

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL
CENTER

Service Agency.

OAH No. 2013120330

DECISION

This matter was heard before Administrative Law Judge Danette C. Brown, State of California, Office of Administrative Hearings (OAH) on January 21, 2014, in Sacramento, California.

Claimant was present. Her mother (mother) appeared as her authorized representative.

Robin Black appeared on behalf of the Alta California Regional Center (ACRC).

Evidence was received, and the record was held open until January 31, 2014, for submission of closing briefs. OAH received the parties' closing briefs, marking claimant's brief as Exhibit E, and ACRC's Brief as Exhibit 14. The case was submitted for decision on January 31, 2014.

ISSUE

Should ACRC fund hand controls and driver's training related to the use of the hand controls for claimant?

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FACTUAL FINDINGS

1. Claimant is a client of ACRC. She was born in January 1998. Pursuant to claimant's Individual Program Plan (IPP) dated March 20, 2013, claimant was assessed, in part, as follows:

- a. Family Assessment: [Claimant's] eligibility for regional center services is based on a diagnosis of infantile cerebral palsy with diplegia. She is ambulatory with the assistance of supports and a service dog. She uses a wheelchair for distances. She is able to walk independently, but is unable to stop her forward movement without falling unless there are supports in place. Claimant resides with her parents as well as her twin sister. Claimant is generally independent in her daily living skills, though at times needs help in dressing due to physical difficulties, and has occasional incontinence. She helps around the house by cleaning the bathroom. She does not cook.
- b. School: Claimant attends Colfax High School in the Placer Union High School District. She receives special education services. Her typical schedule is from 7:50 a.m. to 2:50 p.m. She is transported to and from school by her mother. She has a suppressed immune system, and in early 2013 she had to take time off from school due to a sinus infection. She has some difficulty with hand/eye coordination and writing is difficult for her. She has a laptop computer for assignment completion. She receives physical therapy on a consultation basis. Claimant is able to walk between classes. She pushes her wheelchair for support. Claimant is currently in the concert choir and "this term" participates in the musical theater program. She is college-bound and considering a career as a technical writer. Her ultimate goal is to become a motivational speaker and/or author.
- c. Respite Care: Claimant requires specialized care to ensure her health and safety. It is not safe for Claimant to be left alone for long periods of time, given some of her physical limitations. There are

times when respite services are of benefit to her. The family receives in-home respite (36 hours per quarter) for Claimant's care.

- d. Medical Status: Claimant has a somewhat depressed immune system and tends to get frequent infections. Claimant had mononucleosis in the fifth grade. Claimant had hamstring lengthening surgery in November 2009. In June 2010, she was hospitalized for three days for Kawasaki's disease. In 2012 Claimant was diagnosed with a cyst in her sinus cavity causing severe chronic sinus headaches. [Mother] has requested ACRC to help pay for necessary medical items related to Claimant's cerebral palsy if Medi-Cal and/or California Children's Services (CCS) declines funding, including orthotics and hand controls for driving (Claimant would like to get her driver's license when she turns 16 and will need the hand controls for learning to drive). Her vision and hearing are within normal limits. She generally sleeps well at night, and has no known allergies.

The IPP stated that mother requested that ACRC help pay for medical items related to claimant's cerebral palsy if Medi-Cal and/or CCS declines funding, including orthotics and hand controls for driving. The IPP team¹ determined that the family would seek generic resources for funding of all medical supplies and adaptive equipment. According to the IPP, if there were no generic resources for prescribed equipment and/or medical supplies, pending assessment and need, the ACRC Service Coordinator was to request ACRC funding per ACRC Service Policies.

2. By its letter dated November 7, 2013, ACRC advised the family that it would not be funding hand controls and driver's training related to their use for claimant. ACRC determined that claimant's transportation needs to and from school and in the community were currently being met by her parents. The ability to drive was not required for claimant's increased independence. ACRC stated that while the family may desire that claimant learn to drive an automobile, it is the responsibility of claimant's parents to fund such services and supports just as they would for any minor child, regardless of whether that child had a developmental disability. ACRC further stated that once claimant reaches the age of majority, her parents will no longer be responsible for her transport, and claimant's transportation needs should be re-

¹ The IPP team participants were M.A., Ms. A, and Terry Lipper, ACRC Service Coordinator.

assessed. The planning team could again consider a request for funding the hand controls and training. According to ACRC, generic or other resources may be available at that time to fund or provide assistance in funding any necessary equipment and training.

3. Mother submitted a Fair Hearing Request dated December 3, 2013. The request expressed disagreement with ACRC's denial of funding for hand controls and driver's training, and asked that ACRC's decision be overturned, and that claimant be assessed as to whether driving is appropriate at this time for increased independence.

4. In her letter dated January 20, 2014, mother responded to ACRC's request for written justification of the family's inability to provide for claimant's transportation needs. Mother explained that claimant is 16 years old, and is a high achiever as demonstrated by her school grades and her volunteer work primarily in the disabled community. Claimant is active with Touch of Understanding, an organization dedicated to breaking down barriers between able-bodied and disabled individuals. Claimant has been asked by the organization to advocate for disabled individuals through speaking engagements. The organization is located in Roseville and most of the speaking engagements are at elementary schools, colleges and fraternal organizations in Sacramento and surrounding counties. Claimant has declined several speaking requests because her family could not accommodate her transportation.

5. Mother further stated that claimant's goal is to become a self-sufficient employable adult. To do so, claimant would like the opportunity to complete an internship with Canine Angels Service Dogs (Canine Angels). This will provide her the skills to train service dogs. Claimant would like to enroll in the Veterinary Science course through 49er Regional Occupational Program (ROP). The program provides classes toward a career as a veterinary technician. The ROP class is located at the Nevada Union High School in Grass Valley. Class is scheduled daily from 8:45 a.m. to 11:45 a.m. In addition, claimant would like to increase her volunteer work.

6. Mother also stated that the family owns a professional sports photography business. After successfully maintaining a storefront for over 20 years, the family moved the business to their home due to economic decline over the past five years. Because of the demands of the business, the family is no longer able to meet claimant's growing transportation needs to fulfill her educational, vocational, and social activities. The family resides in a very rural community where public transportation is limited and not accessible to claimant. Providing transportation to and from the ROP program (over one hour each way) is not a reasonable accommodation that the family can meet. Mother stated that this is just one of many instances where the family is unable to meet the increased transportation needs that will allow claimant more opportunities to socialize, seek employment and to provide independence to ultimately help her become a self-sufficient responsible adult.

7. Driving Specialties of Sacramento (Driving Specialties) provided the family an estimate dated June 25, 2013, for hand controls and driver's training for use of the hand controls. The total estimated cost is \$4,895.

ACRC's Testimony and Arguments

8. Ms. Black testified on behalf of ACRC. She testified that ACRC does not exist to promote desires or social integration, and is not "set up" to support vocational needs for persons under 18. She argued that recreational and socialization services are not provided for minors or adults under the Lanterman Act.² Further, ACRC "does not contemplate minors in the workforce performing volunteer work, which is also not specifically addressed in the Lanterman Act." Ms. Black explained that ACRC addresses employment and housing needs for adults. These issues are "not historically looked at for minors." ACRC does not provide many services to school-age children. The school district, however, has "expanded" responsibilities for transitional and vocational services for children. ACRC did not learn about claimant's desire to enroll in the ROP program for a career as a veterinary technician until seeing mother's letter approximately one week before the hearing. Mother's initial request was not tied to any vocational goals. ACRC asserted that support for vocational needs is provided through the Placer County Office of Education. Thus it is the school district's responsibility to support transitional needs. The school district is a generic resource that was not exhausted by the family prior to their Fair Hearing Request. ACRC always refers a family to the school district for vocational services. ACRC understands that transportation is limited in the rural area where claimant lives. Despite her assertion that it is the school district's responsibility to fund claimant's request, Ms. Black added that the ACRC is willing to help claimant's family "problem solve" in finding available public and/or private transportation to claimant's extracurricular activities.

9. ACRC raised the following arguments in support of its position:

- a. It is not ACRC's priority to fund optional services desired by minor clients or their parents, such as the requested hand controls and drivers' training. There is no indication that hand controls and driver's training constitute "special adaptive equipment such as wheelchairs, hospital beds, communication devices," nor that such hand controls and training constitute "necessary appliances and supplies" for minor clients.

² The Lanterman Act, set forth under Welfare and Institutions Code section 4400 et seq., provides for services and supports for persons with developmental disabilities.

- b. Claimant's parents are responsible for providing for all of their minor children whether or not the children have a developmental disability.
- c. Regional centers' ability to purchase certain services is currently suspended, pursuant to Welfare and Institutions Code section 4648.5,³ in particular, "social recreation activities, except for those activities vendored as community-based day programs."
- d. Claimant's parents are responsible for providing transportation for their minor children who are regional center clients unless they prove they cannot.
- e. Social, vocational and employment activities are not the type of activities the legislature intended ACRC to assist, in particular, assisting parents in funding transportation for their minor children/clients. "Services and supports for persons with developmental disabilities" means specialized services and support 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, normal lives. (Welf. & Inst. Code § 4512, subd. (b).) ACRC asserts that claimant's activities are not specialized, are not designed to help ameliorate, habilitate, or rehabilitate claimant's developmental disability, nor are they specifically designed to help her achieve and maintain an independent, productive or normal life. Rather, they are activities claimant has voluntarily chosen to participate in.
- f. Generic resources that might be responsible for funding the requested services and supports have not yet been exhausted. ACRC asserts that the school district may be responsible for funding claimant's request. (Welf. & Inst. Code § 4659, subd. (a)(1); 34 C.F.R. § 300.43 [transition services include related services to benefit disabled children receiving special education].) ACRC did not learn until an informal meeting on January 14, 2014 (regarding claimant's fair hearing) that

³ Welfare and Institutions Code section 4648.5 suspended a regional center's authority to purchase specified services effective July 1, 2009 to achieve state budget savings.

the purpose for claimant in obtaining her driver's license was to access educational and vocational activities. Had claimant provided this information earlier to ACRC, it would have advised Ms. A that the school districts are responsible for funding educational, vocational and employment services to children who receive special education, as determined through the Individualized Education Program (IEP) process.

Claimant's Testimony and Arguments

10. Mother testified on claimant's behalf. Claimant wants to be a self-sufficient adult. She has goals, and driving will help her participate in her internship with Touch of Understanding, and will help her prepare for college. She needs to drive for increased independence. The family lives in a rural foothill community of Colfax. The roads are hilly, and consist of one to two lanes with little or no shoulders. It is impossible to travel on these roads safely in a wheelchair. The family home has a driveway with a 17 percent grade. Limited public bus transportation is available on the I-80 corridor, but there are no bus stops that claimant can utilize in close proximity to the family's home. Public transportation also poses the problem of getting from the drop off point to the final destination. Mother asserted that public transportation is not a viable solution. Mother did not testify as to the possibility of other family or friends assisting with claimant's transportation, or the availability of any other modes of transportation other than driving.

11. Mother raised the following arguments in support of claimant's position:

- a. Claimant disagrees that her IPP did not provide sufficient justification and is based on desire, not an expressed need. ACRC did not raise or communicate that claimant needed to justify a need associated with employment/vocational goals until the hearing

Claimant has a genuine need to drive. She will complete high school on schedule and will enroll at Sierra College in Rocklin to pursue a degree in writing and journalism. To help with her college costs, she hopes to raise and train service dogs with Canine Angels, requiring travel throughout California. In addition, the ROP class for the veterinary science program that claimant hopes to attend is located at Nevada Union High School, 35 minutes from the family's home. Claimant also hopes to continue working with A Touch of Understanding as an inspirational speaker.

- b. ACRC did not request written parental justification for claimant's request.
- c. Claimant disagrees that it is school district's responsibility to provide hand controls and driving instruction. ACRC's contention is contrary to ACRC's internal document dated January 15, 2014, which contains daily or weekly case notes entered into ACRC's computer database by the service coordinator. The entry dated November 11, 2013 by Terry Lipper, ACRC Service Coordinator, states that "All generic funding has been exhausted including DOR,⁴ CCS⁵ and parental funding." According to ACRC's Service Policy Manual, General Standards for the Purchase of Services and Supports, "Upon determining that no public or private resource is available to meet the identified need, ACRC shall provide payment for services and supports."
- d. In addition, mother emphasized that the language in the Lanterman Act requires ACRC to provide "services and supports to meet the needs and choices of each person with developmental disabilities ... regardless of age ... and at each stage of life .. to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code § 4501.) Mother also pointed out that "services should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (Welf. & Inst. Code § 4502, subd. (a).)

Discussion

12. The Lanterman Act mandates that a consumer's IPP be based on 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. Claimant's IPP did not specifically assess claimant's need for hand controls and driver's training for the hand controls so that claimant can learn to drive. In addition, the IPP did not address the funding of claimant's request, or the availability of generic resources. Without an assessment of claimant's needs in the IPP, ACRC cannot secure the requested services and supports that she has requested.

⁴ Department of Rehabilitation.

⁵ California Children's Services.

“Services and supports for persons with developmental disabilities” means “specialized services and supports or special adaptations of generic services and supports directed toward ... the achievement and maintenance of independent, productive, and normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports may include training, education, community integration services, social skills training, and travel training. (*Ibid.*) Being able to drive will allow claimant to have a chance of leading a more independent and productive life and to be integrated into the community. Driver’s training appears to fall within the listed categories, and should be addressed in claimant’s IPP.

In addition, a regional center shall fund transportation services for a minor child living in the family residence only if the family of the child provides sufficient written documentation to the regional center that it is unable to provide transportation to the child. (Welf. & Inst. Code, § 4648.25, subd. (d).) The ACRC now has the family’s written documentation (Findings 4 through 7) regarding their inability to meet claimant’s increasing transportation needs.

ACRC’s Service Policy for Transportation provides funds for transportation when generic resources are insufficient to cover the cost of such transportation. Public transportation shall be utilized where it is available, safe, cost effective, and the consumer is capable of travelling independently. Claimant has raised many issues about her inability to use public transportation in the rural area where she lives. The feasibility of using public transportation is another factor that should be addressed in claimant’s IPP.

Under ACRC’s Service Policy for General Standards for the Purchase of Services and Supports, ACRC shall provide payment for services and supports if they: 1) conform to the Lanterman Act; 2) meet the need related to the consumer’s developmental disability; 3) achieve the goals or objectives clearly stated and defined by measurable outcomes; 4) are supported by research as effective and not harmful; 5) are not already being provided through natural supports, generic services or purchases by ACRC; 6) are provided by an “authorized” service provider; and 7) are cost effective. Claimant’s IPP should apply the listed criteria to the use of hand controls and driver’s training for claimant.

Under ACRC’s Service Policy for Durable Medical Equipment, ACRC is committed to assisting consumers and their families in securing and adapting durable medical equipment related to needs arising from the presence of a developmental disability. “Durable medical equipment” is equipment that: 1) is necessary to achieve and maintain a consumer’s independent, productive and normal lifestyle; 2) can be used to serve a functional or medical purpose; and 3) can withstand repeated use for a reasonable expected time period. Upon determination that there is a durable medical equipment need related to the developmental disability and that generic resources are insufficient to meet the cost, ACRC may provide financial assistance to facilitate the procurement of the needed durable medical equipment.

Hand controls for driving appear to meet the criteria for durable medical equipment subject to funding by ACRC if no other generic funding resources are available. The hand controls will help claimant achieve independence leading to a more productive life. They serve a functional purpose in allowing mobility, and are expected to withstand frequent use due to driving. In addition, the hand controls are adaptive equipment, in that they are located on or near the steering wheel to facilitate driving. The requested hand controls and driver's training for the use of the hand controls are services and supports that the ACRC can secure if identified in claimant's IPP.

13. ACRC's contention that it may be the school district's responsibility to fund claimant's request for hand controls and driver's training has some merit. ACRC's Service Policy for Transportation states that access to public school programs is the responsibility of local education agencies. The funding for driver's training for the use the hand controls may arguably be considered as an educational service that falls under the purview of the school district's responsibility for the funding of educational services for children that receive special education. The school district is a potential generic resource for the driver's training component of claimant's request, which should be considered in claimant's IPP.

14. In sum, driving is a skill that is covered under the Lanterman Act in order to ensure mobility equal to non-disabled individuals. Driving controls may be considered to be adaptive or durable medical equipment like wheelchairs and walkers. Driver's training is an educational service that is subject to funding by ACRC unless generic resources exist, such as the school district.

15. All other arguments were considered and rejected.

LEGAL CONCLUSIONS

1. In the Lanterman Act, the Legislature has created a comprehensive scheme to provide "an array of services and supports ... sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (Welf. & Inst. Code, §§ 4501, 4750-4751; see generally *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. “Developmental disability” means a disability that originates before an individual attains 18 years of age ... and shall include cerebral palsy. (Welf. & Inst. Code, § 4512, subd (a).) “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, ... education, ... adaptive equipment and supplies...” (Welf. & Inst. Code, § 4512, subd. (b).)

3. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. The IPP is arrived at by the conference of the consumer or her representatives, service agency representatives and other appropriate participants. (Welf. & Inst. Code, § 4646.) The IPP must include an assessment of the consumer’s capabilities and problems, a statement of time-limited objectives for improving the consumer’s situation, a schedule of the type and amount of services to be purchased by the service agency in order to achieve the goals and objectives, and a schedule of periodic review to ensure that the services have been provided. (Welf. & Inst. Code, § 4646.5, subd. (a).)

A regional center is required to secure the services and supports needed to satisfy a client’s needs as determined in the IPP. (Welf. & Inst. Code, § 4648, subd. (a); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.)

4. Welfare and Institutions Code section 4646.4, provides, in part:

(a) 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.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

[¶] ... [¶]

5. Welfare and Institutions Code section 4647, subdivision (a) states:

Service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

6. Welfare and Institutions Code section 4648 provides, in part:

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

- (a) Securing needed services and supports.

[¶] ... [¶]

(8) Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

7. Welfare and Institutions Code section 4648.35, provides, in part:

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 fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.

8. Welfare and Institutions Code 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 ...

(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, ...

[¶] ... [¶]

(c) Effective July 1, 2009 ... 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 of this coverage but chooses not to pursue that coverage ...

Claimant's Driving Needs Must be Assessed in the IPP

9. As set forth in Findings 1 through 7, 12 and 13, claimant's IPP did not assess her ability to learn to drive or her driving needs. (Welf. & Inst. Code, §§ 4646, 4646.4, 4646.5, 4647, 4648, 4659.) Before any determination can be made on claimant's request for adaptive driving equipment and driver training, an assessment must be completed to evaluate claimant's ability to learn to drive, and what equipment and training must be provided to allow her to drive safely. Once that assessment is completed, claimant's driving objectives must be set forth in the IPP, as determined by the IPP team. Once that is done, the determination of whether the adaptive equipment and training should be funded by ACRC or other generic sources must be addressed by the IPP planning team. (Welf. & Inst. Code § 4747.) (Welf. & Inst. Code §§ 4646, 4659.) Because there has been no assessment and the IPP contains insufficient information, it is premature to make the determination whether ACRC should fund claimant's request for hand controls and driver's training for the use of hand controls.

10. By reason of Legal Conclusion 9, claimant's appeal of ACRC's denial of funding for hand controls and driver's training for the use of the hand controls is granted in part, and denied in part.

ORDER

This matter is remanded to ACRC to perform an assessment, in accordance with the Lanterman Act, of claimant's request for hand controls and driver's training for use of hand controls. After that assessment is completed, the IPP team shall meet to determine whether and to what extent the IPP should be amended to reflect the assessment.

DATED: February 19, 2014

DANETTE C. BROWN
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).)