

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2018110173

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on December 20, 2018, in Pomona, California.

Claimant was represented by her mother who is her conservator. Claimant and her stepfather were both present at the administrative hearing.

Daniella Santana, Fair Hearings Manager, represented the San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

Shall the Service Agency provide funding for the installation of a wheelchair lift and conversion of a van?

FACTUAL FINDINGS

1. Claimant is a 34-year-old female consumer of the Service Agency. She is eligible for regional center services based on her cerebral palsy and moderate intellectual disability. Claimant is spastic quadriplegic, has lost her left side peripheral vision, and has a cerebral shunt to address her hydrocephalus. Claimant has limited bowel and bladder control and must empty her bladder every 90 minutes. Claimant is non-ambulatory and wheelchair bound. She requires assistance to access the bathroom and is not capable of completing toileting without assistance.

2. Claimant requested that the Service Agency fund a wheelchair lift and conversion for her new van. By a Notice of Proposed Action dated October 19, 2018, the Service Agency notified Claimant that it denied her request, stating that other generic sources, such as ACCESS Paratransit (ACCESS), could be used as a means of transporting Claimant.

3. On or about October 31, 2018, Claimant submitted a Fair Hearing Request appealing the denial of service to the Service Agency.

4. Claimant attends San Gabriel Valley Training Center Work Activity Program five days per week and receives contracted transportation to and from the program. She also has a SGPRC funded personal attendant at the site to assist her with toileting. She also receives 20 hours per month of Independent Living Services (ILS) training in housekeeping, meal preparation money management and grooming.

5. Claimant's family bought a 1996 van in 1997 and had it adapted for her needs including a wheel chair ramp after her family determined that ACCESS services would not be able to meet her needs. Claimant's family bore the costs of the van and all of the conversion. Claimant has been able to attend family gatherings, social events and travel out of state with her family for the last 20 years because she has the van and its adaptations.

6. Claimant is not able to use a manual wheelchair and is not able to shift her weight or self-propel a manual wheelchair. Recently, Claimant obtained a new electric powered wheelchair. The wheelchair has a foot rest, tilt, recline and power leg extensions features which are very useful to Claimant. The tilt is used to relieve the pressure from her bottom and hips from sitting all day, and the recliner allows her to reposition herself since she cannot use her left arm to do so. The leg extensions relieve her knee pain and prevent swelling. The wheelchair is very heavy and wider than her previous wheelchair. It is dangerous for Claimant to use the new wheelchair on the old van's ramp because the ramp is too narrow. Because Claimant has little left side peripheral vision and is paralyzed on the left side, she has difficulty maneuvering the wheelchair into the required narrow space on the ramp to disembark. There have been several incidents in which Claimant has nearly been injured because the wheelchair did not engage at the proper point. In one incident, Claimant's elderly parents had to catch her and her heavy wheelchair to keep her from falling.

7. It is not possible to install a wider wheelchair ramp in Claimant's old van which is approximately 22 years old. Therefore, she has purchased a newer van using her social security income to make payments of approximately \$400 per month. The new van can accommodate the installation of either a manual or automatic wheel chair ramp. Claimant's family obtained estimates to install the lift and complete the van conversion. For a manual ramp installation and conversion, Claimant received estimates of \$21,500 (which includes a \$3000 discount if paid directly by the Service Agency) from Ability Center, and \$24,130 from Aero Mobility for installation of a manual lift and conversion. The manual lift would require Claimant's elderly parents to pull the ramp out and position it before Claimant exits the vehicle. Claimant also presented estimates for an automated lift and conversion for \$29,900 from Ability Center, and \$28,514 from Aero

Mobility. The automated lift would ensure that Claimant's parents can continue to operate the lift for her as they age.

8. The Service Agency provided detailed written evidence of ACCESS's services and the testimony of Eliza Herzog, a Service Agency employee and consumer, about ACCESS, a paratransit service for the disabled. ACCESS provides curb to curb transportation for riders. ACCESS has a new smartphone application as well as its regular telephone service and uses "standing orders" for clients that desire to be picked up and delivered on a regular schedule. ACCESS riders may also bring a personal attendant with them without additional charge. However, ACCESS uses a ride share model which often results in much longer rides as they attempt to accommodate more than one rider at a time. Claimant used ACCESS services for many years, but no longer finds it appropriate for her needs. Ms. Herzog is wheelchair bound, but did not appear to have the same severity of cognitive and physical disability as Claimant. It is unlikely that Claimant would be able to navigate the ACCESS system and use the features described by Ms. Herzog.

9. Claimant has In-Home Support Services (IHSS) and ILS. Her mother is her IHSS worker. Many years ago, Claimant's mother rode Access with her. However, Claimant now must use the restroom every 90 minutes and the duration of ACCESS trips are not predicable. Other than mother, Claimant has not been able to find a worker that is willing to ride ACCESS and assist Claimant with toileting. Additionally, Claimant is very vulnerable because she has paralysis and intellectual disability.

10. Claimant had a disturbing incident with ACCESS when she was dropped off at the wrong location and left there unattended for two hours. When she was later found, she was sitting in a puddle of urine and was soaking wet. On another occasion, her mother had to retrieve her, using the van, because the ACCESS vehicle had mechanical issues.

11. Although Claimant used ACCESS for many years, it is no longer an appropriate mode of transportation for her because her physical condition has worsened over time, and she is no longer able to safely use ACCESS.

12. Claimant's operative Individual Program Plan (IPP) dated March 21, 2018 includes the following desired outcomes:

- (1) [Claimant] will maintain optimal health
- (2) [Claimant] will work to the best of her abilities and earn her own money
- (3) [Claimant] will maintain appropriate behavior in the work environment and elsewhere.
- (4) [Claimant] will continue working towards her independence by increasing her laundry, cooking, money management, social, and personal grooming skills.
- (5) [Claimant] would like to keep all of her equipment in good condition and have a Physical Therapist evaluate her and her equipment as needed.
- (6) [Claimant's] family will be supported in their efforts to maintain [Claimant] in the family home until she is ready and decides to live independently.

13. Claimant requires the van lift and conversion in order to live as independently as possible, to join in family events and trips and to safely obtain routine medical and dental care. There are no appropriate alternative modes of transportation and no generic resources to address the expense. Claimant's resources have been used for her personal necessities and the purchase of the new van.

14. The Service Agency purchase of service policy does not specifically prohibit the requested funding.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the

Lanterman Act. (Welf. & Inst. Code §§ 4700-4716.) Claimant submitted a fair hearing request to appeal the Service Agency's denial of the service request.

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.) The burden of proof is on the party seeking government benefits or services. In this case, Claimant bears the burden of proof because she is seeking funding for a service that the Service Agency has not agreed to provide.

3. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to have an internal process that ensures that the purchase of services and supports emphasizes an increased reliance on "utilization of generic services and supports when appropriate," and for "utilization of other services and sources of funding as contained in Section 4659." The types of other services and sources of funding specified in section 4659 include government agencies or programs required to pay the cost of providing the service in question, such as Medi-Cal, and private entities liable for the costs of the service in question, such as insurance.

4. Welfare and Institutions Code section 4646.4, subdivision (a), addresses an internal process for the Service Agency to follow, but does not create any new criteria or restrictions for the provision of services and supports to any consumer. Claimant has demonstrated that there are no other available funding sources. Nor was it established that ACCESS is a satisfactory alternative means of transportation. Finally, the Service Agency purchase of service policy does not specifically prohibit the requested funding.

5. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501, 4512, subd. (b), and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); foster the developmental potential of the person (Welf. & Inst. Code, § 4502, subd. (b)(1).); and maximize

opportunities and choices for living, working, learning and recreating in the community (Welf. & Inst. Code, § 4640.7, subd. (a)).

6. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

7. As defined in Welfare and Institutions Code section 4512, subdivision (b):

“Services and supports for persons with developmental disabilities” means 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 independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . adaptive equipment and supplies, . . . behavior training and behavior modification programs, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities.

8. Welfare and Institutions Code section 4648.35 provides for purchase of transportation services from a vendor in certain instances as follows:

At the time of development, review, or modification of a consumer's individual program plan (IPP) or individualized

family service plan (IFSP), all of the following shall apply to a regional center:

- (a) A regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.
- (b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.
- (c) A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor.

9. Here, Claimant established a need for funding of a van lift and conversion. Claimant's IPP provides that Claimant is to maintain optimal health and continue working towards independence. Claimant will be able to continue joining her family on outings and trips into the community with the lift and conversion. Her old van is 22 years old and is not safe for her use with her current wheelchair. The conversion of the new van would not be necessary but for Claimant's developmental disabilities. Providing funding for adaptive equipment relative to transportation services is expressly provided for by the Lanterman Act. Claimant is bearing the cost of the van itself. Requiring the Service Agency to bear the cost of the lift and conversion to accommodate Claimant's developmental disability is consistent with the Lanterman Act.

10. Based upon the above factual findings and legal conclusions, Claimant has established that the Service Agency should be required to fund the least costly van conversion with an automated lift for \$28,514, by Aero Mobility. The automated limit is

necessary because of the current and anticipated physical limitations of her elderly parents who are her care providers.

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ORDER

Claimant's appeal is granted. The San Gabriel/Pomona Regional Center shall provide funding for an automated lift and conversion of a new van purchased by Claimant; such conversion costs are not to exceed \$28,514.

DATED:

GLYNDA B. GOMEZ

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.