

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

In the Matter of the Appeal of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER

OAH No. 2022100199

DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 14, 2022, from Sacramento, California.

Jason Toepel, compliance manager, represented Valley Mountain Regional Center (VMRC).

Claimant's mother and authorized representative represented claimant.

Evidence was received, the record closed, and the matter submitted for decision on November 14, 2022.

ISSUE

Should VMRC be required to fund claimant's caregiver's travel to and lodging in Hawaii so claimant can attend a class trip to celebrate his high school graduation?

FACTUAL FINDINGS

1. Claimant is a teenaged VMRC consumer based on his qualifying diagnoses of intellectual disability and Autism Spectrum Disorder (ASD). In June 2023, claimant expects to graduate high school. Following his graduation, claimant would like to attend a class trip to Hawaii to celebrate. Claimant's family intends to pay for his travel and hotel accommodations.

2. Based on claimant's diagnoses, he requires 24-hour supervision. On an unspecified date, claimant's mother requested VMRC to provide funding for claimant's caregiver's travel and hotel accommodations so he or she can accompany claimant on the trip to Hawaii. On September 23, 2022, VMRC sent a Notice of Proposed Action (NOPA) denying the funding request.

3. As explained in the NOPA, VMRC denied the funding request because:

Supports and services are to be planned through a process of individualized needs determination and services and supports based on the developmental disability related needs of the individual. A trip to Hawaii, or any other vacation, to celebrate graduation is not considered a need but rather a want. The regional center is required to provide services in a manner that reflects cost-effective use of

public funds and to consider the least costly options to meet the developmental needs of the individual. Should a trip or vacation to celebrate graduation be considered a developmental disability need, there would be less costly options than a trip to Hawaii.

4. VMRC also explained in the NOPA:

Regulations prohibit the Department of Developmental services (DDS) and the regional centers from expending funds on supports or services outside of the state of California unless the DDS Director or their designee sign off on the support or service. By regulation, the DDS Director, or their designee, may only do this if it can be shown that options within the state of California have been thoroughly explored and that there are no alternate supports or services within the state that can meet the need of the individual.

5. On October 3, 2022, claimant's mother signed and sent VMRC a Fair Hearing Request appealing the denial of funding. In it, she stated the reason for requesting a fair hearing was: "Request for the DDS Director or their designee to sign off on the support service, proof has been provided for options not available in the State of California, no alternative supports of services with the state can meet the needs of [claimant] to participate with his graduating class of 2023 to GradWeek through IS Tours." In response to a question about what is needed to resolve the matter, claimant's mother wrote, "Purchase an additional attendee ticket through IS Tours for [claimant's] provider to attend to provide support, protection and

supervision to [claimant] during this experience at GradWeek. IS Tours provides accommodations for hotel/travel needs but does not provide chaperones or supervision/support to their disabled participants.”

6. On October 12, 2022, claimant’s mother and representatives from VMRC had an informal meeting to discuss resolving claimant’s funding request. On October 19, 2022, VMRC sent claimant’s mother a letter summarizing the parties’ communications during this meeting. Specifically, VMRC reiterated that it could not fund the request because “services are to be based on the needs of the individual and a graduation trip is seen as a want, regional center is to provide services in a cost-effective manner, and federal guidelines prohibit funding of room and board and hotel stays are considered such.” The letter also summarized claimant’s mother’s arguments as follows:

You informed the regional center that you do see the trip as a need because you were not asking us to fund his trip, which is a desire, but rather fund his staff person's trip which [claimant] needs in order to attend. You also talked about how the cost is not that much comparatively when considering you don't ask for other social recreation funding for [claimant] and also mentioned how you tried to find other sources of funding. You also talked about how the regional center isn't being asked to fund the cost of staff working with him during that time as that is being

funded by the generic resource of IHSS.^[1] You also stated that the regional center wouldn't really be funding the hotel because the travel group that puts on the tours is making accommodations to give [claimant] his own room, so the hotel cost is actually covered by [claimant's] ticket.

7. The parties did not resolve the funding dispute at the informal meeting. This hearing followed.

Claimant's Evidence

8. Claimant is in a special day class at his high school. He is eligible to attend his graduation trip because he met his academic and educational goals. Additionally, his Behavioral Intervention Plan at his school is in good standing and he has no unresolved detentions, suspensions, or expulsions. His brother graduated from high school last year and attended a similar trip. Claimant wants to participate in his class trip because doing so will make him feel closer to his brother and included with his own classmates. Although the trip is hosted by a third-party company and is not affiliated with or sponsored by claimant's school, claimant feels strongly that attending will enable him to participate fully with his classmates as though he did not have any disability. Claimant's mother does not know what portion of claimant's graduating class intends to take the trip.

9. Claimant's conditions are such that, for behavioral reasons, he cannot be left unattended for more than a few minutes. Claimant's mother acknowledged that

¹ In-Home Supportive Services.

claimant's attendance on the trip is a "want" and not a "need," but also explained that she intends to fund the full cost of claimant's flight and hotel. Rather, claimant's need is for a caregiver to accompany him. Claimant's family has arranged for his caregiver's time to be funded through IHSS or similar sources. However, claimant wants VMRC to fund the cost of the caregiver's travel and hotel accommodations. Claimant's mother believes that denying the funding request would discriminate against claimant based on his disability.

VMRC's Evidence

10. Christine Couch is VMRC's director of consumer services for adults and transition-aged youth. She reviewed claimant's Individual Program Plan (IPP), dated August 25, 2022, and testified at hearing about its contents and VMRC's policies and procedures. She explained that VMRC can only fund "needs," as opposed to "wants," and confirmed that VMRC views claimant's participation in the class trip to Hawaii as a want, not a need. Additionally, she explained that VMRC is prohibited from funding recreational services or room and board, which would include hotel accommodation, based on its participation in the Centers for Medicare and Medicaid Services's Home and Community-Based Waiver program. She further explained that claimant's supervision is a need, but that need can be met within California. VMRC did not submit a request to the DDS Director to fund out-of-state services because it believes the funding request must be denied on other legal grounds as well. Finally, Ms. Couch explained that VMRC must fund the least-costly options for services, and that a flight and hotel in Hawaii are more costly than other local options.

Analysis

11. VMRC contends that, for various reasons, claimant's funding request must be denied. For the reasons discussed below, VRMC's contention is supported by the law.

12. First, regional centers can only fund either "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 an independent, productive, and normal life." (Welf. & Inst. Code,² § 4512, subd. (b).) Claimant wants to visit Hawaii to celebrate his high school graduation but needs a caregiver to accompany him. This does not satisfy the requirements of section 4512, subdivision (b). Paying for a caregiver's flight and hotel accommodations in Hawaii is not a specialized service or support, nor is it a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy.

13. Second, regional centers must fund services cost-effectively. (§ 4648, subd. (a)(6)(D).) Transporting and accommodating a caregiver in Hawaii is not the most cost-effective way of enabling claimant to celebrate his graduation with classmates. Although claimant's mother argued that the trip to Hawaii was the only class trip

² All statutory references are to the Welfare and Institutions Code, unless otherwise specified.

available, she acknowledged the trip was not sponsored by the school, and she did not know how many of claimant's classmates plan to attend.

14. Finally, regional centers may not fund services outside of California unless the DDS Director approves the out-of-state service in the claimant's IPP. Such approval must be based on the Director's determination that the service, or an appropriate alternative, is not available within California. (§ 4519, subd. (a).) Here, although claimant's mother mentioned the trip to Hawaii at claimant's August 2022 IPP meeting, his attendance was not listed as a targeted outcome of the IPP or included in the plan for achieving his educational outcomes. As a result, Ms. Couch explained at hearing that VMRC did not submit the out-of-state funding request to the DDS Director, and the DDS Director did not approve out-of-state funding, because VMRC believed funding the trip was also prohibited on other legal grounds. As explained above, that decision was reasonable, and claimant's mother's argument that VMRC should have nevertheless submitted the funding request to the DDS Director is without merit.

LEGAL CONCLUSIONS

1. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to the funding sought. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove

it is more likely than not that he is entitled to the funding requested. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

2. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in natural community settings as well as the right to choose their own program planning and implementation. (§ 4502.) "'Services and supports for persons with developmental disabilities' means 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." (§ 4512, subd. (b).)

3. The Legislature has further declared regional centers are to provide or secure family supports that: respect and support the decision-making authority of the family; are flexible and creative in meeting the unique and individual needs of the families as they evolve over time; build on family strengths, natural supports, and existing community resources; are designed to meet the cultural preferences, values, and lifestyles of the family; and, focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective manner. (§ 4648, subd. (a)(6)(D).)

4. Regional centers, when purchasing services and supports, must ensure conformance with purchase-of-service policies and utilize generic services and supports when appropriate. (§ 4646.4, subdivision (a).)

5. Pursuant to section 4519, subdivision (a):

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the consumer's individual program plan developed pursuant to Sections 4646 to 4648, inclusive. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review

of available options, and determination that the consumer's needs cannot be met in California.

6. As discussed in the Factual Findings as a whole, and particularly Factual Findings 11 through 14, the evidence established that claimant's request does not qualify for regional center funding because: (1) paying for a caregiver's flight and hotel accommodations in Hawaii is not a specialized service or support, nor is it a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy; (2) transporting and accommodating a caregiver in Hawaii is not the most cost-effective way of enabling claimant to celebrate his graduation with classmates; and (3) VMRC cannot fund out-of-state services without approval from the DDS Director based on the claimant's IPP. (§§ 4512, subd. (b); 4648, subd. (a)(6)(D); & 4519, subd. (a).) Thus, claimant's funding request was properly denied.

ORDER

Claimant's mother's appeal of the denial of her request to fund the cost of claimant's caregiver's travel to and lodging in Hawaii so claimant can attend a class trip to celebrate his high school graduation, is DENIED.

DATE: November 29, 2022

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)