

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ANTHONY G.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH Case No. 2012120048

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Eastern Los Angeles Regional Center, in Whittier, California, on December 19, 2012.

Anthony G. (Claimant)<sup>1</sup> was represented by his mother, Elsy Galvez (Mother), who was assisted by Spanish/English interpreter Pamela Carreon.

Lilia Ortega, Supervisor, represented Eastern Los Angeles Regional Center (ELARC or the service agency.)

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on December 19, 2012.

ISSUES

The parties stipulated that the following issue is to be decided by the ALJ:

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<sup>1</sup> Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

Shall the service agency continue funding transportation services provided by Comfort Transit (CT)?

## FACTUAL FINDINGS

1. Claimant is an 18 year-old young man who is a consumer of the service agency by reason of his diagnosis of moderate mental retardation.
2. Claimant filed a fair hearing request on October 25, 2012.
3. ELARC presently funds CT to transport Claimant from his school to his after school socialization program, three times per week. ELARC also funds adaptive skills training and behavior training for Claimant.
4. ELARC proposes using ACCESS, a generic transportation company, instead of CT. In the past, Claimant has had problems with ACCESS in the past. In those instances, there was not a "standing order," but rather, an one-time request for transportation. ELARC candidly admits there were problems with ACCESS in the past. However, ELARC personnel testified that ACCESS is now reliable if the consumer has a "set" schedule, as does Claimant, ACCESS can be given a "standing order" to pick up Claimant at 3 p.m. on the three days at issue. Additionally, while Claimant may need some "guidance and mobility training", ELARC established that the company that provides Claimant's adaptive skills training could be utilized to assist him with the transition from CT to ACCESS. Any change usually comes with some difficulty. However, ELARC established that it is reasonable to at least try ACCESS to see if it works. If it does not, Claimant can request that CT be reinstated. If ELARC refuses, Claimant can file a request for fair hearing.

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welfare and Institutions Code sections 4500 et seq.)<sup>2</sup> A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, ELARC had the burden of establishing that the change to ACCESS is reasonable.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (§ 4502.)

4. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer's needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

5. Section 4646 states:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual.... It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*

(b) The individualized program plan is developed through a process of individualized needs determination ....

6. Section 4648 of the Lanterman Act describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determine will best accomplish all or any part of the IPP. Section 4648, subdivision (a)(8), prohibits the use of regional center funds "to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." These are commonly referred to as "generic resources." However, subdivision (g) provides that, where there are identified gaps in the system of services and supports, the Department of Developmental Services may provide the services directly.

7. Services provided must be cost effective (§ 4512, subdivision (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, §§ 4640.7(b), 4651(a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the parents of children with developmental

disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

8. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. ELARC established that the more cost-effective vendor ACCESS, can meet his needs. While Claimant is understandably apprehensive about transitioning to ACCESS, such apprehension, or Claimant's past history with ACCESS, does not establish that ACCESS is presently unable to meet Claimant's needs. Had Claimant recently tried ACCESS, and found ACCESS unreliable, more consideration would have been given for his requested continued funding for CT.

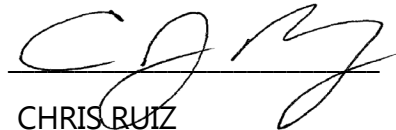
9 Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner (§ 4640.7, subdivision (b), § 4646, subdivision (a)). A regional center is not required to provide all of the services which a client may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP (§ 4651). They are specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as "supplanting generic resources." Where a service is available elsewhere, the regional center is required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subdivision (a)). However, if a service specified in a client's IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP (section 4648, subdivision (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)). In general, a Claimant must first attempt to utilize the generic resource (such as Medi-Cal, County Mental Health, private insurance) before seeking services from the Service Agency. The evidence established that Claimant should attempt to utilize ACCESS. Thereafter, if Claimant can establish that ACCESS can not meet his transportation needs, ELARC may again be required to fund CT.

## ORDER

Claimant Anthony G.'s appeal of the Eastern Los Angeles Regional Center's determination denying Claimant's request for continued funding for Comfort Transit is denied.

IT IS SO ORDERED.

DATED: January 3, 2013



CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.