

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2023020723

DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on March 30, 2023, by videoconference and telephone.

Claimant's mother appeared on claimant's behalf.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, Inland Regional Center (IRC), represented IRC, the service agency.

The record was closed, and the matter was submitted for decision on March 30, 2023.

ISSUE

Is IRC required to pay for claimant's Uber and/or Lyft to transport claimant to and from college several times per week? Is IRC required to reimburse claimant for her costs for transportation by Uber in the amount of \$287.67 already incurred?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 29-year-old woman who is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act) based on a diagnosis of autism spectrum disorder (ASD). Claimant lives with her mother and attends college at California State University, Fullerton (Cal State Fullerton), which is outside of the service catchment area of IRC.

2. Claimant's annual Individual Program Plan (IPP) dated December 21, 2022, stated claimant would require private transportation to get to and from Cal State Fullerton. The IPP noted that no private transportation could be found, and claimant was forced to use Uber or Lyft rides to and from school which claimant's mother paid for out of pocket. Public transportation by bus is available, however, it goes to Los Angeles before arriving in Fullerton resulting in an over two-hour trip each way. Given claimant's self-stimulatory behavior (stimming), and her inability to follow social cues, travel by public transportation would not be safe for claimant.

3. On January 17, 2023, claimant requested that IRC fund either Uber or Lyft to transport her to and from Cal State Fullerton.

4. IRC denied the request in a Notice of Proposed Action (NOPA) dated January 19, 2023. The NOPA listed the reasons for denial. They included that the transportation was not a required service, and that neither Uber nor Lyft were vendored with IRC.

5. On February 14, 2023, claimant submitted a fair hearing request seeking transportation through an approved IRC vendor and reimbursement of Uber payments for the fall semester in 2022 and spring semester in 2023.¹ This hearing ensued.

IRC's Evidence

6. Jessica Ferrin is a Consumer Services Coordinator (CSC) at IRC. She has been employed with IRC for 12 years. Ferrin has been claimant's CSC since January 2022. During the spring semester of 2022, claimant had been receiving transportation from a neighbor, which was funded through a Financial Management Service (FMS) and HBX transportation (HBX), an IRC vendor. The neighbor is currently unable to transport claimant, and HBX does not currently have any routes that go to Cal State Fullerton. In December 2022 after claimant's most recent IPP, Ferrin contacted 11 transportation companies and none of them could provide transportation. She testified that IRC can and will supplement the costs of transporting claimant to and

¹ Claimant's fair hearing request had asked for reimbursement of \$1,576.72 for the previous semester (fall of 2022) and \$287.67 for the current semester (spring 2023). At hearing, claimant's representative withdrew the request for reimbursement for the prior semester.

from school. Claimant could receive the federal mileage reimbursement through FMS. The current rate is 65.5 cents per mile.

7. Anthony Duenez has been a Program Manager at IRC for eight years. Duenez testified that an agreement to fund services is not a guarantee of provision of those services. Further, he stated that IRC does not have a contract with Uber or Lyft, and that IRC is prohibited from reimbursing claimant because there was no purchase of service authorization for Uber or Lyft and retroactive authorization is prohibited pursuant to California Code of Regulations title 17, section 50612.

Claimant's Evidence

8. Claimant's mother prepared a written statement and testified at hearing. Her statement and testimony are summarized as follows. She confirmed that claimant had been provided with transportation through IRC to take claimant to and from school. She has attempted to find transportation for claimant through the Cal State Fullerton rideshare program but was unsuccessful. She had been driving claimant but due to her work schedule is currently unable to do so. Public transportation poses a huge safety risk for claimant. She has been in contact with IRC vendors, and they have been unable to accommodate claimant's schedule due to personnel shortages and the costs associated with transporting claimant from her home to Cal State Fullerton. Among Uber, Lyft, and a taxi, Uber is the most economically feasible option.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proving the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden of demonstrating that she is entitled to receive reimbursement for the costs of Uber/Lyft transportation to and from Cal State Fullerton.

2. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). The Act is found at Welfare and Institutions Code² section 4500 et seq. The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501,

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

4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

4. Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Act provides that 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 life of the community." (§ 4501.)

5. While regional centers have a duty to provide a wide array of services to consumers, they are also directed by the Legislature to provide the services in a manner that reflects the cost-effective use of public resources. (§§ 4646, subd. (a), 4640.7, subd. (b).) More specifically, 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." (§4648.35, subd. (b).)

Evaluation

6. Claimant's IPP states that IRC will fund private transportation for claimant to and from Cal State Fullerton. IRC has offered to reimburse claimant's transportation costs to and from school at the federal mileage reimbursement rate. This offer of reimbursement complies with the Lanterman Act's directives that regional centers be innovative and economical in the practices used to reach the goals set forth in claimant's IPP. Pursuant to Welfare and Institution Code section 4648.35, subdivision (b), IRC is prohibited from funding the payment of Uber or Lyft rides for claimant to and from Cal State Fullerton because that is not the least expensive transportation modality that meets her needs. Instead, the payment of reimbursement costs at the federal mileage reimbursement rate is appropriate under these circumstances.

7. Additionally, IRC is prohibited from reimbursing any past Uber rides, as they were not subject to purchase of service authorization, and retroactive authorization is prohibited pursuant to California Code of Regulations title 17, section 50612.

ORDER

Claimant's appeal is granted in part and denied in part.

1. IRC shall provide claimant with reimbursement, from January 2023 through June 2023 (the current semester), as FMS reimbursement for claimant's costs of travel to and from school.

2. Claimant's written request for reimbursement for the fall 2022 semester is denied.

DATE: April 12, 2023

TRACI C. BELMORE
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.