

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT,

and

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No. CS0011352

OAH No. 2023120807

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 5, 2024, in Chatsworth, California.

Claimant was represented by Melissa Meira Amster, Amster Law Firm, with the assistance of Claimant's mother (Mother). (Titles are used to protect confidentiality.)

North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Aaron Abramowitz, Enright & Ocheltree.

Oral and documentary evidence was received on the hearing date. With the agreement of the parties, the matter was continued to April 15, 2024, so that the parties could submit written closing arguments. Claimant timely submitted her closing argument, which is identified as Exhibit V. Service Agency's closing argument was also timely received and is identified as Exhibit 10.

The record closed and the matter was submitted for decision on April 15, 2024.

ISSUE PRESENTED

Should the Service Agency be ordered to approve re-allocation of funds in Claimant's spending plan to pay mileage reimbursement to an employee?

EVIDENCE RELIED ON

In reaching this proposed decision the ALJ relied upon Exhibits 1 to 9 and A through U, and the testimony of Liz Campos, Robin Monroe, and Mother. The ALJ also considered the arguments in the parties' briefs, exhibits 10 and V, although such arguments are not evidence.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant is a 12-year-old girl who receives services from NLACRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act or the Act), California Welfare and Institutions Code, section 4500 et seq. (Further

statutory references are to the Welfare and Institutions Code unless otherwise noted.) She is eligible for services because she has Cerebral Palsy and Moderate Intellectual Disability, eligible conditions under the Act. (Ex. C, pp. B10-11.) Claimant participates in the Self Determination Program.

2. On November 16, 2023, Service Agency issued a Notice of Action (NOA) denying Claimant's request to provide and fund transportation services for Claimant, such services requested to assist her in attending social recreational activities and/or additional therapies. In the NOA the Service Agency took the position that such transportation services were a parental responsibility. (Ex. 1, pp. A5, A6.)

3. Claimant filed an Appeal Request on December 18, 2023. Mother wrote that Claimant was 11, and had very complex special needs and medical needs, including cerebral palsy, a rare genetic disorder, and type 1 diabetes. Mother stated her disagreement with Service Agency's refusal to allow Claimant to allocate existing funds in Claimant's Self Determination Budget (SD Budget) for mileage reimbursement for an employee who accompanies Claimant to after school social recreational activities. (Ex. 2, p. A11.)

4. On December 27, 2023, Mother participated in an informal meeting with a Service Agency representative in an effort to resolve the matter. The parties could not reach an agreement. (Ex. 4.)

5. This proceeding ensued, all jurisdictional requirements having been met.

Claimant's Background and Condition

6. Claimant lives in the San Fernando Valley, which is in the Service Agency's catchment area, along with her father, mother and three older siblings, a

brother and sister who are twins, and another older sister. Claimant's May 2015 Individual Program Plan (IPP) indicates that at that time Father worked outside the home as an attorney, and Mother was then a full-time homemaker. (Ex. A, p. B1.) Mother's role has changed since then; she testified she now works as the Executive Officer of an organization involved with persons with special needs, as well as some family businesses. Father remains employed outside of the home.

7. Service Agency acknowledges that Claimant is a girl with "complex needs." (Ex. 10, p. A69.) As asserted by Mother in the hearing request, Claimant suffers from Intellectual Disability, Cerebral Palsy, DDX3X, which is a rare genetic disorder, Scoliosis, and type 1 diabetes, which Mother testified developed during the COVID-19 Pandemic. Claimant manifests significant speech delay and behavioral issues as well.

8. Claimant's Adaptive Behavior was assessed in August 2019, when she was seven and one-half years old, utilizing the Vineland Adaptive Behavior Scales-3 (Vineland), a standardized test instrument. Claimant's standard score for communication was 24; her score for daily living skills was 47, and her socialization standard score was 36. The Adaptive Behavior Composite was 36. All these scores were well below the first percentile. The Vineland was again administered in October 2023. Claimant's standard scores had improved: her communication score was 53; daily living skills was 44; socialization was 67, and the composite score was 57. These improved scores, however, were still below the first percentile. (Ex. I, pp. B51-52.) A March 2024 Adaptive Skills Assessment recommended 20 hours per week of direct services to address Claimant's deficits in communication, daily living, safety awareness, and social skills, along with three hours per week of social skills training. (Ex. O, p. B90.) Those services have yet to be authorized.

9. According to her latest IPP, completed in December 2023, Claimant is ambulatory with full mobility, but has problems with fine motor skills and self-help skills. She needs help with hygiene and dressing. It was reported Claimant focuses on preferred activities for five to ten minutes but focuses on non-preferred activities for about one minute, being easily distracted. Maladaptive behaviors were described in the recent IPP, including tantrums, breaking things, and aggressive behavior, and touching herself inappropriately. These behaviors that involve acting out often occur when Claimant doesn't get her own way or is otherwise frustrated. The IPP also describes examples of Claimant's deficits in safety awareness. (Ex. 5.)

10. Claimant attends an on-line charter school, effectively being home schooled. The latest IPP states that the school schedule is Monday through Thursday, 9:00 a.m. to 3:00 p.m., and Fridays 9:00 a.m. to 1:00 p.m. She receives or is eligible to receive speech therapy, occupational therapy, and adaptive physical education. The speech therapy is in-person, while the other two services are virtual; according to the IPP, the virtual format does not work for Claimant. (Ex. 5, p, A31.)

11. Claimant has a busy schedule. During the week, Claimant goes to a learning center in the city where she can participate in her school. After school time Claimant participates in social-recreational activities, which allow for interaction with others. Such activities are, or have included, dance, swimming, basketball, soccer, and horseback riding.

12. Claimant is in her third year of participation in a Self Determination Program (SDP). Her current spending plan includes two items, Community Integration and Independent Facilitator, the vast majority of the SD Budget being allocated to Community Integration. The employee at the center of this matter is an aide hired by Mother approximately one year ago. The aide is paid wages through the spending

plan now in place. The issue raised in this case does not involve the aide's wages, but reimbursement to the aide for mileage driven by her while transporting Claimant to her activities.

13. Robin Monroe, Service Agency's Self Determination Program Supervisor testified that the service code for Community Integration—331—allows for workers like Claimant's aide to Claimant. (See Ex. 6.) The transportation provided by the aide is non-medical transportation; Mother takes Claimant to medical appointments. Service Agency does not dispute Claimant's assertions that, as an employee, the aide is entitled to mileage reimbursement; instead, it argues it cannot fund the mileage reimbursement because of it would be funding a minor's non-medical transportation, which funding is, according to Service Agency, barred.

Claimant's Diabetes and Her Care Requirements

14. Mother testified that Claimant's type 1 diabetes is not a simple problem to manage and treat, in part because the condition is generally difficult to manage, and in part because of Claimant's lack of perception of the problem. Mother testified that Claimant must be monitored every hour, which keeps Mother up most nights.

15. Claimant has two blood sugar monitors, one a Dexcom that is worn on her body, and one that is carried in a fanny pack. The Dexcom monitor can communicate with Claimant's iPad, her parent's phones, and her aide's phone. One of the monitors is changed on a weekly basis.

16. In the past, Claimant received manual insulin injections throughout the day. Recently she was given a pod, which is loaded with insulin, and it administers the insulin. Despite the monitors, Claimant must be manually monitored with finger pricks and glucose strips; this methodology backstops the monitors.

17. Mother testified that Claimant's blood sugar levels will sometimes take sudden and precipitous spikes or dives. In this regard Claimant's pediatrician, Rachel L. Esmond, M.D., described Claimant's diabetes as having an "unpredictable nature." (Ex. Q, p. B94.) If Mother or the aide have the right snacks on hand they can feed Claimant and support her blood sugar at the proper level. Ambient temperature can also affect Claimant's condition. According to Mother, after Claimant has engaged in exercise, she sometimes needs to warmed up in a car with the heater turned on.

18. Mother described some recent problems with caring for Claimant's diabetes, one being a situation where there was a pod malfunction and another where human error caused too much insulin to be delivered. Claimant was up all night after the excessive insulin incident. This type of problem crops up on a somewhat routine basis.

19. Mother described car rides as "complicated," and that was not solely a function of dealing with Claimant's diabetes. For example, Mother needed to buy a device that would lock Claimant's seatbelt, essentially a second seatbelt latch, because Claimant would undo the belt at its own latch release. (See photo, exhibit U.) If a problem arises while they are driving, such as a message about a problem from the diabetes monitors, or if Claimant is suddenly hungry, Mother (or the aide) need to pull over and get in the back seat to attend to Claimant. As noted above, Claimant gets easily frustrated, so a prompt response to her hunger or need for blood sugar management is needed.

20. Mother and Claimant's aide are the only people who can manage Claimant's diabetes and its unpredictable nature. Mother's own father, a physician, and her mother, a nurse, are not comfortable with caring for Claimant since the onset of

her diabetes. Mother and the aide stay in close communication by phone when Mother is not with the aide and Claimant.

21. Claimant's pediatric endocrinologist, Ahlee Kim, M.D., stated in a letter that "due to [Claimant's] young age, diagnosis of type 1 diabetes and neurodevelopmental delay that causes challenges in expressing her symptoms, [Claimant] needs close adult supervision for monitoring blood glucose and interventions when necessary (e.g., insulin administration, glucagon injection, baqsimi administration.)" (Ex. R, p. B96.)

Other Matters

22. Mother testified that she receives funding from In Home Supportive Services (IHSS) but that the IHSS funding does not include transportation. The family has tried using Access, a generic transportation service, Mother describing the effort as a "total and complete disaster." Mother found them unreliable, in part because sometimes they did not show up. The school system is not providing any transport to the afternoon activities. It was not established that the school system would be obligated to transport Claimant to her afternoon activities, and if the school system did so, that it would transport Claimant's aide, or that the school system would transport Claimant and her aide to Claimant's home after the activities.

23. Claimant's three siblings attend three different schools in the San Fernando Valley, and they participate in various after-school activities. Mother, after working in the city, comes back to the Valley and participates in carpools to transport the siblings to and from their activities, and Father occasionally can help with that task.

24. When Mother was attempting, before the NOA issued, to obtain the funding for milage reimbursement, her service coordinator made it clear that NLACRC

"traditionally" did not fund a minor's transportation. (Ex. K, p. B72.) The service coordinator stated her supervisor and a director both were "adamant" that it was an NOA, apparently meaning they were adamant the service would be denied through a Notice of Action. (*Id.*, p. B73.)

25. When Claimant had previously received respite care, the Service Agency provided funding to the vendor of the respite care so that it could provide mileage reimbursement to the respite worker. This mileage reimbursement, however, was to compensate the worker for the expense of going to Claimant to provide the care; it was not paid so that the respite worker could transport Claimant.

26. On November 1, 2023, mother sent an email to "Evelyn," presumably Claimant's service coordinator. Mother quoted section 4648.35, which provides that a regional center shall fund a minor child's transportation only if the family provides written documentation to the service agency to demonstrate it is unable to provide transportation to the child. Mother then attached a schedule of her and her family's daily activities, with an explanation of Claimant's needs, asserting that due to her "complex physical and medical needs, she can only participate in her social recreational activities if someone is able to take her, stay with her and monitor her, and bring her home." (Ex. J, p. B69.) Mother went on to say that without such support, Claimant will just be riding around in a car with Mother, which was the case before social recreational activities became available.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 5.

2. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary, by a preponderance of the evidence. (See Evid. Code, §§ 115 & 500.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

General Rules Applicable to Resolving Service Disputes

3. Although there is an SDP and concomitant SD Budget in place in this case, the SDP should be seen as a vehicle to fund services that are determined by the IPP process. Therefore, basic concepts from the Act, and especially regarding IPP development, should be considered. The parties have cited some of the statutes pertaining to IPP development in their position statements and briefs, and others follow.

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Legislature enacted the Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter,

ARC v. DDS.) The Act mandates 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.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

5. Regional centers must develop and implement IPP’s, which shall identify services and supports “on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of . . . the cost-effectiveness of each option.” (§ 4512, subd. (b); see also §§ 4646; 4646.5; 4647; 4648.) The Act assigns a priority to services that will maximize the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2); 4685, subd. (b)(5).)

6. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646. Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a fair hearing decision may, in essence, establish such terms. (See §§ 4646, subd. (i); 4705; 4706; 4707, subdivision (a)(3); 4710.5, subd. (a).)

7. Section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities” broadly, as meaning

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.

8. Section 4512, subdivision (b), provides a list of services that may be provided, in appropriate circumstances, to a consumer of regional center services. The services and supports are not limited to those set out in the statute. The list is extensive, running the gamut from diagnosis to advocacy to supported and sheltered employment. Obviously relevant to this case is the statute's authorization of "transportation services necessary to ensure delivery of services to persons with developmental disabilities."

9. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and school districts, and private entities such as insurance. (*Id.*, subdivision (a)(1) and (2).) Section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources. And under section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

10. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in section 4659. (§

4646.4, subd. (a).) The Service Agency is also required to consider the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (*Ibid.*)

11. Section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

The Self-Determination Program

11. Section 4685.8, subdivision (a), provides:

The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. . . .

12. Self-determination gives the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (§ 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (§ 4685.8, subd. (b)(2)(G).)

13. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (§ 4685.8, subd. (d)(3)(B).) Further, the SDP requires participants to “only purchase services and supports necessary to implement his or her IPP” (§ 4685.8, subd. (d)(3)(C).)

14. When a consumer is in the SDP, the IPP team is to develop the plan, utilizing the person-centered planning process. (§ 4685.8, subd. (k).)

15. Section 4685.8, subdivision (k), provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5.¹ A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

16. SDP participants and their families have the authority to make decisions about the services and support they need in their lives (§ 4685.8, subd. (y)(1)(B)) and

¹ Under Code section 4648.5, regional centers’ ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended. In 2022 section 4648.5 was repealed.

allow the participant to decide how they want to spend their time. (§ 4685.8, subd. (y)(3)(A).)

17. When developing the individual budget, the IPP team determines the services, supports, and goods necessary for each consumer, based on the needs and preferences of the consumer, and when appropriate the consumer's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in section 4648, subdivision (a)(6)(D). (*Id.* at subd. (b)(2)(H)(i).)

Other Pertinent Authority

18. Each party cited the Self-Determination Program Service Definition for non-medical transportation. That definition, found at Exhibit 8, states such transportation is:

Service offered in order to enable individuals served to gain access to the Self-Determination Program waiver and community services, employment, activities and resources, and participate in community life as specified by their Individual Program Plan. This service is offered in addition to medical transportation required under 42 CFR 431.53 and transportation services under the State plan, defined in 42 CFR 440.170(a) (if applicable), and shall not replace them. Transportation services under the waiver shall be offered in accordance with the individual's plan of care and shall include transportation aides and such other assistance as is necessary to assure the safe transport of the recipient.

Private, specialized transportation will be provided to those individuals who cannot safely access and utilize public transportation services (when available). Whenever possible, the use of natural supports, such as family, neighbors, friends, or community agencies which can provide this service without charge will be utilized. All SDP participants will work with a regional center service coordinator and a Financial Management Services provider. Some will choose to also work with an Independent Facilitator. The SDP participant, and one or all of these entities will determine when the use of natural supports, such as family, neighbors, and friends have been exhausted and paid services begin.

19. Section 4646.4, subdivision (a)(4), states that in providing services, a regional center shall ensure:

Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

20. Claimant cited a regulation, California Code of Regulations, title 17 (CCR), section 54326, subdivision (d)(1), which states that a regional center shall not

Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship.

21. Section 4648.35, subdivision (d) provides: "A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child."

Analysis

22. As found in Factual Finding 24, Service Agency staff may believe a minor child living with his or her family cannot have non-medical transportation funding. That is plainly incorrect. While there are restrictions on when such transportation services may be provided, section 4512, subdivision (b), clearly identifies "transportation necessary to ensure delivery of services to persons with developmental disabilities" as an authorized service. The SDP definitions set out in Legal Conclusion 18 provide further evidence that transportation services can, in appropriate circumstances, be provided to a consumer in the SDP program. The statement within the definition that "[t]ransportation services under the waiver shall be offered in accordance with the individual's plan of care and shall include transportation aides and such other assistance as is necessary to assure the safe transport of the recipient. Private, specialized transportation will be provided to those individuals who cannot

safely access and utilize public transportation services (when available)” is a clear-cut authorization of non-medical transport services.

23. Service Agency asserts that “while Claimant’s diabetes may complicate her medical care, diabetes care is not a specialized service under the Lanterman Act,” citing section 4512, subdivision (b). (Ex. 10, P. A74.) Diabetes, however, complicates more than Claimant’s medical care, it complicates her access to authorized services and supports that meet key goals of the Act: habilitation and community integration. (See Legal Conclusions 4 and 5.) In the circumstances, Claimant’s diabetes cannot be ignored, or somehow separated from the analysis. If Claimant was hearing-impaired, or visually impaired, such would have to be considered in determining how to transport her to her activities, even if such was not a direct outgrowth of her eligible disabilities.

24. Service Agency argues that there are generic resources available, at least Access and transport that could be obtained from the school district. On the first point, Mother’s testimony that Access proved unreliable is credited. As to the school district, on this record it can’t be found that such transportation could be obtained where the student is effectively home schooled, and it is not clear the school district would be obligated to take Claimant to and from the activity site.

25. Claimant has provided written documentation that the family cannot provide transportation for Claimant. Mother’s email and schedule, transmitted to Claimant’s service coordinator is such documentation. (Factual Finding 25.) Whether it is “sufficient” documentation is another issue.

26. At bottom, transportation of children to afterschool activities and other events are a typical responsibility of parents to children without disabilities. Here

Claimant, like her siblings, needs transport to her afterschool activities. Even if she did not have developmental disabilities, someone would have to take her to the soccer pitch, or the stables. In many families, the parents might have to take time from work, or employ a nanny or assistant who could help with transportation. Service Agency's suggestion that Claimant's grandparents might help with her siblings' transportation should be explored, as it might free up Mother to perform some of the transportation. In any event, the rule pertaining to parental responsibility must control in this case, and Claimant's appeal must be denied.

ORDER

Claimant's appeal is denied, and the Service Agency shall not be required to approve re-allocation of funds in Claimant's spending plan to pay mileage reimbursement to Claimant's aide.

DATE:

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023120807

Vs.

DECISION BY THE DIRECTOR

North Los Angeles County Regional Center

Respondent.

ORDER OF DECISION

On April 25, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day May 23, 2024.

Original signed by

Nancy Bargmann, Director