

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

In the Matter of the Request for Transportation Services of:

Claimant,

and

North Los Angeles County Regional Center, Service Agency.

DDS No. CS0015170

OAH No. 2024040453

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this consolidated matter¹ on August 15, 2024, and October 15, 2024, by videoconference.

¹ This matter was consolidated for hearing with DDS No. CS0015167, OAH No. 2024040457, claimant's appeal of the denial of her request for DIR Floortime services, but separate decisions for each appeal were issued.

Christopher Wecks, Independent Facilitator, Abound Services, represented claimant who was not present. Claimant's mother was also present.

Stella Dorian, Due Process Officer, represented North Los Angeles County Regional Center (NLACRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 15, 2024.

ISSUE

Should transportation funds be included in claimant's Self-Determination Program (SDP) budget?²

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is 21 years old and resides in her family home. She is eligible for regional center services based on her diagnosis of autism spectrum disorder. Authorized services and supports she receives include respite, camp service, an

² Claimant is transitioning to SDP. Pursuant to Welfare and Institutions Code section 4712.5, and the February 27, 2023, delegation of services from the Department of Developmental Services (DDS) to OAH, decisions containing issues regarding SDP shall be proposed decisions provided to DDS.

Applied Behavior Analysis (ABA) assessment,³ social recreation, community integration, and social skills training.

2. On March 13, 2024, NLACRC advised claimant that her request that transportation funding be included in her SDP budget was denied.

3. Claimant appealed that decision, and this hearing followed.

Motion to Continue

4. Prior to the start of the first day of hearing, claimant filed a continuance request, moving to continue the hearing. The basis for the request was that claimant had received a large packet of documents from NLACRC (the hearing exhibits) and wanted time to review them. NLACRC opposed the request. The request was denied for failure to demonstrate good cause.⁴ NLACRC had timely uploaded the exhibits, in fact well before the time due, and most documents were claimant's records which there was no showing claimant had not previously reviewed. Other documents were simply applicable code sections, and procedural documents, previously referenced by NLACRC in its denial. The remaining documents were reference materials relied upon by NLACRC in making its decision. There was no showing why claimant had not reviewed them prior to hearing. For all those reasons, the request was denied.

³ This assessment is the subject of the appeal addressed in OAH No. 2024040457.

⁴ This was claimant's second continuance request. Pursuant to Welfare and Institutions Code section 4512, subdivision (a)(1), a showing of good cause was required.

Suspension of Hearing

5. During the hearing, claimant sought to introduce exhibits not previously produced. Over objection, claimant was allowed to upload those exhibits. Included among them were several research articles regarding issues addressed in claimant's other appeal, OAH No. 2024040457. NLACRC's request for time to review those articles was granted, and a second day of hearing was set.

Evidence Introduced at Hearing

6. Consumer Services Coordinator (CSC) Amado Amores, and Behavioral Services Supervisor Annette Sinanian testified, and documents were introduced. The factual findings reached herein are based on that evidence. At the close of NLACRC's case in chief, claimant and her representative were given time to meet privately to discuss how they wanted to proceed, after which they stated they did not want to testify. Instead, they wanted claimant's representative to make a closing argument. No findings of fact can be made on the statements the representative made as they were not given under oath and can only be received as argument.

7. Claimant's 2021 and 2022 Annual Progress Reports provided information about claimant including health information, behaviors, social information, potential future services, goals, and desired outcomes. Claimant graduated from high school in June 2021 with a diploma.

8. Claimant's 2024 Individual Program Plan (IPP) documented her strengths, family information, internship worked, communication skills, services funded by NLACRC, and the disputed services which are the subject of this hearing. The IPP signature page documented the services and supports that would be funded, as well as the disputed services which required resolution.

9. Claimant has been utilizing Access transportation services, an ADA complementary paratransit service for disabled individuals in Los Angeles County. It is a curb to curb transportation service. Claimant advised CSC Amores that Access is not a reliable mode of transportation because pickup and drop-off times are not guaranteed, which happens at least two times per month. Claimant misses events when Access does not appear to take her to them, and "must remain accompanied" when Access does not pick her up from events.

10. NLACRC's Informal Decision Letter summarized the discussions that took place at the April 29, 2024, Informal Meeting. As noted, transportation is a necessary service for all members of the community, and not a need unique to individuals with developmental disabilities. Potential resources to provide transportation to claimant include her family members, private ride-sharing, and public or private transportation agencies. Public transportation is a generic resource and includes bus transit and paratransit systems such as Access. Even though Access may not be able to guarantee pickup and drop-off times, it is a generic transportation resource which claimant has been utilizing. Public transportation is another generic resource available to claimant and Access can provide one-on-one individualized travel training to assist claimant to safely travel on fixed route public transportation. There are also mobility training services and transportation aides to help claimant safely access public transportation which are services available through NLACRC's formal assessment process.

11. NLACRC's Position Statement set forth the reasons for the action it took, essentially reasserting the information in its Informal Decision Letter.

12. Claimant disputed NLACRC's position. She asserted in her documents that it is unsafe for her to travel alone on public transportation. She also argued she cannot use a fixed route independently, and that there are no bus stops close to her

residence or continuous sidewalks that allow her to walk safely to the bus stop. She also asserted Access travel training is not an option because it requires her to walk this unsafe route. However, this argument did not address the fact that Access is a door-to-door service so she would not have to walk the route. Claimant also did not provide any evidence that the route is unsafe; her assertions are not evidence.

13. Claimant introduced photographs of the route in support of her assertions, but none of the photographs established that the route was unsafe. Claimant also provided 2022 Access communications documenting its determination that claimant was unable to “use fixed route independently,” making her eligible for temporary Access services. Due to COVID 19, Access was not granting anyone more than two years of eligibility for the service. Claimant also attached a sample list documenting the numerous times Access canceled or arrived late, and the issues that this caused, including additional costs and inconveniences.

14. Claimant’s 2018 Psycho-Educational Assessment prepared by her school district documented her “well below average” visual perception skills, executive functioning skills, working memory skills, and poor retention of subject matter. Other attention, auditory, visual, and sensory deficits were noted. She met the special education criteria for Specific Learning Disability.

15. NLACRC’s Service Standards, adopted January 12, 2022, and approved by DDS on March 23, 2022, set forth the approved provision of services and supports for NLACRC’s consumers. Section X contains the “Transportation Services, Service and Procedural Standards.” As noted, NLACRC’s policy is “to fund transportation services for adult consumers to primary program sites if the consumer cannot safely access and utilize public transportation or other appropriate personal or public resources as identified in the consumer’s [IPP].”

16. Access's Rider's Guide provided information about its programs including how to schedule trips, wait times, fares, codes of conduct, and the complaint process.

17. Access provides a window of time for pickup/drop-off. CSC Amores explained how any transportation service has a risk of being delayed due to traffic, car trouble, or other reasons, and he recommends consumers schedule an earlier time than needed if they have to be somewhere at a specific time. CSC Amores suggested claimant schedule an earlier pick-up time if being late to programs was an issue. If there are safety concerns regarding claimant's ability to access or use public transportation, these can be addressed with an aide or with Access training.

18. Claimant's mother submitted a written statement setting forth the issues with Access's service and how the services claimant seeks are more cost effective than the aide NLACRC proposed. While this may be true, nothing in that statement overrode that Lanterman Act requirements that generic resources be utilized first. Further, claimant's comparison of the costs of an aide versus Lyft or Uber was unpersuasive as both Lyft and Uber are generic resources.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden and Standard of Proof

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, footnote 5.) In this case, claimant bears the burden to prove that her SDP budget should include funds for transportation.

3. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. It is “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.)

The Lanterman Act, DDS, and Regional Centers

5. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

6. Welfare and Institutions Code section 4501 sets forth the state’s responsibility and duties.

7. Welfare and Institutions Code section 4512 defines services and supports.

8. DDS is the state agency responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory

mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

9. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.2.

10. Welfare and Institutions Code section 4646, subdivision (b), provides that the IPP "is developed through a process of individualized needs determination."

11. Welfare and Institutions Code section 4646.4 sets forth the internal process for creating IPPs. Subdivision (a)(1) requires regional centers to conform with their purchase of service policies. Subdivision (a)(2) requires regional centers to utilize generic services and supports. Subdivision (a)(3) requires regional centers to utilize other services and sources of funding as contained in Welfare and Institutions Code section 4659. Subdivision (a)(4) requires regional centers consider the family's responsibility for providing services and supports.

12. Welfare and Institutions Code section 4646.5, subdivision (a)(1), requires the IPP planning process to include gathering information and conducting assessments. Subdivision (a)(7) requires:

(A) The development of a transportation access plan for a consumer when all of the following conditions are met:

(i) The regional center is purchasing private, specialized transportation services or services from a residential, day, or

other provider, excluding vouchered service providers, to transport the consumer to and from day or work services.

(ii) The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services.

(iii) The planning team has determined that generic transportation services are available and accessible.

(B) To maximize independence and community integration and participation, the transportation access plan shall identify the services and supports necessary to assist the consumer in accessing public transportation and shall comply with Section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

13. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(8) states: "Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all

members of the general public and is receiving public funds for providing those services.”

14. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding including, but not limited to:

(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.

15. Welfare and Institutions Code section 4685.8 requires DDS to implement a statewide SDP which shall be available to all regional centers. Subdivisions (c)(6) and (c)(7), respectively, define “Self-determination” and “Spending Plan.” Subdivision (d) makes participation in the SDP voluntary. Subdivision (d)(3)(C) mandates that the SDP “participant shall only purchase services and supports necessary to implement their IPP and shall comply with any and all other terms and conditions for participation in the” SDP. Subdivision (k) authorizes an SDP participant to “implement their IPP, including choosing and purchasing the services and supports” that are “necessary to implement the plan” and a “regional center shall not prohibit the purchase of any service or support that is otherwise allowable.” Subdivision (r)(5) requires regional centers, “in addition to annual certification, [to] conduct an additional review of all final individual

budgets” Subdivision (r)(6) requires the “spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies.” Subdivision (y)(3)(D) makes SDP participants accountable for the use of public dollars.

Evaluation

16. Claimant did not establish by a preponderance of the evidence that NLACRC should include transportation funds in her SDP budget. Transportation is a service that is not unique to individuals with developmental disabilities. All persons require transportation to school, work, programs, and/or events. NLACRC must first look to generic resources and family supports before it can fund services. Access is a generic resource, as is public transportation, and private-hire cars (Lyft, Uber). Claimant’s family is also an option to provide rides for her.

NLACRC complied with the Lanterman Act and its Service Standards when it denied claimant’s request that funds for transportation be included in her SDP budget. The Lanterman Act does not contain an exception for “unreliable” generic resources, and claimant did not establish that Access’s unreliability was any more unusual than typical transportation issues/delays. Moreover, there is Access transportation training available to claimant as well as the possibility that NLACRC can fund an aide to assist claimant during transportation if an assessment determines one is required, neither of which claimant has pursued. Claimant’s arguments regarding her unsafe access to a bus stop were not persuasive in light of Access’s door-to-door service, and did not overcome the prohibitions in the Lanterman Act that when funding services, regional centers must first look to generic resources, family responsibility, and the type of service being sought.

On this record, claimant's appeal must be denied.

ORDER

Claimant's appeal that NLACRC include funds for transportation in her SDP budget is denied. Those funds shall not be included in her SDP budget.

DATE: October 21, 2024

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024040453

Vs.

DECISION BY THE DIRECTOR

North Los Angeles County Regional Center,

Respondent.

ORDER OF DECISION

On October 21, 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 November 20, 2024

Original signed by:

Pete Cervinka, Acting Director