

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ROBERT H.,

Claimant,

OAH No. 2011110920

and

REGIONAL CENTER OF  
ORANGE COUNTY,

Service Agency.

**DECISION**

On January 11, 2012, Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Santa Ana, California.

Claimant's parents, Diane and William H., with assistance from Amanda D., represented claimant, who was not present at the hearing.<sup>1</sup>

Paula Noden, Manager Prevention Program, represented the Regional Center of Orange County (RCOC or service agency).

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on January 25, 2012.<sup>2</sup>

**ISSUE**

Whether the service agency should fund the cost of a van conversion to accommodate claimant's developmental disability, and thus meet claimant's transportation needs.

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<sup>1</sup> Initials are used to preserve confidentiality.

<sup>2</sup> Consistent with a January 12, 2012 Post-Hearing Order in this matter, the service agency submitted a January 18, 2012 letter responding to Claimant Exhibit 23, which has been marked for identification and entered in evidence as Regional Center Exhibit 9. On January 25, 2012, the parties simultaneously submitted written closing arguments. The Regional Center Closing Brief is marked for identification only as Regional Center Exhibit 10. Claimant's Closing Statement is marked for identification only as Claimant Exhibit 24.

## FACTUAL FINDINGS

1. Claimant is a 33-year-old consumer of RCOC based on his qualifying diagnosis of mild intellectual disability and cerebral palsy. Claimant does not have functional use of his right upper extremity. He wears bilateral ankle foot orthoses (AFOs) for weight bearing activities and his AFOs are removed only when he bathes or sleeps. Claimant is non-ambulatory and dependent on a 200-pound power wheelchair which he maneuvers with his left upper extremity for mobility. Claimant uses a manual wheelchair when his power wheelchair is unavailable. Claimant is verbal, but his speech is not easily understood by those do not regularly communicate with him. He uses a Franklin Speech Enhancer/Communication device. Claimant resides with his parents in the family's home, which has been remodeled to facilitate claimant's independent mobility with the use of his power wheelchair.

2. Claimant is active in his community. He maintains his own web-based business, Memories to Life, which specializes in transferring photographs, slides, films, and VHS tapes to DVD and digital files. Claimant volunteers one day each month at the La Palma Library and five days each week at the North Orange County Adult Education campus. Claimant additionally participates in a variety of social and recreational activities with his family, girlfriend, and girlfriend's family including outings to shopping malls, restaurants, movies, concerts, parties, sporting events, and religious services. Claimant frequently travels to northern California and vacations in other locales away from the immediate vicinities of his community. Claimant also ventures out into his community for appointments to address his medical needs. A combination of public and private transportation services, discussed below, facilitates claimant's integration into his community.

3. For a period of time not specifically established by the evidence, claimant's mother transported him in the front passenger seat of a 1994 Ford E-350 van. Mother was required to transfer claimant to and from his wheelchair as he entered and exited the vehicle. The transfer presented safety risks for claimant. On at least one occasion, claimant suffered injury to his neck during a transfer from his wheelchair to the passenger seat of the vehicle. Claimant's family subsequently acquired a 2001 Dodge Grand Caravan which, with financial assistance from the Department of Rehabilitation, was converted to include a side-door power lift for claimant to enter and exit the vehicle without having to leave his wheelchair. Claimant uses a remote control to operate the lift. The floor of the van has been altered to accommodate claimant's wheelchair and to reduce the risk of claimant hitting his head on the van's ceiling. There are locks to secure claimant's wheelchair in the vehicle.

4. The family's Dodge Caravan currently has over 125,000 miles. Between January 2007 and January 2012, claimant's family expended over \$7,000 for various repairs to the vehicle including replacing the automatic locking mechanism on the door through which claimant enters and exits the vehicle because the door was opening while the vehicle was in operation, and installing a rebuilt transmission in the vehicle in order for the vehicle to pass the California-mandated smog check test. The rebuilt transmission comes with a 12,000 mile one-year warranty. The maximum Kelley Blue Book value of the family's Dodge Caravan, assuming that it is in "excellent" condition, is \$4,466.

5. Claimant's family determined that it was impractical and cost-ineffective to continue to make costly repairs to an aging, depreciating vehicle. The family determined to purchase a new family vehicle, advised RCOC accordingly, and queried claimant's service coordinator, Wanda Cutley, whether RCOC would fund the cost of a conversion that includes an automatic power lift and EZ lock system. Cutley advised the family that RCOC has a policy against funding van conversions and mailed *Disabled Dealer* magazine with listings of used vans that were already converted and equipped with lifts (although not necessarily automatic) to the family for its consideration.

6. At a July 6, 2011 planning team meeting, RCOC again advised claimant and his family that its policy does not permit its funding of conversions to vehicles. A Consumer Transaction note memorializing the meeting states that "it was explained as to why conversions to vehicles are not funded" without further elaboration. Mother's October 2, 2011 follow up letter to the service agency, however, reports that "[t]he RCOC staff stated that they typically are able to pay for approximately \$8,000 of a conversion but are not able to fund for the structural changes to the van due to liability reasons." In addition, the service agency's October 13, 2011 letter denying funding for the requested van conversion states "the Purchase of Service Guidelines address funding for van lifts but do not cover the cost for conversion of a vehicle if that is necessary or desired."

7. At the July 6, 2011 planning team meeting, as an alternative RCOC offered the family financial assistance for only the installation of a power lift and locks needed to secure claimant's wheelchair in the vehicle. RCOC instructed the family to provide an estimated breakdown of the costs associated with only the automatic power lift and the locks.

8. Aero Mobility, an existing service agency vendor, estimated that it costs \$14,950 for a "new VMI side entry 'Northstar' in floor ramp, ramp cartridge, wiring harness, VMI 6 computer;" \$4,800 for a "power kneel system to meet ADA requirement for the ramp;" \$1,280 for a "EZ-lock base with wiring & switches (part & labor);" \$600 for "one way shipping cost;" and \$2,000 for "11[inch] lowered floor to meet ADA requirement." Aero Mobility's estimate totaled \$23,630. Aero Mobility notes on its invoice, however, that "items listed above are not being offered individually and must be purchase[d] as a package from the mobility conversion factory and provided for information purpose only."

9. Ability Center, an existing service agency vendor, estimated that "VMI North Star conversion, power in floor ramp, power kneel system, power door, removable front seats, 10 inch lowered floor" costs \$23,600 and that the EZ lock system costs \$1,950.

10. Mac's Lift Gate, Inc., which is not a service agency vendor, provided estimates for three separate types of vans. For a 2011 Toyota Sienna Sport, Mac's Lift estimated that it costs \$23,200 for a "Braun Ramp Vat XT Lower Floor Conversion;" \$265 for a "Braun protective Floor Mat;" and \$635 for "1-way Freight and Prep from Braun" for a "total conversion price" of \$24,100. For a 2011 Honda Odyssey EXL, Mac's Lift estimated that it costs \$22,595 for "VMI Northstar in Floor Conversion" and \$400 for "1-way Freight from VMI" for a "total conversion price" of \$22,995. For a 2010 Chrysler Town & Country Limited, Mac's Lift estimated that it costs \$22,795 for "VMI Northstar in Floor Conversion;"

\$665 for “Rubberized Flooring for Wheelchair Install Customer’s EZ lock to Vehicle;” and \$400 for “Freight from MI” for a “total conversion price” of \$23,850.

11. All three vendor estimates produced in this case establish that van lifts are components of a conversion package that are unobtainable on an à la carte basis.

12. On August 8, 2011, the service agency and the family convened a meeting at Aero Mobility in Santa Ana for the RCOC staff to view a converted van and to observe claimant’s use of the automatic power lift and EZ lock system. As subsequently noted in the service agency’s October 13, 2011 letter denying funding for the requested van conversion, claimant “was able to independently enter and exit the vehicle and the sales representative made a compelling case for the safety provided by the EZ lock system over tie downs for the wheelchair.”

13. Thereafter, the service agency additionally required claimant to undergo a physical therapy equipment evaluation, which its consultant Sharon Grady conducted at claimant’s home on November 16, 2011. Grady observed claimant as he independently transferred himself from his wheelchair to his bed, from his wheelchair to a desk chair in his room, and from his wheelchair to a shower chair in his bathroom. Grady noted in her evaluation report that claimant “demonstrates a good standing pivot transfer and is able to move his feet to maneuver his body effectively.” Grady observed claimant walking short distances in the hallway of the family home while using a grab bar for support. Grady reported claimant’s gait as spastic and she reported complaints about his “feet hurting him more than they used to.” Grady additionally observed claimant enter the family’s Dodge Caravan without any assistance by using a remote control to open the door, lower a ramp on which he motored his wheelchair, lock and secure his wheelchair in the vehicle, and fasten himself in his wheelchair. Grady did not observe claimant transfer from or to his wheelchair to enter or exit any vehicle with or without the assistance of a caregiver.

14. At the hearing Grady testified that claimant is “capable” of transferring from his wheelchair to a typical car seat because his AFOs “give stability for transfer and weight bearing activities.” Grady admitted, however, that “the optimal thing is for [claimant] to use a car like he is currently doing.” Claimant “is always at risk for falling.” “Looking at the total global risk, there is less risk when [claimant] doesn’t have to move from his wheelchair.” Grady acknowledged, for example, that there is an increased risk to claimant’s safety should he attempt a wheelchair-to-vehicle transfer on surfaces that are not flat. In addition, given the amount of spasticity in claimant’s muscle tone, his muscles are likely to tighten when attempting any such transfer causing him to lean back and lose his balance. Claimant told Grady that “as he has gotten older he has more fear transferring.”

15. Kelly Radford, who manages claimant’s service coordinator, and Sharen Leahy, a nurse consultant to RCOC, both testified that up until the time that the service agency reviewed Grady’s report, the service agency was not aware of claimant’s ability to bear weight while transferring from his wheelchair to his bed or desk chair or shower chair. Based on this information contained in Grady’s report, the service agency determined that its Purchase of Service Guidelines (Guidelines) precludes it from funding equipment such as a van lift if the consumer is able to bear weight and can therefore transfer in and out of a

wheelchair. The service agency additionally determined that under the Guidelines claimant was eligible for transportation services from his place of residence to and from a day program site because he previously received mobility training. The service agency advised claimant and his family that claimant was already a recipient of such RCOC-funded transportation service. The service agency thereafter withdrew its alternate offer to fund the costs for an automatic power lift and lock system.

16. For 14 years, the service agency has funded 40 coupons per month for claimant to purchase transportation from ACCESS, a shared ride service for individuals with disabilities, to drive him to his daily volunteer activities. ACCESS contract field administrator Robert Gebo testified that ACCESS provides several levels of service including curb-to-curb service, door-to-door service, subscription service, and same-day taxi service.<sup>3</sup> ACCESS vehicles, with the exceptions of taxi cars, are equipped with surveillance cameras and microphones to enable monitoring and rapid response in case of emergencies. All ACCESS vehicles have GPS devices.

17. During the course of his use of ACCESS, claimant reported several concerning incidents. On one occasion a taxi driver carried on a phone conversation while driving at speeds up to 85 miles per hour. GPS information was unable to confirm the alleged speed. On another occasion, because an operator failed to note that claimant is non-ambulatory, the wrong kind of vehicle—a taxi—was dispatched to him. Once, there was no space in the van intended for claimant because a personal care attendant accompanied another passenger. Another incident occurred when claimant's van reached his destination at the North Orange County Adult Education campus too early and since the driver could not leave claimant alone unattended, he was granted permission to drive with claimant in the van to pick up another customer. Traffic was heavy. In the end, claimant arrived late to the campus.

18. Claimant's family maintains that ACCESS cannot meet all of claimant's transportation needs, which, as set forth above in Factual Findings 2, includes commutes within and around his community as well as frequent travel outside his community with his family, girlfriend, and girlfriend's family. Without adapting the vehicle the family intends to purchase to accommodate claimant's developmental disability, claimant's participation in and around his community and with his family and associates during social and recreational activities outside his community will be limited, if not extinguished. Claimant's family additionally raises concerns about the reliability and costs of ACCESS in the event of unexpected medical appointments. In December 2011, claimant had at least three such medical appointments. If claimant were reliant only on ACCESS he would not have been

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<sup>3</sup> ACCESS informs its users as follows: Standard service is a curb-to-curb service for riders certified by ACCESS. Door-to-door service is an escorted service and is provided at an additional cost. Subscription service allows riders to receive service without the need to call and request each trip. This is good for riders who are traveling to work, school, for regularly scheduled medical appointments, or to other destinations on a regular basis. Same day taxi service is not reserved in advance and is scheduled the same day a customer wishes to travel. The fare is \$2.70 upon boarding the taxi—the same fare as a regular ACCESS trip. At the end of the trip, any amount left on the taxi meter over \$10 will be paid by the customer.

able to obtain medical treatment. Same-day ACCESS transportation for an individual using a power wheelchair is difficult to obtain. Also, claimant's ACCESS coupons would not have covered the entire cost of transportation which exceeded a three mile limitation. Claimant requires frequent restroom use. Claimant's family fears for his embarrassment because a driver would have to call dispatch first for permission to stop the vehicle and then wait for roadside assistance to arrive to help claimant with his toileting.

19. Claimant's family commissioned John Samson, M.D. of West Coast Physical Therapy to conduct an additional equipment evaluation of claimant. Dr. Samson observed and assisted claimant's transfer from his wheelchair to the passenger side of the family's van. Dr. Samson, in a December 7, 2011 report, states that claimant "was able to come to standing with assist of an open passenger door, although the close proximity to another parked car was challenging in itself in order to get the door open wide enough to make room for the transfer. He required minimal to moderate assist with his pivot turns due to lower extremity spasticity. He had difficulty flexing his neck adequately to get down into the car without bumping his head. He states this awkward neck positioning has occurred multiple times and is now causing more and more of a problem due to the consequent pain and making his neck very stiff. Once he is in the car, there is no place for the power wheelchair. . . ."

20. The service agency recommends transporting claimant's power wheelchair on the exterior of any vehicle used for transporting claimant on those occasions when he is not using ACCESS transportation. That recommendation is contrary, however, to manufacturing guidelines warning against exposure to rain or dampness that will cause the wheelchair to malfunction electrically and mechanically or rust prematurely.

21. Claimant timely appeals the service agency's denial of funding for the cost of converting a newly purchased family van to accommodate his developmental disability on grounds that RCOG maintains a fixed policy of not funding van conversions in violation of the Lanterman Developmental Disabilities Services Act (Lanterman Act)<sup>4</sup> and the Home and Community-Based Services (HCBS) waiver program under the federal Medicaid program.<sup>5</sup>

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act, which mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental

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<sup>4</sup> Welfare and Institutions Code section 4500 et seq. Hereinafter, statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>5</sup> See 42 U.S.C. § 1396n. The HCBS waiver program permits states such as California, through the Lanterman Act, to offer an array of home and community-based services to greatest number of disabled individuals while avoiding institutionalization because community services are significantly less expensive than institutional care. The HCBS waiver program is not intended to address specific claims, such as claimant's, for services and supports.

disabilities . . . and to support their integration into the mainstream of life in the community.” (§ 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences and for ensuring service cost effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as “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 rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (§ 4512, subd. (b).)

3. Like individuals without developmental disabilities, claimant requires a combination of public and private transportation services. ACCESS meets his need for transportation to his day program consisting of his volunteer positions at the La Palma Library and the North Orange County Adult Education campus. ACCESS, however, only partially satisfies claimant’s transportation needs. Of equal importance is claimant’s need for other transportation that enables him to venture out into his community and beyond to achieve and maintain, as provided for in the Lanterman Act, an “independent, productive, normal life” through his participation in a variety of family, social, recreational, and religious activities. Up until now, the family vehicle—a 2001 Dodge Caravan—adapted with an automatic power lift and locking system to accommodate claimant’s wheelchair fulfilled claimant’s other transportation needs thereby enabling him to partake in activities that support his integration into the mainstream of life in the community. The Dodge Caravan requires costly repairs that are unreasonable to make given its Kelly Blue Book value. Claimant’s family intends to purchase with its own funds a new family vehicle which requires adaptive equipment such as an automatic power lift and lock systems to accommodate claimant’s wheelchair.

4. The automatic power lift and lock systems required by claimant are among those services and supports which the Lanterman Act was designed to provide in appropriate circumstances. Services and supports include adaptive equipment. (§ 4512, subd. (b).) RCOC’s Guidelines identifies van lifts as a service agency-funded equipment available to consumers “unable to bear weight and, thus, cannot transfer in and out of wheelchair.” With the assistance of grab bars claimant is capable of bearing weight as he transfers from his wheelchair to his bed and desk and shower chairs. It was not established, however, that claimant is capable of a wheelchair-to-vehicle transfer without assistance of grab bars that do not exist on vehicles or in places where vehicles are likely stationed. Without the availability of grab bars should claimant have to make a wheelchair-to-vehicle transfer, claimant is unable to bear weight and thus incapable of any wheelchair-to-vehicle transfer.

5. Wheelchair-to-vehicle transfer does not occur under the same conditions as wheelchair-to-bed or -to-desk and shower chair transfer. RCOC’s own expert, Sharon Grady, acknowledged that there is an increased risk to claimant’s safety should he attempt a

wheelchair-to-vehicle transfer on surfaces that are not flat and that given the amount of spasticity in claimant's muscle tone, his muscles are likely to tighten when attempting any such transfer causing him to lean back and lose his balance. Dr. John Samson, who actually observed claimant attempt a wheelchair-to-vehicle transfer without use of adaptive equipment such as an automatic power lift, confirmed that increasing neck stiffness made it difficult for claimant to enter the vehicle without hitting his head. According to Grady, "the optimal thing is for [claimant] to use a car like he is currently doing" because "looking at the total global risk, there is less risk when [claimant] doesn't have to move from his wheelchair."

6. When purchasing services and supports, regional centers must conform to their purchase-of-service guidelines. (§ 4646.4, subd. (a)(1).) The Lanterman Act requires the Department of Developmental Disability (Department) to review the guidelines "to ensure compliance with statute and regulation." (§ 4434, subd. (d).) Reflecting the Department's interpretation of statute and regulation, the guidelines are not entitled to the deference given to a regulation but are rather entitled to a degree of deference dependent upon the circumstances in which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

7. A family vehicle without adaptive equipment such as an automatic power lift and locking system to accommodate claimant's wheelchair presents increased risks of injury for claimant. Deference to the service agency's application of its equipment policy to deny funds to acquire adaptive equipment for the family's vehicle is unwarranted under these circumstances. Even if claimant were able to bear weight, without the requested adaptive equipment he can neither maintain or maximize his independence. (See Guidelines stating that "[d]ue to their developmental disability, some consumers may require adaptive devices or equipment, which will enable them *to maintain or maximize their independence.*" (Emphasis added.) )

8. Regional centers, moreover, cannot deny requested services and supports on the basis of a general policy not to provide such services and supports. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225.) Reliance on an inflexible policy is inconsistent with the Lanterman Act's stated purpose of providing services "sufficiently complete to meet the needs of each person with developmental disabilities." (*Id.* at 232 citing § 4501.) The Lanterman Act clearly contemplates that services to be provided each consumer will be selected "on an individual basis." (*Id.* at 233 citing *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Consideration of claimant's particular need augurs convincingly for adaptive equipment consisting of an automatic power lift and locking system, which as established in Factual Finding 11, is inseparable from a van conversion.

9. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greatoroex v. Board of Admin.* 91979) 91 Cal.App.3d 54, 54 [retirement benefits]; Evid. Code, §500.) By reason of Factual Findings 1 through 21, inclusive, and Legal Conclusions 1 through 8, inclusive, claimant has met his burden.

10. Cause exists for RCOC to fund the cost of a van conversion to accommodate claimant's developmental disability, and thus to meet claimant's transportation needs.

ORDER

1. Claimant Robert H.'s appeal is granted.
2. Regional Center of Orange County shall fund for claimant Robert H. the cost of a van conversion.

Dated: February 16, 2012

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JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.