability to learn the required information and pass a driving test.
2. The consumer has or will have access to a vehicle, and has or will have the resources to purchase the necessary licenses and insurances.

3. Westside Regional Center may fund the initial assessment.
4. The first 25 hours of classes will be the responsibility of the consumer and this is normally incurred costs for non-disabled individuals.
5. Westside Regional Center will fund incrementally up to an additional 50 hours if the planning team determines (based on progress reports) that the consumer will be able to obtain a license within these 50 hours.

(Exh. 7 [A37]; Bold in original.)

12. Mr. Nelson explained the extent to which there is any continuity of services when a consumer transfers from one regional center to another. He testified, "The understanding/agreement among regional centers is that whenever one regional center is obligated [to provide] service supports to an individual who has an active case, even if the person transfers, the new regional center will be picking up that. All our services have defined times, volumes, and service dates. So, whatever was agreed to by the previous regional center and the individual transfers, the new regional center will continue that service." Mr. Nelson further testified, "For example, if [HRC] stated they were going to fund, based on their policy, driving services for X amount hours, for X amount of time, and [Claimant] transferred to [WRC], we would just honor that as all the regional centers would . . . because that would be the agreed upon service support. In this case, when [Claimant] transferred over, if there was a stated agreement in the IPP [WRC] would have continued that funding according to what was previously

agreed upon and then at the termination point it would be reviewed according to [WRC's] policies."

13. An October 24, 2022 Client I.D. Note in Claimant's WRC records documents the WRC fair hearing specialist contacted Claimant's HRC service coordinator, who confirmed driver's education was a topic of discussion during Claimant's HRC IPP on April 8, 2021, but no service or support was funded at the time. According to the I.D. Note, "Although HRC used to offer Driver's Education classes, they were not available at the time of the IPP and currently are still not offered by HRC." (Exh. 4 [A14].)

14. Regarding Mother's request for WRC funds to pay for Claimant's driver's education and training, Mr. Nelson explained WRC's internal decision making processes include a designee of the WRC Director meeting informally with Mother. At the conclusion of the meeting, the designee determined WRC's *Amended Driver's Training Service Standard* requires Claimant to pay for the standard classes, then, in the event Claimant's special needs require Claimant to have additional training, WRC would cover that additional cost. Mr. Nelson additionally explained the designee further determined although HRC contemplated driver's education and training for Claimant, HRC never identified, or put in place, driver's education and training as a funded service for Claimant in her HRC IPPs. Under those circumstances, Mr. Nelson testified, there is no bases for a continuity of service. "We would not be able to fund something that is not already in place. There is nothing there."

15. Mr. Nelson declared WRC encourages and supports Claimant's independence. He noted Claimant's IPP has in place services and supports for her independence and community integration.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

2. Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) “[T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant.” (*Id.* at p. 325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant “must produce substantial evidence, contradicted or un-contradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

Discussion

3. Under the Lanterman Act, developmentally disabled persons have a statutory right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4620, & 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates 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 of life in the community.” (Welf. & Inst. Code, § 4501.)

4. Services and supports for persons with developmental disabilities are defined as “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 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.

5. Regional centers, including WRC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including WRC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including WRC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

6. To those ends, the Lanterman Act specifically obligates regional centers, including WRC, to purchase services and supports in conformity with their purchase of service policies approved by the Department. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department reviews regional centers’ purchase of service policies “to ensure compliance with statute and regulation” prior to promulgation of the guidelines. (*Id.* at § 4434, subd. (d).) The purchase of service policies are deserving of

deference because they reflect the regional center's expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

7. Additionally, when purchasing services and supports regional centers, including WRC, are required to use a process which not only ensures adherence with laws and regulations but also ensures, at least in matters involving minor children, consideration of the family's responsibility for providing similar services and supports for individuals without developmental disabilities. (See Welf. & Inst. Code, § 4646.4, subd. (a)(4).)

8. Claimant has not met her burden of establishing by a preponderance of the evidence her entitlement to support and service in the form of WRC-funded driver's education and training. Claimant's HRC IPPs did not provide for funding for driver's education and training. Consequently, Claimant transferred from HRC to WRC without any such funded services or supports in place. Under these circumstances, any request for funds for Claimant's driver's education and training must comport with WRC's *Amended Driver's Training Service Standard* approved by the Department.

9. Generally, driver's education and training are not "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability" under the Lanterman Act. Driver's education and training are generic services available to all. It is therefore Claimant's responsibility to fund the costs of the driver's education and training she desires. This is in accordance with the Lanterman Act's instruction to regional centers about family responsibility in connection with the purchase of services typically available to individuals without developmental disabilities.

10. Only in the limited circumstance where 25 hours of regular driving education and training courses have occurred does WRC have funding authority. Presumably, WRC reasonably determined, with the Department's approval, after that many hours of education and training an individual with developmental disability requires special adaptations for that generic service. Claimant has yet to satisfy the "25 hours of classes" threshold. WRC therefore has no authority to proceed with any funding, incremental or otherwise, for Claimant's driver's education and training.

11. No cause exists for WRC to fund Claimant's driver's education and training.

ORDER

1. Claimant's appeal is denied.
2. Westside Regional Center shall not fund the costs of Claimant's driver's education and training.

DATE:

JENNIFER M. RUSSELL
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.