

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

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

DDS No. CS0009095

OAH No. 2023081051

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 12, 2023, in Bakersfield, California.

The Service Agency, Kern Regional Center, was represented by Jimmy Alamillo, Fair Hearings Officer. Claimant was represented by Mother, conservator under a Limited Conservatorship of the Person. To protect privacy, the names of Claimant and his family are not used. A Spanish interpreter participated by telephone to assist the parties.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act). Each regulation cited below is a section of title 17 of the California Code of Regulations.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on October 12, 2023.

STATEMENT OF THE CASE

Mother seeks mileage reimbursement for the long car rides she takes with Claimant to mitigate misbehavior. She also seeks compensation for Personal Assistance services she rendered Claimant in the first half of 2023, before she completed the process of becoming a vendor. The Service Agency contends funding such services is impermissible: car rides, unlike the Applied Behavior Analysis (ABA) services that have been offered, do not help Claimant live independently or integrate into the community; and regulations do not allow the Service Agency to pay Mother for services she rendered before becoming a vendor.

FINDINGS OF FACT

1. Claimant is eligible for services based on a diagnosis of Autism or Autism Spectrum Disorder (ASD). Mother recently separated from her husband and Claimant lives with her.

Notice of Action

2. The Service Agency's June 21, 2023 Notice of Action (NOA) denied Claimant's request for mileage reimbursement. An August 9, 2023 NOA denied

Claimant's request for retroactive payment for personal assistant (PA) services.

Claimant timely appealed the NOA's on August 18, 2023.

Background

3. Claimant, 21 years old, is in stable physical health, but has a history of disruptive social behaviors, including disrobing, destruction of property, aggressive social behaviors, self-injurious behavior, and emotional outbursts. He visits his psychiatrist once a month for consultation and medication monitoring.

4. Claimant requires Mother's assistance daily to initiate and complete self-care tasks of all kinds, such as brushing his teeth. Claimant knows how to use a restroom, yet he will defecate without using a bathroom and if clean-up is not immediate, that leads to more problems for Claimant and his family.

5. Claimant needs not only prompts, but a great deal of direct supervision. He will elope, leave home, at the risk of serious harm to himself and others. He does not appreciate dangers, such as from vehicle traffic. Claimant has at times been physically aggressive with other people. He will destroy property as well.

6. Kern High School District prepared an Individualized Education Plan (IEP) for Claimant. The District has offered funding so that Claimant may attend the Valley Achievement Center's Education Program with the help of education transportation services, but Claimant refuses to attend.

Individual Program Plan Addendum

7. In the Individual Program Plan (IPP) Addendum dated January 11, 2023, the Service Agency noted, Exhibit 3, page A100, that it "funds 300 monthly hours of homemaker services through Guardian Home Care. KRC also funds for 50 monthly

hours of respite care through Maxim Healthcare, money management through New Leaf Supportive Services, and legal assistance through Attorney, Curtis C. Scott. In addition, KRC has funded for residential placement at Sails Chandler, specialized dentistry through Dr. Dalia Michael, and SSI benefits assistance through Exceptional Family Center.”

8. Claimant was then approved for 218 hours per month of In-Home Supportive Services (IHSS). He received Social Security Income (SSI) of \$1,040.21 per month, Mother being the SSI benefits payee.

9. The IPP Addendum noted also that each month Claimant had three to four instances of aggression towards Mother, including severe scratching and pinching that would leave visible marks.

10. Among the goals expressed in the IPP Addendum, Exhibit 3, page A101, was that Claimant should live in “the most appropriate, safe, and least restrictive home environment with the capacity to meet his needs.” Mother reported, however, that Claimant's overall physical and mental state had regressed, such that he had become more aggressive, non-compliant, and a danger to himself and others.

11. In discussing the IPP Addendum, Mother noted that she drove with Claimant four hours per day or more to help reduce problematic behaviors. Mother reported that as a result of the increased driving her vehicle needed more upkeep, including oil changes and tire rotation.

12. At Mother’s request, the Service Agency undertook to review: ABA, car maintenance, mileage reimbursement, and personal assistance. Service Coordinators submitted a referral to a Crisis Assessment Stabilization Team (CAST) and were to seek generic resources as well. Finally, the IPP Addendum noted that a referral for

Stabilization Training Assistance Reintegration would be submitted as a last resort in case recommendations by CAST were unsuccessful.

April 2023 IPP

13. Claimant's last IPP is dated April 13, 2023. It notes, Exhibit 4, page A119, "The family . . . spends 80 dollars per week on gas to drive [Claimant] around town which he enjoys." The IPP also noted, Exhibit 4, page A120, that Mother "would like to take the ABA parent training course, so she can better understand ABA services." At the time of the IPP, Claimant was not enrolled in a day program or school, but Mother was planning to enroll him in the ABLE program. Classes would be held at his home "due to his excess behaviors," as the IPP states, Exhibit 4, page A122.

14. The IPP noted, Exhibit 4, page A122, Claimant "will be starting ABA services in-home through Prism Behavioral Solutions. Initial Assessment appointments with Mother and Father were completed 05/08/23 and 05/10/23. Proposed start of services 6-8 weeks after initial assessment."

15. The IPP, Exhibit 4, page A123, like the IPP Addendum, discusses Mother's car rides with Claimant:

[Claimant] has a diagnosis of schizophrenia and ASD.

[Claimant] likes long car rides. . . . [He] does not show an interest in . . . any . . . entertainment media. . . . [Claimant] does not like to go to any places. He will only want to stay in the car while [Mother] drives him around. [Mother] will drive him anywhere from 10:00 AM-10:00 PM. If parents do not comply, [Claimant] will undress himself, and he will refuse to do anything until parents tell him to get ready to

go for a drive. He will also become physically aggressive with his parents. That is, he will scratch their arms and hands. [Claimant] will also take 2-3 showers per day. He will stand in the water until parents prompt him to go out for a drive. In some occasions, parent will need to shut the water off for the whole house. [Claimant] will also destroy property in his home. . . . [Claimant] will be starting ABA services in-home through Prism Behavioral Solutions. Initial Assessment appointments with [parents] were completed 05/08/23 and 05/10/23. Per Prism, proposed start of services approximately up to 8 weeks after initial assessment. Authorized hours not yet confirmed.

16. Claimant's Service Coordinator (SC) is Blanca L. Frias Macias. On May 11, 2023, she emailed Aveanna Healthcare (Aveanna), formerly Accredited Respite Services, Woodland Hills, California, to advise that Mother would act as Claimant's PA once she completed an application and provided documentation to become a vendor.

17. In a May 17, 2023 email Zalma Romo, Enrollment Coordinator at Aveanna, advised that they had received Mother's application. Ms. Romo asked whether Claimant's family was approved to provide PA services. SC Frias emailed back to say that the Service Agency's upper management approved and Mother would be Claimant's PA. SC Frias also asked whether Mother had completed the application correctly. Ms. Romo wrote back on May 17, 2023, to advise that Mother had supplied an incorrect date of birth and they awaited documentation to begin the approval process.

18. On June 12, 2023, SC Frias inquired whether Mother had completed the application process. In her June 13, 2023 email response, Ms. Romo advised that Mother had provided her correct date of birth the day before and was still in the application process. On June 20, 2023, Ms. Romo sent SC Frias an update, confirming that Mother had completed the process and could be paid for providing Claimant PA services.

19. SC Frias also gave testimony in agreement with facts set out in the IPP Addendum and IPP. She was testifying when Claimant asked to terminate the proceedings.

20. Mother did not testify at the fair hearing or offer documentation. She expressed concern that she did not have legal counsel or the resources available to the Service Agency. She said she had received a message she was required at home to attend to Claimant and must leave the fair hearing before its conclusion. But she declined offers to take a break, even an extended break, from the proceedings, and resume later in the day, and said she would not seek a continuance to another day either. She would adapt to whatever might be decided, favorable or unfavorable.

LEGAL CONCLUSIONS

1. Generally, the party asserting a claim or urging a change in the status quo has the burden of proof in an administrative proceeding. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) Claimant bears the burden of proof here.

Applicable Laws and Regulations

2. Claimant is seeking services, PA services, and supports, mileage reimbursement. Welfare and Institutions Code section 4512, subdivision (b)(1), states what is meant by services and supports:

“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.

3. Welfare and Institutions Code section 4512, subdivision (b)(1), provides that generally a decision on the services and supports to be provided a consumer is arrived at in cooperation with the consumer and, as appropriate, the consumer’s family, and the Service Agency: “The determination of which services and supports are necessary for each consumer shall be made through the [IPP] process.”

4. As stated in Welfare and Institutions Code section 4646, subdivision (a), the IPP “takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.” The statute states that the IPP should “ensure that the provision of services to consumers and their families [is]

effective in meeting the goals stated in the [IPP], . . . and reflect the cost-effective use of public resources.”

5. Welfare and Institutions Code section 4646, subdivision (d), provides: “Decisions concerning the consumer’s goals, objectives, and services and supports . . . shall be made by agreement” between the regional center and the consumer and family if appropriate.

6. The IPP is further described in Welfare and Institutions Code section 4646.4, subdivision (a), providing in part that:

Regional centers shall ensure . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center’s purchase of service policies, as approved by the [Department of Developmental Services]

(2) Utilization of generic services and supports if appropriate.

7. Welfare and Institutions Code section 4646.5, subdivision (a)(2), provides that the IPP must include:

A statement of goals . . . and a statement of specific, time-limited objectives for implementing the person’s goals and addressing the person’s needs. These objectives shall be

stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over the consumer's life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

8. Welfare and Institutions Code section 4648, subdivision (a)(3), provides in part:

A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment

for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements.

The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; and the procedure for an individual or an agency to appeal a vendorization decision made by the department or regional center.

9. Welfare and Institutions Code section 4659.5, subdivision (a), states that the Service Agency must comply with policies promoting transparency and the public's access to information. Subdivision (b)(5) states that to promote transparency the Service Agency must post on its website: "Purchase of service policies and any other policies, guidelines, or regional center-developed assessment tools used to determine

the transportation, [PA], or independent or supported living service needs of a consumer.”

10. Regulation 50612 provides in part:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider

11. Regulation 54326, subdivision (a), provides that:

All vendors shall: [¶] . . . [¶]

(8) Be vendored separately for each type of service provided, [¶] . . . [¶]

(10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center. . . .

Analysis

12. Claimant has many needs. He needs a great deal of supervision, for instance. He will elope, or leave his home, at the risk of serious harm, because he does not appreciate dangers, such as from vehicle traffic.

13. Claimant has need of changes in behavior. He behaves in ways that cause multiple difficulties for his family and others. He is at times physically aggressive against others, and at times he will destroy property. He knows how to use a restroom, yet he will go without using the restroom, causing problems if clean-up is not quickly done.

14. The evidence does not show that these needs and problematic behaviors are treated effectively by Mother's efforts in taking Claimant for long drives. When he is in a vehicle with Mother for hours of the day, Claimant is not being instructed in or learning how to deal properly with other people. While riding in a vehicle, he is not receiving instruction or lessons in how he might cope with situations that lead to his misbehavior.

15. Mother's decision to take long drives with Claimant has a certain logic. While he is on a long trip, Claimant's misbehavior is at least diminished. No doubt it can be hard for Mother and family members to deal with Claimant and his misbehavior in the home. Driving him for long periods gives them some relief as Claimant is confined to a small space and cannot elope from a moving vehicle and, like many riders in vehicles, is lulled into inactivity by hours of travel.

16. But confinement and inactivity are not a support or service, and in fact are more appropriately considered antithetical to the Act and out of keeping with the policy to fund, as much as possible, services and supports for the betterment of those

suffering from disability. Long rides in vehicles cannot be expected to contribute to “promoting community integration, independent, productive, and normal lives, and stable and healthy environments,” as set out in Welfare and Institutions Code section 4646, subdivision (a).

17. The Lanterman Act’s supports and services are not, to be sure, only for a disabled person. Supports and services may be funded if they contribute to the well-being of the disabled person’s family as well. An example is respite. It is recognized that a family needs breaks from the amount of care, sometimes constant, that a disabled person may need. Mother may thus legitimately claim that driving with Claimant is for the betterment of her life in particular and indeed of the whole family, as preventing Claimant from misbehavior lightens their burden in looking after him.

18. There is, however, no evidence to show that keeping Claimant quiet in a vehicle is good for him, though it might benefit the family. Claimant’s activities are suspended while he is in a vehicle. He is not being instructed or counseled or exercised. There may be some little benefit to Claimant from suspending his activities, but there is also the danger he will stagnate, rather than change and perhaps even change for the better.

19. The Service Agency presented evidence that there are better ways to meet Claimant’s needs and problems. One good alternative that should be tried, and that the Service Agency will fund or assist with obtaining funding for, is ABA. ABA is a type of behavior intervention, described in the Service Agency’s Purchase of Service (POS) Guidelines, Exhibit 11, page A275: “techniques to increase the frequency and strength of adaptive behaviors and prevent, reduce, or eliminate the occurrence of maladaptive behaviors.”

20. ABA therapy thus aims to improve skills in language and communicating, socializing with others, academic progress, and understanding the difference between appropriate and inappropriate behaviors. Mother should follow through with her comments at the IPP meeting that she was willing to take the ABA parent training course to better understand ABA services.

21. The Service Agency has also approved the funding of PA services. As there was no emergency, the Service Agency was not authorized under Regulation 50612 to fund the PA services Mother was providing Claimant before she finished the vendorization process on June 20, 2023. Now that Mother is a vendor, her PA services, including to some extent her vehicle mileage, may be reimbursable, in accordance with Welfare and Institutions Code section 4648, subdivision (a)(3) and Regulation 54326, subdivision (a)(8) and (a)(10).

22. Mileage for hours of driving without a particular destination and vehicle maintenance costs incurred because of such driving are not reimbursable. Some transportation funding may be appropriate, but it is limited. Adults such as Claimant may be trained to use public transportation. However, as set out in the POS Guidelines, Exhibit 11, page A328, "If it is determined that the client is not capable of traveling independently, in a group and/or with a travel companion or where a reasonable mode of transportation is not available to enable an adult client to attend an educational, or training program, KRC will purchase transportation."

23. Personal assistant services, to be rendered by Mother, may be used for transportation if Claimant is unable to use public transportation. As the personal assistant in such circumstances, Mother's travel with Claimant to doctor's appointments or therapy and the like may be reimbursed, because such transportation relates to Claimant's disability and its alleviation. But reimbursement for the travel

Mother seeks here was not shown to be related closely to disability or its alleviation, and therefore is not reimbursable.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS LUCERO

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.