

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

In the Consolidated Matters of the Fair Hearing Requests of:

CLAIMANT ONE,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

DDS No. CS0012602

OAH No. 2024020395 (Primary)

and

CLAIMANT TWO,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0012515

OAH No. 2024020302 (Secondary)

PROPOSED DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 18, 2024.

Armida Ochoa, Independent Facilitator, represented Claimants, who are siblings (Claimant One and Claimant Two or, collectively, Claimants). Claimants' mother (Mother) was present throughout fair hearing. Claimants and their family members are identified by titles to protect Claimants' privacy.

Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (SCLARC).

Spanish interpretation was provided on an as-needed basis during the fair hearing by Alex Zajdman, interpreter. Edgar Maldonado, Spanish interpreter, was also present throughout fair hearing.

Testimonial and documentary evidence was received. The record was closed and the matters were submitted for decision on September 18, 2024.

The two matters were consolidated for hearing and involve the same issue for both Claimants. The matters concern two siblings, Claimant One and Claimant Two. The instant proposed decision concerns Claimant One, OAH Case No. 2024020395 (Primary). A proposed decision concerning Claimant Two, OAH Case No. 2024020302 (Secondary), is issued concurrently with this Proposed Decision.

ISSUE

Should SCLARC's be required to fund for Mother's transportation costs for Claimant One from June 28, 2023, the date the request was made to SCLARC, and ongoing?

EVIDENCE RELIED UPON

Documentary: SCLARC exhibits 1-11; Claimants' exhibits A-Z.

Testimonial: Mayra Munguia, SCLARC program manager, Cynthia Rivera, SCLARC participant choice specialist; and Mother.

Jurisdictional Matters

1. Claimants One is a fifteen-year-old boy who qualifies for regional center services based on Autism.

2. Claimant One participates in the Self-Determination Program (SDP). His SDP individual budget for April 1, 2023, through March 31, 2024, was approved and signed by Mother and SCLARC on January 24, 2024. (Exhibit 4.) Claimant One's fair hearing representative, Ms. Yadira Ochoa, who is also Claimant One's SDP Independent Facilitator (IF), approved and signed the budget on August 15, 2024.

3. On June 28, 2023, Mother requested SCLARC provide funding for Mother for transportation services for Claimant One and add transportation services funding to Claimant One's SDP budget so that Mother could be reimbursed for transportation (i.e., driving) services she provided to Claimant One.

4. On December 14, 2023, SCLARC sent a Notice of Action (NOA) letter to Mother, notifying her that her June 28, 2023 request was denied. (Exhibit 7.)

5. Claimant One had been receiving transportation services from SCLARC when he was receiving services under the traditional model. Specifically, Mother had been reimbursed for driving Claimant One by SCLARC. However, by a notice of resolution (March 2023 NOR) signed by Mother on March 14, 2023, relating to a different dispute between Claimant One and SCLARC, Mother agreed that once Claimant One became part of SDP, he would no longer receive funds for transportation services and Mother, therefore, would no longer be reimbursed for driving Claimant One. (Exhibit 7.) After entering SDP, however, and despite the March 2023 NOR, Mother requested transportation services as a single mother of three children with special needs, indicating to SCLARC it is hard to transport all her children and be in all places for them at the same time. Mother also asserted public transportation can be challenging and overwhelming, and receiving transportation funding from SCLARC would reduce frustration and anxiety. Mother made the request for SCLARC to fund transportation services for all three of her children, including Claimant One, Claimant Two, and Claimants' Sister, who is also a SCLARC consumer. (*Ibid.*)

6. The December 14, 2023 NOA explained SCLARC was unable to approve the request as the SDP budget had already been allotted, could meet Claimant One's needs, and should be utilized to receive the requested support. (Exhibit 7.) SCLARC suggested Mother utilize funds approved for Claimant One's SDP budget, transfer funds distributed to a different self-determination budget category, or Mother negotiate the rate of transportation services so that Mother could remain within her

budget. In addition, SCLARC noted it must consider family support required for minors. (*Ibid.*)

7. On February 12, 2024, Mother filed an appeal request, on Claimant One's behalf, to appeal SCLARC's denial of the request for funding for transportation, requesting only mediation of the matter. On May 30, 2024, Ms. Ochoa, now Claimant One's designated authorized representative and IF, filed an appeal request change form, on Claimant One's behalf, requesting a fair hearing. A motion to consolidate this matter and OAH Case No. 2024020302, which concerns the same request for transportation funding but for Claimant Two, for fair hearing, was also jointly filed by the parties. By an OAH corrected order dated June 7, 2024, the matters were consolidated for fair hearing. This hearing took place thereafter.

Claimant One's Background

8. Claimant One resides at home with Mother and his two siblings, an older sister (Sister), seventeen-years-old, and Claimant Two, who is Claimant One's twin brother. The siblings are all regional center consumers.

9. Mother is Claimant One's primary caregiver. Claimant One is ambulatory. He communicates verbally, using sentences of three words or more and has a limited vocabulary (30 words or less). Claimant One requires assistance to complete self-care tasks. Claimant requires supervision at all times to ensure his safety. Claimant attends some integrated classes at an integrated school, Southeast High School, part of the Los Angeles Unified School District.

10. Claimant One's Individual Program Plan (IPP) dated June 13, 2024, was signed and approved by Mother and Claimant One's Service Coordinator, Annel Guerra. (Exhibit 2.) Pursuant to the IPP, effective April 1, 2024, through March 31, 2025,

SCLARC agreed to fund \$7,322.40 for Community Living Support (Cooking class); \$92,229.60 for Community Integration Support (which includes Personal assistance in the community/camping Bakersfield, one to one personal support, community integration support, Adaptive Skills Training (AST) services, AST supervision, art class and music class); \$1,000 for Participated-Directed Goods and Services (Advocate support representation); \$3,000 for IF; and \$2,520 for Individual Training and Education; \$925 monthly for Financial Management Services (FMS); \$135 for Training and Counseling for Unpaid Caregivers; and \$14,252.64 for respite services. (*Ibid.*)

11. Mother reported Claimant One receives 10 hours per week in Applied Behavioral Analysis (ABA) therapy. Additionally, Claimant One receives 50 hours per month of In-Home Supportive Services (IHSS). Mother is Claimant One's IHSS provider. Claimant One also receives \$1,000 in monthly Social Security Income (SSI). Medi-Cal provides for Claimant One's medical services.

12. According to the IPP, Claimant's last Individualized Education Plan (IEP) was on May 17, 2024. (Exhibit 2.) The May 17, 2024 IEP was not submitted into evidence at fair hearing. As reported by Mother at the IPP, Claimant is enrolled and attends Southeast High School in person from 8:23 AM to 3:00 PM, Monday to Friday. He has a Behavior Intervention Implementation (BII) service provider in school and is receiving speech counseling services. (*Ibid.*)

13. Claimant One participates in community outings for personal errands, recreation, entertainment, or church on an almost daily basis. (Exhibit 2.) One of Claimant One's IPP goals is to continue working on building his social skills while participating in social recreational activities through the SDP. (*Ibid.*)

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Request for Transportation Funding

14. Mother requested SCLARC reimburse her and fund for her transportation of Claimants and Sister performed by her as a single mother of three special needs children. Mother testified at hearing regarding the challenges she faces as the sole caregiver and submitted a written statement in support of her transportation reimbursement and funding request. (Exhibit D.) At hearing and in her written statement, Mother argues that because SCLARC previously funded transportation as "an exception . . . due to [Mother's] unique situation as a single mother with full custody of three children with special needs . . . [T]he transportation provided allowed them to access services that [Mother] could not have been able to manage on [her] own." (*Ibid.*)

15. Mother described that the SDP program, while providing flexibility, has caused her to face "significant challenges" and "new obstacles" that she was not aware of before she joined the program. (Exhibit I.) Mother believes that she is not receiving the "same level of support that was previously available" in the traditional program from SCLARC. (*Id.*) Mother's claim of a lack of support by SCLARC is primarily based on her belief that she should continue to be paid by SCLARC for transporting her special needs children to their various activities, including academic tutoring, boxing, Sky Zone, Bolero, and art class, which require Mother to drive her children to and from after school social recreational activities and private tutoring between 12 to 30 miles each day, Monday to Friday. (Exhibits B-H.)

16. Mother has two cars and Sister is almost 17 years old. Mother testified that Sister intends to get her driver's license and attend college in the future. Mother testified she cannot be at all the places her children need her to be at the same time and that the children are developing individual interests and want to be involved in

different social recreational activities. Mother testified she has not pursued requesting transportation services from the generic resource of children's school district because SCLARC did not allocate sufficient funds in the SDP budget for legal services, \$1,000, in the past. It is unclear if Mother has subsequently requested additional funding in the SDP budget for legal services. Mother expressed concern that her health will suffer if she continues to have to transport her children to their various social recreational activities and private tutoring.

17. Mother submitted documents to corroborate her argument that because SCLARC had previously reimbursed her for transporting her children, she should continue to be paid to drive her special needs children to their afterschool social activities and private tutoring classes. Mother submitted copies of transportation reimbursement logs for 2017 through 2023, submitted by her to 24Hr HomeCare, SCLARC's vendor, to demonstrate that she had previously been paid for transporting her three special needs children by SCLARC. (Exhibits J-W.) However, according to Claimant One's IPP addendum, signed by Mother on January 23, 2017, and by SCLARC's Program Manager on January 26, 2017, Mother's original request for transportation services was based on Claimant One's transportation to and from a behavioral program, not social recreational activities and private tutoring classes, and was limited to the time period of February 1, 2017 through June 30, 2017. (Exhibit X.) Further, the language in the request does not specify that Mother will be the transportation provider, rather stating that "a relative" will transport Claimant One "due to distance" and because Mother is "unable to find transportation vendor willing to transport." (*Ibid.*) Further, SCLARC's agreement to provide funding for transportation for Claimant One specified that funding would only be provided at a transportation rate of "over 20 miles per day" in accordance with "SCLARC [Purchase of Service] policies and guidelines." (*Ibid.*)

18. SCLARC's Participant Choice Specialist, Cynthia Rivera, whose responsibilities at SCLARC include providing families with SDP budget planning and guidance, credibly testified at hearing. In response to Mother's argument that Mother should continue to be reimbursed and funded for transportation costs related to transporting her three special needs children to their various afterschool activities, Ms. Rivera explained that Mother had been reimbursed for transportation costs in error by SCLARC while Claimant One was in the traditional model. According to SCLARC's purchase of service (POS) funding standards, transportation service is not the responsibility of any public agency but is considered a parental responsibility for parents, whether or not their children are special needs. (Exhibit 5.) When transportation service is provided by SCLARC, it is under strict exception guidelines. (*Id.*)

19. Ms. Rivera explained that SCLARC's past transportation funding was meant to be an exception during Claimant One's attendance at behavioral therapy and that the intended vendor provider for the transportation was not Mother, but another family member. Ms. Rivera described that the ongoing transportation reimbursement to Mother error was only discovered by SCLARC when Claimant One was transitioning to SDP and Ms. Rivera, who was not involved in SCLARC's prior approval for transportation services funding for Claimant One, examined the transportation reimbursement logs and saw Mother was the provider.

20. Mother disputed that she was paid in error, asserting that SCLARC was aware at all times that she was the transportation provider and approved her transportation reimbursement during the 2017 through 2023 IPP process. None of the IPPs from the past relevant years are in evidence.

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21. Regardless of whether Mother was reimbursed for transportation of her special needs children in the past in error while Claimant One was under the traditional model, Ms. Rivera explained that under SDP policy and funding guidelines, non-medical transportation of minor children to social recreational events and private tutoring, like Claimants', was not an available SDP funded service. Specifically, Mother's transportation needs for her children, which were consistent with typical family support required for minor children, does not qualify for the waiver for non-medical transportation services under SDP. (Exhibit 8, p. A145; Factual Findings 18-19.)

22. Mother's scheduling conflicts and challenges in transporting her three special needs children could potentially be met, according to Ms. Rivera, by, for example, allocating some of the approximately 350 in monthly Personal Assistance (PA) hours in the Claimants' SDP budgets to have the PA provider assist Mother in transporting the children to their various afterschool social recreational activities and private tutoring. SDP provides a family with the option of contracting with their PA to provide transportation services by, for example, the family setting a mileage reimbursement rate. Alternatively, Ms. Rivera explained that the generic resources such as ACCESS or IHSS could also be utilized to have an IHSS provider, other than Mother, transport Sister or Claimants (who sometimes attend the same activities), while Mother transported Sister or Claimants. (Mother's assertion that IHSS precludes transportation to be provided as a service for children is inconsistent with IHSS program guidelines (Exhibit 11).)

23. In sum, Ms. Rivera opined that SCLARC had gone "above and beyond" to support the family through the SDP budget and recognized the challenges Mother faced as a single mother of three special needs children. For example, SCLARC had agreed to increase PA and respite hours and increased Claimants' SDP budgets.

Mother, in turn, asserted that none of the available generic or SDP budget reallocation options would work for her family. Mother continued to insist during her testimony that she was unable to meet the transportation costs and needs of her children without additional assistance, in the form of transportation reimbursement funding by SCLARC.

Services Available in SDP

24. At hearing, SCLARC presented a document titled "Self-Determination Program Definitions" that lists the services available under SDP. (Exhibit 8.) SDP service funding is limited in that SDP "shall only fund services and supports . . . that the federal Center for Medicare and Medicaid Services determines are eligible for financial participation." (Welf. & Inst. Code, § 4685.8, subd. (c)(6).)

25. Non-Medical Transportation is an available service "offered in order to enable individuals served to gain access to the [SDP] waiver and community services, employment, activities and resources, and participate in community life as specified by their [IPP]." (Exhibit 8, p. A145.) The "[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)." (*Id.*) However, the non-medical transportation service waiver is a strictly limited exception, requiring the exhaustion of natural support; "[W]henever possible, the use of natural supports, such as family, neighbors, friends, or community agencies which can provide this service without charge will be utilized." (*Id.*)

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LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) A fair hearing to determine the rights and obligations of the parties is held in response to a claimant's appeal of a service agency's decision. Claimant One timely requested a fair hearing of SCLARC's denial of his request that Mother be reimbursed and funded for transportation costs, and therefore jurisdiction for this case was established. (Factual Findings 1-7.)

2. Because Claimant One seeks government benefits or services, he has the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. In this case, Claimant One bears the burden of proving by a preponderance of the evidence that his Mother is entitled to transportation reimbursement and funding as part of the SDP. (See Evid. Code, § 500.)

Applicable Statutes

4. Section 4659, subdivision (a), provides:

Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources

of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

5. Services provided must be cost effective, and the Lanterman Act requires regional centers to controls costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (§§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4687.)

Self-Determination Program

6. The SDP is a model of service delivery governed by the statutory guidelines set forth in section 4685.8. "Self-determination" means "a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP." (§ 4685.8, subd. (c)(6).)

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7. A regional center consumer who has been deemed eligible for, and has voluntarily agreed to participate in, the SDP is referred to as a "participant." (§ 4685.8, subd. (c)(5).) "A participant may choose to participate in, and may choose to leave, the Self-Determination Program at any time." (§ 4685.8, subd. (d).)

8. The SDP "shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (§ 4685.8, subd. (c)(6).) Transportation of minor children is typically a family responsibility and not a service funded by SCLARC using public funds. Similar to the traditional model, where transportation services are granted by SCLARC as an exception, SDP provides strict guidelines and precludes non-medical transportation from being funded unless a participant qualifies for a waiver after having exhausted natural supports. (Factual Findings 18-25.)

9. An SDP participant can negotiate unique service arrangements with local community resources. (§ 4685.8, subd. (b)(2)(B).)

10. An SDP participant "shall manage [SDP] services and supports within the participant's budget." (§ 4685.8, subd. (d)(3)(D).)

11. An SDP participant "may transfer up to 10 percent of the funds originally distributed to any budget category set forth in paragraph (3) of subdivision (m) to another budget category or categories. Transfer in excess of 10 percent of the original amount allocated to any budget category may be made upon the approval of the regional center or the participant's IPP team." (§ 4685.8, subd. (n).)

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Discussion

12. Based on Factual Findings 1 through 25 and Legal Conclusions 1 through 11, the preponderance of the evidence established that SCLARC properly denied Claimant One's request to use SDP funding for family funded transportation reimbursement and services. Insufficient evidence was presented that Mother's transportation costs, incurred due to driving her special needs children to afterschool social recreational activities and private tutoring, is a service that is eligible for federal financial participation. Non-medical transportation waivers for typically family support required for minor children is not included in the definition of services available in the SDP. Mother's challenges in transporting her special needs children can be addressed through other alternatives, such as transferring funds in the existing SDP budget or from the use of the generic resource, such as IHSS, to provide transportation services to the children.

ORDER

Claimant One's appeal is denied. SCLARC properly denied Claimant One's request for SCLARC to fund for Mother's transportation costs for Claimant One from June 28, 2023, the date the request was made to SCLARC, and ongoing.

DATE:

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case Nos. 2024020395 & 2024020302

Vs.

DECISION BY THE DIRECTOR

South Central Los Angeles Regional Center

Respondent.

ORDER OF DECISION

On September 27, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in these two consolidated matters.

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 submit an application for reconsideration to DDS pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving this 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 October 22, 2024.

Pete Cervinka, Acting Director