

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

In the Matter of:

CLAIMANT

V.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency

OAH No. 2022090946

DECISION

This matter was heard by Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on October 26, 2022, by videoconference from Sacramento, California.

Valley Mountain Regional Center (VMRC) was represented by Jason Toepel, Compliance Manager.

Claimant appeared and represented himself.

Evidence was received, the record closed, and the matter submitted for decision on October 26, 2022.

ISSUE

Must VMRC fund private door-to-door transportation for claimant when public transportation is available?

FACTUAL FINDINGS

Background

1. Claimant is a 37-year-old man who is eligible for Regional Center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code section 4500, et seq., based on a diagnosis of mild mental retardation. He lives at home and attends a day program in Stockton, California. He has been receiving services from VMRC since 2010.

2. Claimant's former service coordinator at VMRC was Katie Alcantara. On March 9, 2011, Ms. Alcantara held an Individual Program Plan (IPP) meeting with claimant and his parents to review his long-term goals and challenges. One of claimant's goals was to "[i]ncrease socialization opportunities within the community." The IPP noted that claimant was attending Person Centered Services day program, which he enjoyed very much. To facilitate transportation to and from the program, it was determined that VMRC would provide him with a San Joaquin Regional Transit bus pass. He has been effectively using that mode of transportation for approximately 12 years.

3. Claimant recently requested VMRC fund private door-to-door transportation to and from the day program. Claimant recently witnessed an act of violence on a city bus, and he is now afraid to ride it. He is often harassed by

unhoused individuals in the area where he gets on the bus. He is also concerned about the sanitary conditions on the bus, particularly with the spread of germs and COVID-19.

4. In a Notice of Proposed Action (Notice) dated September 9, 2022, VMRC denied Claimant's request for private door-to-door transportation. The Notice stated, in pertinent part:

The regional center notes that changing to contracted, door-to-door transportation does not take away the possibility of an act of violence occurring on the bus or the potential for germs and COVID. Many of the consumers that the regional center funds door-to-door transportation for are due to behavioral challenges. Behavioral episodes are just as much of a potential therefore on the door-to-door transportation. There is also nothing about the door-to-door transportation that would make the spread of germs and/or COVID any less likely. Many of the consumers riding this form of transportation are going from one congregate setting, like a care home, to another congregate setting, such as a day program, making the transmission of germs and COVID just as likely on this bus as the city bus.

5. Claimant signed a Fair Hearing Request (Request) on September 15, 2022, which was subsequently served on VMRC. The Request stated that public transportation was unsafe, in that people using public transportation were starting fights and shooting guns. Claimant also requested an informal meeting to attempt to resolve the matter prior to hearing. That meeting occurred via Zoom on September 28,

2022. Present at the meeting were claimant, VMRC Service Coordinator Brandy Rodgers, Mr. Toepel, and VMRC Program Manager Karen Jensen. Claimant was informed at the meeting that there is a law that prohibits regional centers from funding private transportation for individuals who can safely access and use public transportation. Since claimant has been using public transportation for over a decade, he was notified in an October 4, 2022 letter that VMRC affirmed its initial decision to deny claimant funding for private door-to-door transportation.

6. Ms. Jensen testified at hearing. She confirmed that VMRC is precluded from funding private transportation for a consumer when the consumer can use public transportation. Private door-to-door transportation is typically reserved for individuals who are not capable of navigating public transportation due to cognitive deficiencies, or individuals who are unable to demonstrate socially appropriate behavior on public transportation without close supervision.

7. Ms. Jensen testified that individuals riding public transportation are no longer required to wear masks. Consumers using door-to-door transportation are also no longer required to wear masks, though it is encouraged. As such, claimant would be subject to the same risks as those present with public transportation.

Claimant's Evidence

8. Claimant testified at hearing. He is afraid of the unhoused individuals that he encounters on his way to catch the bus, and he has been verbally accosted by an individual on at least one occasion. On the morning of hearing, he was nearly struck by a vehicle on his way to the bus stop. Finally, he is concerned about the risk of catching COVID-19 while using public transportation.

9. Ms. Rodgers also testified at hearing. She works as a Service Coordinator for VMRC in Stockton, California. She has been claimant's case manager for nine and a half years. In the last three years, Stockton has experienced an increase in violence, as well as an increase in the population of unhoused individuals. She has noticed a corresponding increase in claimant's anxiety about getting to and from his day program, as well as in his fear of exposure to germs. As such, she recommended his appeal be granted.

Analysis

10. Claimant has been able to safely access and utilize public transportation for approximately 12 years. While his concerns for his health and safety are valid, he remains able to safely access and utilize public transportation. Additionally, claimant's concerns seem to be unrelated to his developmental disability. Instead, they are general safety concerns that would be applicable to anyone in the population, regardless of having a developmental disability. As VMRC pointed out, riding door-to-door transportation in close quarters with other unmasked consumers, some of whom may be prone to acts of violence, would expose claimant to the same health and safety risks that he would face riding a city bus. As such, claimant's appeal must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a fair hearing to appeal VMRC's denial of his request to modify services to pay for private door-to-door transportation.

2. In seeking government benefits, the burden of proof is on the person asking for the benefits. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The burden of proof in this case is a preponderance of the evidence because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

4. Appropriate services and supports include diagnosis, evaluation, treatment, mental health services, protective services, technical and financial assistance, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Determining which services or supports are necessary for each consumer shall be made through the IPP process. (Welf. & Inst. Code, § 4512, subd. (b).)

5. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, § 4646, subd. (a); see also § 4512, subd. (b).) Specifically, under Welfare and Institutions Code section 4648, subdivision (a)(6)(D), "the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the needs of the consumer and family as identified in the individual program plan, shall be selected."

6. Welfare and Institutions Code section 4648.35, subdivision (a), provides that "[a] regional center shall not fund private specialized transportation services for

an adult consumer who can safely access and utilize public transportation, when the transportation is available." Subdivision (b) provides that "[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."

7. Based on the Factual Findings and Legal Conclusions as a whole, claimant has been able to safely access and use public transportation for approximately 12 years. He failed to prove that he is no longer able to do so. As such, claimant's appeal must be denied.

ORDER

Claimant's appeal of the denial of his request that VMRC fund private door-to-door transportation to his day program is DENIED.

DATE: November 4, 2022

MATTHEW S. BLOCK
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.