

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016040379

DECISION

Administrative Law Judge Angela Villegas (ALJ), State of California, Office of Administrative Hearings, heard this matter May 31, 2016, in Pomona, California.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC).

Claimant's mother represented claimant. Also present were claimant and claimant's father.¹

Evidence was received, and the matter was submitted May 31, 2016.

ISSUE AND SUMMARY OF DECISION

1. The issue in this case is: Must SGPRC provide claimant with a van-conversion wheelchair ramp/lift system for a van to be purchased by claimant's family?

¹ Claimant's name and the names of claimant's parents are not disclosed, in order to protect their privacy.

2. This decision concludes SGPRC must provide the van conversion.

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EVIDENCE RELIED UPON

Documentary: SGPRC's exhibits 1 through 6; claimant's exhibit A. Testimonial: Daniela Santana, SGPRC; claimant's mother; claimant's father.

FACTUAL FINDINGS

1. Claimant is a 24-year-old male who qualifies for regional center services based on diagnoses of cerebral palsy, epilepsy, moderate intellectual disability, and expressive learning disorder. (Ex. 3.) He lives with his parents, who are also his limited conservators, and his younger brother.

2. (a) Sometime before March 23, 2016, claimant's mother requested, on claimant's behalf, that SGPRC fund a "van conversion" to facilitate taking claimant to medical appointments (testimony of claimant's mother), and "because it would be easier to transport [him] to community outings, church functions, and or any other place you may take [him]." (Ex. 1.)

(b) In a March 23, 2016 Notice of Proposed Action, SGPRC denied the request, explaining its position that the van conversion was not medically necessary, and that claimant's personal resources (a stipend of \$876 per month in Supplemental Security Income (SSI)) and generic resources (Access Services, a public transportation entity for the disabled) were available to meet claimant's needs. (Ex. 1.)

(c) On April 1, 2016, claimant, through his mother, made a fair hearing request (FHR) seeking "funding for van conversion[,]" or, alternatively, funding for the "conversion ramp itself and we can look for funding the vehicle." (Ex. 2.) The FHR contends the conversion van or ramp is a "medical necessity to transport [claimant] to

and from doctor's appointments, medical testing/labs . . . or any medical needs[.]" (*Id.*) This proceeding followed. At the hearing, claimant's mother made clear only the conversion, not the van itself, is being sought.

3. Claimant is approximately five feet, three inches tall, and weighs approximately 130 pounds. (Ex. 3.) He is not self-ambulatory (though he does regularly walk for exercise, using a walker) and uses a motorized wheelchair to get around. He needs help with all activities of daily living, including transferring into and out of his wheelchair.

4. Because of claimant's various conditions, he needs medications to control spasticity and seizures, and sees a primary care physician as well as a neurologist. When claimant gets a minor illness, such as a cold, his primary care physician has instructed the family to stay in daily contact, and bring claimant in on a same-day basis if a cough develops, because left untreated, the cough could cause fluid build-up in claimant's lungs.

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5. Claimant's most recent Individual Program Plan (IPP), dated January 20, 2016, includes as one of his goals "maintain[ing] optimal physical health[.]" (Ex. 3.)

6. Claimant's IPP also concludes claimant "is unable to safely access public transportation due to the severity of [his] disability." (Ex. 3.) Among claimant's IPP goals is for his parents to continue providing transportation for him "to [his] daily activity[.]" and "to medical appointment[s] and to the community." (*Id.*)

7. Claimant's IPP does not identify any services with which SGPRC has agreed to provide him, but claimant's mother testified SGPRC recently agreed to provide some respite care. The family has not yet used any of the respite hours authorized. Claimant no longer attends school, and does not attend a day program outside his home. Instead,

his mother arranges enriching activities for him each day, including exercise, rest, outings, and community outreach through the family's church. (Ex. 3.)

8. (a) Claimant receives \$876 per month in SSI, of which he must spend \$600 on living expenses. Claimant uses the remaining \$276 to purchase other necessities and access recreation.

(b) Claimant also receives 211 hours per month of In-Home Supportive Services (IHSS) through another agency. Claimant's mother is his IHSS worker.

(c) Indeed, claimant's mother is his primary caregiver. She does not like to leave claimant's care to others, and considers it her and the family's responsibility to oversee his care. Claimant's needs require her attention virtually 24 hours per day; therefore, she does not regularly work outside the home. Because claimant's family must rely on the father's income, finances are relatively tight. Claimant's SSI is insufficient for him to make a meaningful contribution to the cost of a van conversion.

9. Claimant's medical insurer (Medi-Cal) denied his request that it fund the van conversion. Claimant has not appealed the denial; the evidence did not disclose whether he could still do so.

10. The kind of van conversion claimant prefers is one in which the van would lower itself and have a fold-down ramp for claimant's wheelchair. (Ex. A, pp. 2 and 3.) The new system would cost \$28,060 (according to an estimate from Ability Center) or \$28,940 (according to an estimate from Kare Mobility). (Ex. A.) The family plans to use its own funds to purchase the type of van needed for the ramp/lift system.

11. Since 2011, the family has had a 2007 Toyota Sienna van with a wheelchair lift, but the van has nearly 100,000 miles on it, and both the van and the lift have become unreliable. In April 2016 alone, repairs and maintenance on the van and lift cost the family \$1,136.44. Claimant's family uses the van to transport claimant to medical and

dental appointments, and to activities in the community, of which claimant engages in many. Claimant's motorized wheelchair cannot fit into a standard, unmodified vehicle.

12. As an alternative to funding the van conversion, SGPRC offered to engage Access Services (Access) for claimant. (See Factual Finding 2.) Access is "a form of public transportation" offering "a shared-ride service for persons with disabilities who, because of their disability, are unable to use regular bus and light rail services." (Ex. 6.) Access provides curb-to-curb transportation to and from locations within three-quarters of a mile of a bus or rail route. Access drivers cannot leave the vehicle to assist customers who cannot wait on the curb.

13. (a) SGPRC acknowledged Access is not perfect and has limitations, but pointed out many families use it successfully. The evidence did not disclose whether the families successfully using Access have needs congruent with claimant's.

(b) One of Access's limitations is that "all destinations must be treated as equal. For example, a person who needs to visit the doctor cannot get a quicker pick-up or a faster ride than a person who wants to see a movie." (Ex. 6.) How long a ride will take depends on how many riders are being transported and the number of pick-ups and drop-offs.

(c) Moreover, with the exception of standing orders (which must meet several prerequisites), rides must be scheduled "a day in advance." (*Id.*)

(d) In addition, it is "impossible [for Access] to pick up everyone who needs a ride at exactly the time they would like"; therefore, Access reserves the right to set a pick-up time within a two-hour window (one hour before or after) the desired pick-up time. (*Id.*) Pick-up can also occur up to 20 minutes late and still be considered "on time." (*Id.*) Access is busiest weekdays from 7:00 a.m. through 10:00 a.m., and again from noon through 4:00 p.m. There is no provision for an early pick-up if an appointment ends sooner than expected.

(e) On the other hand, up to six one-way trips can be scheduled in a single call to Access, and a personal care assistant may ride along for free.

14. Claimant and his family have previously been offered the chance, through claimant's school district, to try Access, but they have not used it. They prefer the independence of transporting claimant themselves in their own van.

15. SGPRC's Purchase of Service Policy (POS Policy) (ex. 5) does not expressly cover wheelchair lift van conversions.

16. SGPRC's POS Policy for transportation addresses situations in which the client is using "day services and supports." (Ex. 5.) For such situations, the POS Policy allows for public transportation to and from the day program if the client is able to access it, and for those unable to use public transportation, private transportation through an approved vendor or "family members [who] may become vendored for reimbursement of mileage costs." (*Id.*) In denying claimant's request for a van conversion system, SGPRC did not expressly rely on the transportation POS Policy.

17. (a) Rather, in denying claimant's request, SGPRC relied on its POS Policy governing medical, dental, and equipment services. This POS Policy allows SGPRC to purchase "equipment" if four criteria are met: (i) the equipment is associated with, or the need for it has resulted from, the client's developmental disability; (ii) the equipment "is deemed to be medically necessary"; (iii) SGPRC's consultants or clinicians have reviewed and approved the need for the equipment; and (iv) there is no insurance coverage for the equipment, and SGPRC has determined an appeal of the denial coverage is not warranted. (Ex. 5.)

(b) SGPRC conceded claimant's need for the van conversion system results from his developmental disability. In deciding to deny claimant's request in this instance, however, SGPRC did not attempt to evaluate claimant's medical necessity for the system, because it concluded Access was a generic resource that could meet

claimant's need. Since SGPRC did not consider whether the van conversion was medically necessary, it was not in a position to assess whether claimant's insurer's denial of coverage warranted an appeal or not.

18. Likewise, the evidence did not disclose the cost of Access, or whether, year over year, that cost would be greater or less than the cost of the van conversion amortized over the expected life of the device. The evidence also did not indicate that SGPRC had studied the availability or cost of transportation service from a vendor more able than Access to meet claimant's needs flexibly and reliably.

LEGAL CONCLUSIONS

INTRODUCTION

1. Claimant had the burden to prove, by a preponderance of the evidence, his entitlement to have SGPRC provide the van conversion. (Evid. Code, §§ 115; 500.) Claimant met the burden.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code (WIC), §§ 4500 et seq.), recognizes a public responsibility to provide services and supports for individuals with developmental disabilities. Regional centers are principally responsible for coordinating those services and supports, through the IPP process. (WIC, §§ 4500.5, subd. (d); 4512, subd. (b); 4620 et seq.)

3. Under the Lanterman Act, people with developmental disabilities, such as claimant, have the right to services and supports to help them achieve the most independent, productive, and normal lives possible. Services and supports should be flexible and individually tailored to the consumer and, where appropriate, his or her family. (WIC, § 4648, subd. (a)(2).) Consumers are empowered to make choices in all life areas. (WIC, §§ 4501; 4502, subd. (b)(10).) Regional centers must factor those choices

into the selection of goals and services for the consumer. (WIC, §§ 4501; 4502; 4502.1; 4512, subd. (b); 4640.7, subd. (a); 4646, subds. (a) & (b); 4648, subd. (a)(1) & (2).)

4. WIC section 4646, subdivision (a), requires regional centers to balance several interests in procuring services and supports, including “the needs and preferences of the individual and the family”; “promoting community integration, independent, productive, and normal lives, and stable and healthy environments”; providing effective services; and “reflect[ing] the cost-effective use of public resources.”

Claimant’s IPP and Need for Transportation Suitable for His Motorized Wheelchair

5. Once an objective has been included in a consumer’s IPP, WIC section 4648, subdivision (a), mandates that the regional center “[s]ecur[e] needed services and supports” “[i]n order to achieve” that objective.

6. Among the objectives stated in claimant’s IPP are for him to “maintain optimal physical health” (Factual Finding 5), and for his parents to continue providing transportation for his daily activities and medical appointments, and into the community. (Factual Finding 6.) Claimant’s IPP goals do not include accessing public transportation, because of the determination that he cannot safely do so. (*Id.*) These objectives were developed in the IPP process and reflect claimant’s and his family’s choices, and SGPRC’s recognition of those choices. (Factual Findings 3-11 and 14.)

7. In order for claimant's IPP goals to be met, his parents must have a means of providing transportation for him.² Since claimant is non-ambulatory without his motorized wheelchair, transportation would be meaningless for him without a way to bring his motorized wheelchair along. (Factual Finding 3.) Since a regular passenger vehicle cannot accommodate the motorized wheelchair, a modified vehicle is necessary. (Factual Finding 11.) Likewise, claimant's IPP goal of maintaining optimal health is best served if he has a mode of transportation that allows him to attend same-day medical appointments. (Factual Findings 3-5.)

SGPRC'S POS POLICY

8. When purchasing services and supports, regional centers must follow their POS guidelines. (WIC, § 4646.4, subd. (a)(1).) The Department of Developmental Services (Department) reviews the guidelines "to ensure compliance with statute and regulation." (WIC, § 4434, subd. (d).) Guidelines are not entitled to the same deference given to regulations, but do merit a degree of deference, depending upon the circumstances under which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 14-15.)

9. Nevertheless, as SGPRC acknowledges, an administrative policy does not trump the established individual needs of a consumer (*Assn. of Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 390-393), and a regional center

² This case does not present the issue whether claimant's parents should be compensated, in terms of mileage or otherwise, for the transportation they provide claimant. Likewise, it does not present the issue whether SGPRC must provide claimant's family with the van itself. (Factual Finding 2.) It presents solely the issue of whether claimant's parents should be helped to secure the modifications necessary to provide the transportation set forth in claimant's IPP.

cannot decide which services and supports it will provide based solely upon a fixed policy. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.)

10. SGPRC's POS Policy for transportation (Factual Finding 16) does not apply to claimant's request for a van conversion, because claimant's request was not for mileage or similar reimbursement for the transportation itself. Rather, it was for the modifications that make transportation practicable for claimant and his mobility device. Accordingly, SGPRC rightly did not rely on its transportation POS Policy in denying claimant's request. (*Id.*)

11. SGPRC's POS Policy governing medical, dental, and equipment services likewise does not preclude SGPRC from providing claimant with the van conversion—at least, not under the circumstances presented here.

12. First, it is unclear whether the van conversion requested by claimant even constitutes "medical, dental, and equipment services." Respondent's motorized wheelchair undoubtedly constitutes durable medical equipment, but a van conversion merely expands respondent's ability to use his motorized wheelchair outside his home. Thus, the applicability of POS Policy on which SGPRC relied (Factual Finding 17) is debatable.

13. Even assuming the medical, dental, and equipment services POS Policy applies, and even assuming "medical necessity" is a legitimate requirement to impose,³ SGPRC did not address the question whether the van conversion *is* medically necessary

³ Based on the Department's approval of SGPRC's POS Policy, it is assumed, without deciding, that it is appropriate for SGPRC to require that equipment be "medically necessary," even though that standard does not appear in any statute or regulation cited or known to the ALJ.

for claimant.⁴ (Factual Finding 17.) Instead, SGPRC ended its inquiry after determining that Access constituted a generic alternative. (*Id.*)

14. The evidence showed claimant has maintained from the outset that the van conversion was necessary for him to access medical services, and that claimant does indeed require a means of going to the doctor's office on a same-day basis. (Factual Findings 2-4.)

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15. Although Access might provide a generic alternative to transport claimant to and from his daily activities and the community, it does not provide same-day services. Moreover, in any kind of a situation requiring urgent (as opposed to emergent) medical care, Access is not a viable alternative, since it cannot be counted upon to arrive at a particular time, and cannot prioritize drop-offs.⁵ (Factual Findings 12 and 13.)

16. Since Access does not address claimant's same-day medical needs, SGPRC improperly ended its inquiry with the determination that Access constituted a generic alternative, without considering medical necessity. Indeed, further inquiry would have revealed the medical necessity for the van conversion.

17. Hence, SGPRC's POS Policy for medical, dental, and equipment services does not preclude, and even supports, the relief claimant seeks.

⁴ As previously noted, it was undisputed that claimant's need for the van conversion results from his developmental disabilities. (Factual Finding 17.)

⁵ For a medical emergency, presumably an ambulance would be appropriate, although non-ambulance transportation would still be needed after the emergency resolved. For urgent, non-emergent, medical transportation, a converted family van would certainly be more appropriate and cost-effective than an ambulance.

EXHAUSTION OF OTHER POSSIBLE FUNDING

18. Regional centers must pursue “all possible sources of funding for consumers receiving regional center services[,]” including private insurance coverage and government programs such as Medi-Cal, before spending regional center resources to purchase services or supports. (WIC, § 4659, subds. (a) & (b).) In addition, “Regional center funds shall not be used 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.” (WIC, § 4648, subd. (a)(8).)

19. In this case, claimant did seek to have his Medi-Cal insurance cover the cost of the van conversion, and coverage was denied. (Factual Finding 9.) SGPRC did not determine that an appeal would be unfounded; it made no determination at all in that regard. (Factual Finding 17.) Accordingly, the possibility of funding by another source has been exhausted.

20. Given claimant’s scant financial resources, he cannot afford to contribute meaningfully to the cost of the van conversion, let alone fund it entirely by himself. (Factual Finding 8.) Even if claimant’s resources enabled him to pay for the conversion, that would still leave open the question whether he was obligated to do so—and he is not.

COST-EFFECTIVENESS OF THE VAN CONVERSION

21. Services provided must be cost effective, and regional centers must control costs as far as possible, and conserve resources that many consumers must share. (WIC, §§ 4512, subd. (b); 4640.7, subd. (b); 4646, subd. (a); 4651, subd. (a); and 4659.)

22. On balance, the van conversion is cost-effective. While the evidence was silent on the annual cost of Access, claimants are looking to replace an approximately 10-year-old van that has become unreliable. (Factual Finding 11.)

23. Taking the low estimate for the conversion of \$28,060 (Factual Finding 10) and assuming the new van will also have a 10-year life span, the annualized cost of the van conversion is approximately \$2,806 (which breaks down further to roughly \$233.83 per month). That cost per year, to ensure claimant has reliable and suitable transportation, reflects reasonableness and thrift, and is not wasteful.

CONCLUSION

24. For the foregoing reasons, SGPRC must provide claimant with the van conversion.

ORDER

1. Claimant's appeal is granted.
2. Upon claimant's parents' presentation of proof that they have purchased a van for claimant's transport, SGPRC shall furnish \$28,060 toward the installation of a fold-out conversion package, of the type specified in the Ability Center estimate, exhibit A, page 3.

Dated: June 7, 2016

ANGELA VILLEGAS
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.