

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2014100606

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

On December 5, 2014, Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at Harbor Regional Center (HRC) in Torrance, California.

Claimant was represented by his mother.¹

Gigi Thompson, Manager Rights Assurance, represented HRC.

This matter was submitted for decision on December 5, 2014.

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ISSUE

¹ Claimant and his family are referred to by their family titles in order to protect their confidentiality.

The parties stipulated that the following issue is to be decided:

Shall HRC be ordered to fund a new transportation provider in order to replace ACCESS Para Transit (ACCESS), claimant's current transportation provider?

FACTUAL FINDINGS

Jurisdiction and Background

1. Claimant is a 32-year old man who is a consumer of HRC by reason of his diagnoses of autism and borderline intellectual disability. Claimant resides with his mother.

2. In August 2013, ACCESS began providing transportation services for claimant. ACCESS transported claimant between his home in Long Beach and his day program at Southwest Industries (Southwest), which is a segregated work program for people with disabilities. ACCESS is a publicly subsidized entity that provides transportation services for people with disabilities. The evidence presented did not establish if ACCESS is an acronym.

3. Claimant almost immediately had a number of negative experiences with ACCESS. ACCESS has been late picking claimant up on multiple occasions, over two hours late on one occasion. ACCESS also dropped claimant off at an incorrect address, leaving claimant stranded, and requiring his mother to leave work early in order to assist her son. By late 2013, claimant and his mother had become completely dissatisfied with ACCESS. As a result, claimant requested² that HRC fund a different transportation provider to replace ACCESS.

4. On April 27, 2014, HRC denied claimant's request to fund a new transportation provider for claimant.

5. On October 2, 2014, claimant filed a Fair Hearing Request.

Claimant's History with South Central Los Angeles Regional Center

6. Claimant was a consumer of South Central Los Angeles Regional Center (SCLARC) for more than 20 years. During that time, he and his mother lived in Compton, California, which is part of SCLARC's catchment area. The term "catchment area" is used to describe a regional center's designated geographic area for which that regional center is responsible. For 15 of claimant's years with SCLARC, claimant attended a day program at Southwest, which is located in Gardena, California. During those 15 years, SMS Transportation Company (SMS), an authorized vendor for SCLARC, transported claimant

² The date of this request was not established.

between his home and Southwest. Claimant and his mother were very satisfied with SMS's service.

Claimant's Recent History with Harbor Regional Center

7. On May 1, 2013, claimant's case was transferred from SCLARC to HRC after claimant and his mother moved from Compton to Long Beach, which is in HRC's catchment area. Claimant informed HRC that he wanted to continue with Southwest, even though it was outside of HRC's catchment area. HRC contacted SMS and requested that SMS continue to providing transportation services for claimant. SMS is not an authorized vendor for HRC and declined HRC's request. SMS was unwilling to transport claimant between his home in Long Beach and Southwest. Because claimant no longer lives within SCLARC's catchment area, it was not economically feasible for SMS to continue providing transportation for claimant, which would have required SMS to send a van to Long Beach each weekday.

8. Since SMS was no longer interested in transporting claimant, HRC began to search for a transportation provider willing to transport claimant between Long Beach and Gardena. However, HRC was unable to locate any willing transportation vendor. HRC's transportation vendors typically transport consumers only within HRC's catchment area. HRC does not have any transportation vendors that are willing to drive from Long Beach to Southwest, because Southwest (located in Gardena) is outside of HRC's catchment area. In August 2013, HRC concluded that ACCESS was the only transportation provider willing to drive claimant from his Long Beach home to Southwest. Therefore, ACCESS became claimant's transportation provider.

9A. Approximately six months later, claimant's mother requested that ACCESS be replaced. HRC again searched for another vendor willing to transport claimant from his home to his day program, and back. Again, HRC could not locate any provider willing to transport claimant between Gardena and Long Beach. Therefore, HRC is presently unable to offer claimant any alternative to ACCESS.

9B. Although HRC is unable replace ACCESS for claimant, HRC has proposed other alternatives for claimant to consider. For example, HRC offered claimant the opportunity to transfer from Southwest to a day program located within HRC's catchment area. If claimant decided to attend a day program within HRC's catchment area, then HRC would be able to replace ACCESS as claimant's transportation provider. HRC has offered claimant three types of day programs that claimant may be able to attend: a segregated workshop similar to Southwest, a more inclusive program which combines work and social/recreational activities, or perhaps a supported employment program. To date, claimant has declined all of HRC's offers.

10. Claimant earns \$5 per hour at Southwest. Most day programs pay a lower hourly rate to their new clients. Claimant has been unwilling to transfer from Southwest to a new program because he may earn less money. Claimant is willing to move to a new day

program within HRC's boundaries, but only if that program can guarantee that he will earn at least \$5 per hour. None of the day programs offered by HRC will make such a promise. HRC is also unwilling to make that promise as it does not control the pay rate offered by its day programs. Claimant would be offered a specific pay rate once his new day program evaluates his work.

11. The parties are at an impasse. ACCESS is the only transportation provider willing to transport claimant between Long Beach and Gardena. Claimant is dissatisfied with ACCESS, but he is unwilling to move to a new program unless he is paid \$5 per hour. HRC has offered to fund a day program and alternate transportation providers within its catchment area.

12. Claimant and his mother also searched for a replacement for ACCESS. They also could not find any provider willing to make the Long Beach to Gardena roundtrip. In this case, neither party offered a transportation provider that could replace ACCESS. Claimant requested that HRC be ordered to fund a transportation provider to replace ACCESS. However, no such provider exists. Therefore, claimant's request must be denied. An order compelling HRC to fund a service that does not exist would be inappropriate.

13. The parties stipulated that the ALJ will order HRC to inform claimant, in writing, of his options regarding day programs, including segregate workshops similar to Southwest, inclusive programs which combine work and social/recreation activities, and supported employment programs. HRC will also provide claimant with options regarding transportation providers in HRC's catchment area. Claimant and his mother can evaluate and compare claimant's options and decide if claimant would like to change his mind and transfer to a day program located within HRC's boundaries, which would allow HRC to offer a transportation provider other than ACCESS.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant appealed HRC's decision and requested a fair hearing. Therefore, jurisdiction for this case was established. (Factual Findings 1-5.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, claimant had the burden of establishing that: (1) ACCESS should be replaced by another transportation provider; and (2) that said provider is presently

³ All further statutory references are to the Welfare and Institutions Code.

willing to transport claimant roundtrip between his Long Beach home and Southwest in Gardena. Claimant did not establish the second prong of his burden. Therefore, whether ACCESS should be replaced need not be decided in this decision, because the evidence did not include any available options to replace ACCESS.

ORDER

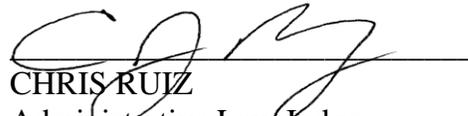
1. Claimant Clyde McKinney's appeal of Harbor Regional Center's denial of claimant's request for funding for an alternate transportation provider to replace ACCESS is denied.

2. Within 30 days, Harbor Regional Center shall inform claimant in writing with the name, address, phone number, and a brief description of HRC's day programs which are appropriate to meet claimant's needs, and which are within HRC's catchment area. The list shall include segregated day programs, inclusive programs that combine work and social/recreation activities, and supported employment programs.

3. Within 30 days, Harbor Regional Center shall inform claimant in writing of the name, address, and phone number of each of HRC's available transportation providers within HRC's catchment area for transportation from claimants residence to the programs listed in paragraph 2 directly above.

IT IS SO ORDERED.

DATED: December 14, 2014,


CHRIS RUIZ
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.