

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

In the Matter of the Appeal of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2023030747

System Tracking No. CS0003808

DECISION

Thomas Heller, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this appeal in Chatworth, California on May 23, 2023.

Claimant appeared at the hearing and was represented by his mother. Their names are not used in this decision to protect their privacy.

Cristina Aguirre represented North Los Angeles County Regional Center (NLACRC).

The matter was submitted for decision on May 23, 2023.

ISSUE

Should NLACRC pay for a private specialized transportation service for Claimant's work commute?

EVIDENCE RELIED UPON

Documents: NLACRC exhibits 1-13; Claimant's exhibit A. Witness testimony: (1) Jennifer Todd for NLACRC; and (2) Claimant's mother.

FACTUAL FINDINGS

Background and Procedural History

1. NLACRC determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.; undesignated statutory references are to this code.)

2. Claimant is a 37-year-old male who is eligible for Lanterman Act services and supports based on a diagnosis of unspecified intellectual disability. He lives with his mother, who is his authorized representative in this appeal.

3. In 2019, Claimant started working for Goodwill Industries (Goodwill) in an "enclave" (i.e., small group) supported employment program, funded first by the Department of Rehabilitation and later by NLACRC. Before he started, NLACRC revised

Claimant's Individual Program Plan (IPP) to reflect the new job and a plan for Claimant to get to and from work on public transportation. Claimant received mobility training from an NLACRC vendor to help him access public transportation, but he still needed some assistance with accessing it. In late 2019, Claimant began working at a Goodwill store in Santa Clarita, California. To facilitate his commute, Claimant and his mother moved within walking distance to the store.

4. In April 2020, Goodwill temporarily closed the store where Claimant worked due the COVID-19 pandemic. Claimant and his mother moved to a different residence that was still close to the store, and Claimant began working there again in July 2020. At times, he used Access, the county's curb-to-curb public paratransit service for disabled individuals, for his work commute.

5. In late August 2020, Claimant's mother emailed Claudia Lee, Claimant's Service Coordinator at NLACRC, stating it was "problematic" for Claimant to use Access for his work commute because the drivers were "disrespectful." Claimant's mother asked if Claimant could use R&D Transportation Services (R&D), which is a private specialized transportation service, or Dial-A-Ride, which is a city curb-to-curb paratransit service. Lee responded that although R&D was an NLACRC vendor, it was for consumers attending a day program or a sheltered workshop, and Claimant was not eligible to use it for his work commute. Lee suggested that Claimant's mother speak directly to Access and report the specific drivers who were problematic.

6. In December 2020, Claimant, his mother, and NLACRC agreed to a new three-year IPP for Claimant. One goal of the plan was for Claimant to continue to work at the Goodwill store in supported enclave employment, with Claimant "commut[ing] to and from [the] Goodwill Store on his own." (Exhibit 5, p. A37.)

7. In June 2021, Claimant's mother again asked Lee if NLACRC would approve Claimant using R&D to commute to and from work due to problems with Claimant using Access. This time, NLACRC approved the request, authorizing Claimant to use R&D on up to five days per week for the commute. NLACRC funded that service for Claimant until August 2022, when Claimant's mother cancelled it. Claimant's mother emailed Lee that she did so due to R&D's "lack of promptness, every other day they are late picking him up." (Exhibit 10, p. A58.) NLACRC documented the cancellation in an August 2022 IPP Addendum.

8. In September 2022, Claimant and his mother moved to Palmdale, California, and Claimant began working at a Goodwill store in that city in individual supported employment rather than enclave supported employment. After the move, NLACRC transferred Claimant's case to its Antelope Valley office and assigned his case to a different consumer services coordinator, Claudia Flores. In November 2022, Claimant's mother contacted Flores asking for approval for Claimant to resume using R&D for his work commute. Claimant's mother stated Claimant was currently using Access for the commute, and he had a standing order to be transported daily without the need to schedule daily pick-ups or drop-offs. Claimant mother also stated the reason for the request was the out-of-pocket cost associated with Access. She later stated the request was necessary because Access was unreliable and inconvenient for the family.

9. Flores and Consumer Services Supervisor Jennifer Todd reviewed the request. On December 2, 2022, Flores notified Claimant and his mother the request was denied because there was an available generic resource, Access, which Claimant had used and could continue to use for his work commute. Flores also offered to review Claimant's need for reimbursement of the fee for using Access, which Claimant

initially declined but later requested. Flores sent Claimant a letter dated December 16, 2022, explaining NLACRC's decision and enclosing a Notice of Proposed Action denying the request.

10. Claimant appealed the Notice of Proposed Action and filed an amended appeal on April 23, 2023, requesting transportation from R&D and an order requiring NLACRC to "make sure [what happened] doesn't happen to anyone else." (Exhibit 1, p. A4.)

Hearing on Appeal

NLACRC'S EVIDENCE

11. NLACRC contends its denial of the request to use R&D for Claimant's work commute is appropriate. Todd testified NLACRC is not allowed to fund private transportation services for an adult consumer who can safely access and utilize public transportation. Nothing in Claimant's documentation at NLACRC indicates he cannot safely use public transportation on Access for his work commute, and he has already been using it successfully.

12. Todd also testified that during the COVID-19 pandemic, NLACRC could fund specialized transportation services from R&D for Claimant's work commute as an exception due to the extraordinary circumstances of the pandemic, when public transportation options were limited. But Claimant's mother cancelled R&D in August 2022, and the pandemic-related exception is no longer available. Furthermore, Claimant is no longer in group supported employment, and NLACRC expects its clients who are not in that form of supported employment to get to and from work independently. In fact, Claimant is no longer even in individual supported employment, because he and his mother recently asked to end the job coaching

services that NLACRC funded for that support. NLACRC clients working without employment supports generally do not receive transportation services from R&D for their work commutes.

CLAIMANT'S EVIDENCE

13. Claimant's mother testified she was not informed that R&D would be unavailable for Claimant's work commute when he moved to Palmdale. She contends Claimant should be allowed to take R&D again for the commute. She cancelled R&D during the pandemic because R&D did not have enough drivers at the time and became unreliable, but she believes it would work better than Access for Claimant now.

14. Claimant's mother and Claimant live about a 10-minute drive away from the Goodwill store in east Palmdale, and Claimant has been using Access for his work commute off and on since about June 2022. Claimant's mother testified that using Access has resulted in some delayed pickups of Claimant, which have sometimes caused him to be late for work and to miss appointments after work. The longest delay in picking Claimant up to go to work has been about 25 minutes, and the longest delay in picking him up from work has been about 10 minutes. Claimant's mother calls Goodwill when Claimant is going to be late for work, and the delays have not jeopardized his employment there. Access is also a shared ride service, and it sometimes takes Claimant much longer than 10 minutes to get home because other riders are dropped off first. The cost of Access is \$4.00 per day round trip, which Claimant can afford.

Analysis of Evidence

15. The evidence supports a finding that Claimant is able to use Access safely and usually effectively for his work commute. Claimant's mother testified he has used it regularly for his commute since June 2002, and the only reported problems are occasional delays that sometimes make him late for work or late getting home. The delays that Claimant's mother described are not so great as to make Access unusable for Claimant or to jeopardize his employment. Claimant's mother also testified the cost of the service is not an issue.

16. NLACRC funded R&D for Claimant's work commute during part of the COVID-19 pandemic, and Claimant's mother objects she was not told R&D would be unavailable for Claimant's commute after they moved to Palmdale. Furthermore, Claimant's mother only cancelled R&D because it did not have enough drivers during the pandemic and became unreliable. But Todd testified that NLACRC's prior agreement to fund R&D for Claimant's work commute was a pandemic-related exception that is no longer available. No evidence in the record indicates otherwise, and the evidence supports a finding that transportation services from R&D for Claimant's work commute are not necessary for Claimant at this time.

LEGAL CONCLUSIONS

Legal Standards

1. The Lanterman Act provides services and supports to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) "'Developmental disability' means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue,

indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a)(1).)

2. "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 an independent, productive, and normal life." (§ 4512, subd. (b).) "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process . . . 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." (*Ibid.*)

3. The services and supports authorized in an IPP may include "transportation services necessary to ensure delivery of services . . ." (§ 4512, subd. (b).) But when purchasing services and supports, a regional center shall ensure "[u]tilization of generic services and supports if appropriate." (§ 4646.4, subd. (a)(2).) Furthermore, a regional center "shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP . . .," and a regional center "shall not fund private specialized transportation services for an adult

consumer who can safely access and utilize public transportation, when that transportation is available.” (§ 4648.35, subds. (a), (b).)

4. Claimant contends that NLACRC should pay for R&D to transport Claimant to and from work, and he has properly exercised his right to appeal. (See §§ 4700-4716.) As the party seeking relief, Claimant has the burden of proof. (Evid. Code, § 500; see *Lindsay v. San Diego County Retirement Board* (1964) 231 Cal.App.2d 156, 161.) This burden of proof requires proof by a preponderance of the evidence, because nothing in the Lanterman Act or another law provides otherwise. (Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].) A preponderance of the evidence means “evidence that has more convincing force than that opposed to it.” [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Analysis

5. Claimant did not prove NLACRC should fund private transportation services from R&D for his work commute. The evidence presented proves Claimant can safely access and utilize public transportation on Access, and NLACRC therefore may not fund the requested private transportation services from R&D. (§ 4648.35, subds. (a), (b).) While Access is not a perfect service for Claimant, it is usually effective for him, and private transportation services for Claimant's work commute are unnecessary at this time. Furthermore, the pandemic-related exception that previously allowed NLACRC to fund transportation by R&D for Claimant's work commute is no longer available. Accordingly, NLACRC's decision to deny Claimant's request to resume using R&D for his work commute is appropriate.

///

ORDER

Claimant's appeal is denied.

DATE:

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.