

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

OAH No. 2022100166

DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 7, 2022.

Stella Dorian, Due Process Officer, represented North Los Angeles Regional Center (RC or regional center).

Claimant's mother (Mother) represented Claimant.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on December 7, 2022.

ISSUE

Shall RC be ordered to reimburse Claimant for round-trip transportation expenses incurred for Claimant's travel to and from school between August 23, 2021, and June 3, 2022, which is 154 days, at 166 miles per day, and at a rate of \$.56 per mile, which equates to \$14,315.84?

EVIDENCE RELIED ON

Documents: RC's Exhibits 1-18 and Claimant's Exhibits A-F.

Testimony: Monica Munguia and Mother

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 14-year-old male who is eligible for RC services based on his diagnosis of autism.
2. On August 20, 2021, Claimant requested that RC reimburse him for travel expenses related to attending school.
3. On October 29, 2021, RC mailed the first Notice of Proposed Action (NOPA) to Claimant, which denied funding for school transportation or mileage reimbursement. This letter provided Mother with specific and detailed information regarding how she could pursue due process with Los Angeles Unified School District (LAUSD) concerning Claimant's school placement and travel reimbursement.

4. On September 23, 2022, Claimant filed a Fair Hearing Request, which was almost a full year after the initial NOPA was sent to Claimant. Claimant's Fair Hearing Request appealed RC's decision to deny services.

Claimant's School History

5. Claimant attended LAUSD public schools until the fifth grade. Claimant resides within LAUSD's boundaries.

6. On May 22, 2019, an Individualized Education Program (IEP) plan meeting was held. The IEP report stated Claimant was not performing at grade level (Exhibit A, pages 2-3.) Prior to this IEP meeting, Mother had become generally dissatisfied with LAUSD, the alternate dispute resolution process, and the fair hearing process. As a result, Mother unilaterally placed Claimant at California Connections Academy Southern California (Connections Academy) for the 2020-2021 school year. Connections Academy is an online public charter school, which is under the administrative control of the El Dorado County School District.

7. Mother acknowledged that placing Claimant at Connections Academy did not improve Claimant's learning.

8. In November 2020, Dr. Cydney Fox, Doctor of Audiology, diagnosed Claimant with Auditory Processing Dysfunction. (Exhibit C).

9. On February 1, 2021, Dr. Gary Etting, O.D., F.C.O.V.D., diagnosed Claimant with Visual Processing Deficits and Visual Dysfunction.

10. As a result of Claimant's diagnoses of visual and auditory processing deficits, Mother began searching for a school that could provide Claimant with

supports and services. Mother decided to enroll Claimant at Foundations Cognitive School (FCS), a private school in San Juan Capistrano.

11. On August 23, 2021, Claimant began attending FCS. Mother transported Claimant to and from school each day. Claimant's family paid his tuition at FCS.

12. Claimant thrived at FCS. FCS addressed Claimant's visual and auditory deficits. At the end of his year at FCS, the teachers told Mother that Claimant was performing at grade level and recommended Claimant participate in a general education class during the following school year. Claimant attended 154 school days at FCS.

13. Based on FCS' recommendation, Mother enrolled Claimant at Glendale Adventist Academy, where Claimant has been placed in a general education classroom. It was established that the time and money expended by Claimant's family, for his year at FCS, had a positive impact on Claimant's educational experience and future.

Transportation Expenses at Issue

14. Between August 23, 2021, and June 3, 2022, Mother drove Claimant to and from FCS, which was 166 miles roundtrip, on 154 days, which equates to 25,564 miles. The parties agreed the appropriate rate of reimbursement is 56 cents per mile. Therefore, Claimant requested reimbursement in the sum of \$14,315.84.

Claimant's Lawsuit Against Connections Academy

15. In November 2021, Mother met with an attorney regarding her displeasure with Connections Academy. On April 11, 2022, Mother's legal counsel filed a lawsuit, which sought reimbursement for tuition and travel expenses related to Claimant attending FCS.

16. On June 16, 2022, Claimant and Connections Academy reached a settlement. Connections Academy agreed to reimburse Claimant for tuition expenses up to \$20,000, for the 2021-2022 school year. The settlement agreement stated the tuition reimbursement "shall not include transportation costs." (Exhibit 8.) Claimant contended that he attempted to utilize this generic resource, the resource refused to pay, and therefore available generic resources have been exhausted

Claimant's Individual Program Plan

17. On March 30, 2022, RC and Mother conducted an Individual Program Plan (IPP) meeting for Claimant. The parties agreed that Claimant would transition to a Self Determination Program (SDP) and RC authorized \$2,500 to be placed in Claimant's SDP to purchase services during the following year. On page 3, the IPP states, "[T]hough Joshua attends Foundations Cognitive School, LAUSD continues to be the generic resource for education services."

18. As of March 30, 2022, Claimant had been attending FCS for approximately seven months, beginning on August 23, 2021. The IPP report (Exhibit 18) does not mention any request by Claimant for reimbursement for travel expenses to and from his school. The IPP states that it was distributed to all involved parties on May 25, 2022.

Other Correspondence Between the Parties

19. In September 2021, RC proposed an option to allow Claimant to use SDP funds to hire a person to drive him to and from FCS, as opposed to allowing travel reimbursement. Mother informed RC she did not feel comfortable hiring an individual to take Claimant to school every day. Mother preferred to drive Claimant herself because of COVID-19 concerns, Claimant's need for restroom and meal breaks, and

Claimant's inability to always be able to communicate his needs or desires, during the long commute from Woodland Hills to San Juan Capistrano. Mother reiterated her request for transportation reimbursement.

20. Since October 29, 2021, RC informed Mother that generic resources had to be exhausted before RC could consider funding for school-related travel expenses. RC provided Mother with detailed and specific instructions regarding how she could request services from LAUSD. RC also explained how Mother could initiate "due process" with LAUSD to seek placement for Claimant in a non-public school, and to seek reimbursement for travel expenses. RC's letter stated the travel expenses at issue could not be added to Claimant's Self Determination Budget (SDB). RC contended that Claimant has not exhausted an available generic resource, namely the LAUSD.

21. On October 19, 2022, RC sent a letter, and a second NOPA, to Claimant, which summarized the prior correspondence between the parties, and the issues discussed at the parties' August 25, 2022 informal meeting regarding Claimant's funding request. RC again provided specific and detailed instructions regarding how Claimant could initiate a due process complaint with LAUSD to seek reimbursement of travel expenses.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500.) All further statutory references will be to the Welfare and Institutions Code (Code) unless otherwise stated.

2. An administrative fair hearing to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman

Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal RC's denial of his request for reimbursement of travel expenses incurred when he attended school in San Juan Capistrano.

3. Because claimant seeks benefits or services, he bears the burden of proof. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

4. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

5. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services based upon the consumer's developmental needs and the effectiveness of the means selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

6. Pursuant to Code section 4646, subdivision (d), a consumer's IPP must be prepared jointly by the planning team. Decisions concerning the consumer's services and supports, which will be purchased by RC or obtained from a generic resource,

must be made by agreement between claimant and RC. There was no discussion of travel expense reimbursement at Claimant's most recent IPP meeting in March 2022. However, at that time, the parties had an on-going discussion regarding travel expense reimbursement.

7. Pursuant to Code section 4648, subdivision (a)(2) when implementing IPP's, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings.

8. Pursuant to Code section 4648, subdivision (a)(8), regional center funds cannot be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. RC contended any expenses or costs related to Claimant's schooling are the responsibility of LAUSD, because Claimant resides within LAUSD's designated boundaries. Alternatively, RC contends that Claimant should have attempted to seek travel reimbursement from LAUSD, as a generic resource, prior to requesting RC to fund this expense.

9. Pursuant to Code section 4648, subdivision (g), if no provider will provide services and supports contained in a consumer's IPP, the Department of Developmental Services may provide the services and supports directly.

10. Pursuant to Code section 4659, subdivision (a)(1), a regional center is required to identify and pursue all possible sources of funding for consumers receiving regional center services. The possible sources include school districts. RC contended Claimant failed to pursue funding, or reimbursement, from LAUSD for his travel expenses incurred while he attended FCS.

11. Code section 4685.8 details the SDP. Pursuant to subdivision (d)(3)(B), a consumer may utilize the services and supports available within the SDP only when generic services and supports are not available.

12. Code of Federal Regulation (CFR), title 34, section 300.507 details how a person may file a due process complaint against a school district. All further references to the CFR are to Title 34, unless otherwise stated.

13. CFR section 300.34 states transportation to school, to assist a child with a disability, is considered a service which is related to special education and is funded by the school district.

14. Travel expenses related to Claimant's schooling are the responsibility of his school district. (Legal Conclusion 13.) During the time Claimant attended Connection Academy, El Dorado School District was the responsible school district. After Claimant transferred to FCS, his residence then determined the responsible school district, which was, and is, LAUSD. The evidence did not establish why Claimant chose to pursue litigation against Connections Academy and not LAUSD.

15. Within two months of Claimant's request for mileage reimbursement, RC informed Claimant of the need to pursue LAUSD as a generic resource. Additionally, RC provided specific and detailed instructions regarding how Claimant could proceed with LAUSD and request travel reimbursement. Nevertheless, Claimant did not take any action to utilize LAUSD as a generic resource. Instead, Claimant chose to sue Connections Academy and obtained a favorable result.

16. Cause does not exist to order RC to reimburse Claimant for his travel expenses to FCS. LAUSD was an available generic resource and Claimant did not attempt to utilize that generic resource.

ORDER

Claimant's appeal is denied. RC is not required to fund Claimant's transportation expenses incurred during the time Claimant attended FCS.

DATE:

CHRIS RUIZ

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.