

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JAMES C.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2012110069

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on December 10, 2012.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Supervisor and Hearing Designee.

Claimant was present at the hearing and represented by his brother who was appointed by his parents/conservators to represent claimant. Claimant's parents/conservators were also present throughout the hearing.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is ACRC required to fund transportation costs for MedStar to transport claimant to and from his Reach day program?

Is ACRC required to fund the cost of PA (Personal Assistant) hours to provide an individual to remain with claimant in his home after his brother leaves for work prior to

claimant's pick up by the Reach day program van, and in the afternoon when dropped off at his home by the Reach van before his brother returns from work?

Is ACRC required to reimburse claimant's brother for fuel costs incurred in transporting claimant to a drop off site so claimant could board the Reach van prior to his scheduled pick up time?

FACTUAL FINDINGS

1. Claimant is a forty-two-year-old conserved man eligible for ACRC services based on a diagnosis of severe mental retardation. He has also been diagnosed with organic personality disorder, obsessive compulsive disorder and intermittent explosive disorder. Claimant requires assistance in all his daily activities as well as constant supervision.

Claimant lives with his brother, Derrick, in his brother's home in Elk Grove, California. His parents are his conservators and they reside in Fresno, California. Claimant receives services from ACRC pursuant to the Lanterman Developmental Disabilities Act (Welfare and Institutions Code Section 4500 et. seq.)¹

2. Claimant's 2012 IPP (Individual Program Plan) contains the following statement of goals:

[Claimant] would like to continue living with his brother.
[Claimant] will maintain good physical and dental health.
[Claimant] will attend a day program with transportation.

3. In support of these goals, Claimant receives services and supports which include:

Participation in the ACRC vendored Reach behavior management day program, Monday through Friday, with curb to curb transportation.

272 hours per month of County funded IHSS (In Home Supportive Services), which includes 40 hours per week of protective supervision.

ACRC vendored in-home respite at 90 hours per quarter and 14 days of out-of-home respite per year.

Social security income reported to be approximately \$840 per month.

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

4. Claimant's brother is employed as claimant's sole IHSS worker. He is also employed full time outside the home. He testified that he leaves for work prior to the time the Reach van is scheduled to pick up claimant to transport him to his day program. The van is also scheduled to drop claimant off at home prior to claimant's brother's return home from work. During these times, claimant's brother has taken various actions to ensure supervision. At times he has personally employed and funded aides, his parents have come from Fresno to provide assistance, and he has arranged to transport claimant to various pick up locations so claimant could have an extended commute to his day program. The family contends that they had "an agreement that was breached" with the Reach program for extended transportation time.

Claimant requested that ACRC fund transportation through Medstar, rather than the included day program transportation, because he believes it would cover the gap when his brother is at work. He also requested funding of personal assistant hours to cover that time, as well as reimbursement for fuel costs incurred by his brother when transporting claimant to alternative pickup locations.

Claimant's brother and parents contend that the "family is not supposed to suffer hardships because [claimant] chooses to be in program." Claimant's brother testified that as claimant's full time IHSS worker, he receives full health benefits. If he were to work less than the full amount of IHSS hours he would lose that benefit.

5. On October 11, 2012, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that the agency "is denying your requests for: (1) funding MedStar transportation for [claimant]; (2) funding personal assistant services for [claimant]; and (3) reimbursing [claimant's brother] for fuel.

The reason for this action was:

(1) Medstar: ACRC is denying your request to fund MedStar transportation for [claimant] to and from Reach Day Program because it is not cost-effective for ACRC to fund alternative transportation when transportation is already offered and funded for as part of [claimant's] day program. ACRC is required to use the least costly vendor available to provide a service. In this case, Reach is the least costly vendor available to provide [claimant] transportation to and from his program. In addition, the transportation provided by the Reach Day Program is specially designed to ensure clients are not en route to/from program for an extended period of time, to assist in helping reduce or eliminate negative behaviors which might occur during transport. Thus, transportation provided by reach is more appropriate for [claimant].

(2) PA Hours: ACRC is denying your request that it fund personal assistant hours to fund an individual to remain with

[claimant] in his home after [Derrick] leaves the home in the morning pending [claimant's] pick-up by the Reach van, and again in the afternoon after claimant's drop off by the Reach van and before Derrick arrives home. This request is denied because generic resources and other regional center funded services are available to provide [claimant's] care and supervision when Derrick is unavailable due to Derrick's work schedule. Specifically, [claimant] currently receives 90 hours per quarter of in home respite, as well as 263² hours per month of In Home Support Services (IHSS). Either respite or IHSS hours could be used to support and supervise [claimant] before and after his day program when Derrick is unable to be in the home. Another individual could certainly be hired to work some or all of the IHSS hours now being work by [Derrick], allowing that individual to provide the requested care and supervision to supervise [claimant] before and after his day program. Additionally, Claimant's SSI income could be applied toward the cost of obtaining additional care and supervision for [claimant].

(3) Reimbursement for Fuel: ACRC is denying your request that it reimburse [Derrick] for fuel used to drive [claimant] to and from his day program or a drop-off spot so that [claimant] may board the Reach van prior to his regular pick-up time. This denial is based upon the fact that transportation is already available and being funded to provide [claimant] transportation to and from his day program. It would be a duplication of services and not cost-effective for ACRC to fund services which are already being provided through other purchases by ACRC.

6. On October 22, 2012, claimant filed a Fair Hearing Request, appealing ACRC's determinations.

7. Sharon Kurpinsky is claimant's ACRC Service Coordinator. She testified that claimant's Reach day program is a behavior management program that provides its own transportation within the program design. As a behavior management program it works to route transportation so that consumers are in route the shortest amount of time possible. This is especially important in managing consumer behaviors.

8. Timothy Swank is the ACRC transportation coordinator responsible for arranging transportation to meet consumer needs. He testified that the Reach day program provides door to door transportation within its program design at a cost of approximately \$10

² At hearing, claimant's brother clarified that claimant actually receives 272 hours per month of IHSS.

per day. MedStar is generally utilized as non-emergency medical transport. The cost for Medstar to transport claimant to his day program would be approximately \$50 per day.

Mr. Swank testified that transportation services generally have a “ready time” which is often a window of time fifteen minutes before and after the scheduled pick up or drop off time. Transportation times need to allow for variables including the number of consumers utilizing the service on a given day, and traffic conditions. The intent is to transport claimant “in a reasonable amount of time.” They do not provide a “sitting service”

Mr. Swank explained that the most cost-effective transportation service for claimant is that included with his day program. It would be a duplication of services to add additional transportation. If claimant’s brother chooses to drop claimant off at an alternative site, that would not be a transportation need.

9. Claimant filed an appeal based on similar facts that was heard by Administrative Law Judge Ann Elizabeth Sarli on March 23, 2010. Judge Sarli noted the following which continues to be accurate:

A review of the services being provided to claimant show that he has significant supervision (40 hours per week) through IHSS, is enrolled in a full-time day program with transportation and has significant respite time. The Regional Center can expect claimant’s brother to manage these services to provide 24-hour supervision to claimant. The evidence is that claimant’s brother can achieve 24-hour supervision by engaging another person to provide some or all of the IHSS services claimant’s brother now provides. Moreover, claimant receives Social Security income, a generic resource that claimant’s brother can apply to his care and supervision.³

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center’s responsibility for providing services to persons with development disabilities. An “array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities.” (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer’s goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

The Lanterman Act mandates that a consumer’s Individual Program Plan (IPP) be based

³ Claimant’s brother is the legal payee of claimant’s Social Security benefits.

on his or her individual needs. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources, avoid duplication of services, and ensure the cost-effective use of public funds.

2. Section 4646, subdivision (a), provides:

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 with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. 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 plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Section 4648, subdivisions (a)(6)(D) and(a)(8), specify:

In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

- (a) Securing needed services and supports.

- (6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

- (D) The cost of providing services or supports of comparable quality by different provider, if available, shall be reviewed, and the least costly available of comparable services, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and his family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the

consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

[¶] . . . [¶]

(8) 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.

4. Section 4646.4, subdivisions (a)(1), (2) and (3), provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in section 4659.

5. Section 4644, subdivision (b), defines "generic agency" to mean:

Any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

6. Section 4659, provides in part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(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 supplemental program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] . . . [¶]

(c) Effective July 1, 2009 notwithstanding any provision of the law to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria for this coverage but chooses not to pursue that coverage...

7. The evidence presented was persuasive that claimant's needs may be met with the services and supports currently provided. In addition, there was no reason to conclude that it would be in claimant's best interest to extend his transportation time to and from his day program. While claimant's brother contends that he is unable to maintain full health benefits if he is not employed full-time as claimant's IHSS worker, the IHSS services are provided for claimant's benefit, not his workers. Services and supports provided to claimant are designed to meet the needs of claimant.

ORDER

The appeal of claimant James C. is denied

DATED: December 17, 2012

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)