

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2014100841

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on December 9, 2014, in Concord, California.

Mary Dugan, Director of Consumer Services, represented Regional Center of the East Bay, the service agency.

Claimant was represented by her mother, who is also claimant's conservator.

The matter was submitted on December 9, 2014.

ISSUE PRESENTED

Whether RCEB properly terminated transportation services for claimant to and from her day program.

FACTUAL FINDINGS

1. Claimant is a 44-year-old woman who receives services from the Regional Center of East Bay (RCEB) due to diagnoses of moderate intellectual disability and cerebral palsy. She has also has severe hearing loss. Claimant lives with her mother in Oakley.

2. Since 1993, claimant has attended a day program at Commercial Support Services (CSS), a work-based program in Antioch. She attends the workshop from 9:00 a.m. to the mid-afternoon, five days per week. By car, it is a 15 to 20 minute trip between claimant's home and the workshop. Since claimant started attending the workshop, RCEB has funded roundtrip transportation to CSS by a private bus service under contract with the regional center. Until recently, that service was Mobility Plus.

3. Claimant's current Individual Program Plan (IPP) states that RCEB will "fund CSS Antioch 23 days per month, through 6/30/17"; that claimant "will continue to be transported by Mobility Plus to and from program 5 days a week"; and that "RCEB will fund Mobility Plus 23 days per month, roundtrip transportation, through 6/30/17."

4. In 2014, claimant's mother learned that one of the disabled patrons on a Mobility Plus bus had attacked her daughter. She felt that the driver had not done anything to protect her daughter. Claimant's mother became increasingly concerned with her daughter's safety while traveling on Mobility Plus vehicles. She repeatedly demanded that the company explain what had happened to her daughter and what it intended to do to prevent similar incidents in the future, but she never received an explanation.

5. Claimant's mother noted that, during the time she was pressing Mobility Plus for information about the attack on her daughter, her daughter's travel time between home and CSS became longer and longer. Claimant's mother does not expect her daughter to be picked up last and dropped off first; she anticipates that a one-way trip may be 40 to 45 minutes. Claimant's trips, however, were taking over an hour. On some occasions, the Mobility Plus driver drove past claimant's home in Oakley to take another disabled patron to Discovery Bay, adding 45 minutes onto claimant's trip. Claimant's mother felt that the more she complained to Mobility Plus about the attack on her daughter, the longer her daughter's rides became. Claimant's mother felt at the time, and still feels, that her daughter was the victim of harassment by Mobility Plus because the company felt she herself was difficult to work with.

6. In or around July 2014, in an incident unrelated to claimant's transportation, inspectors at the CSS workshop noticed that claimant was standing at her workbench instead of sitting like the other workers. It was claimant's mother who had asked CSS to let her daughter stand: claimant suffers from sciatica and if she sits too long on a hard seat, she loses feeling in her leg and will unwittingly roll her ankle if she tries to walk on it, creating a risk that she will fall. CSS asked claimant's mother for medical documentation supporting her request, in the event the inspectors returned and questioned why claimant was standing instead of sitting. Claimant's mother went to claimant's physician, Wilfredo P. Mahuntag, M.D., who wrote a note dated August 6, 2014. The note reads, in its entirety, as follows: "[Claimant] was evaluated on 8/6/14 and she cannot remain sitting for more than 15-20 minutes because of her leg problem."

7. In the meantime, claimant's mother continued to press for changes in how Mobility Plus routed her daughter. Among other things, claimant's mother wanted Mobility Plus to commit to dropping claimant off in Oakley before continuing on to Discovery Bay. Claimant's mother demanded a meeting of all the interested parties.

8. The meeting was held on October 1, 2014. Claimant's mother and claimant attended the meeting, as did representatives of Mobility Plus, CSS, and RCEB. At the meeting, the subject of Dr. Mahuntag's note came up; it was the first time that Mobility Plus had seen it. Mobility Plus questioned whether it could continue to provide transportation to claimant, given Dr. Mahuntag's limitation on sitting: under its contract with the regional center, Mobility Plus has a two-hour window within which it can pick up and drop off claimant, and it was unwilling to commit to transporting claimant to and from Antioch in 20 minutes or less. The day after the meeting, Mobility Plus notified RCEB that it could not meet the restrictions of Dr. Mahuntag, and that it would no longer provide transportation service for claimant.

9. When it received the notification from Mobility Plus, RCEB concluded that it, too, would have to deny transportation services to claimant. On October 17, 2014, RCEB issued a Notice of Proposed Action (NOPA) in which it informed claimant of its "Proposed Action: Termination of Mobility Plus services." While the NOPA appears to state that RCEB intends only to terminate the services of Mobility Plus – services that Mobility Plus had already terminated on its own initiative – RCEB has since made it clear that its intent is to terminate all bus service for claimant. A letter to claimant from Case Management Supervisor Matthew Verdun, dated November 4, 2014, sets forth the rationale for the regional center's decision:

RCEB's transportation contracts state that the commute from a program to any residence can be up to two hours. A medical directive is not service specific, therefore the medical order for not sitting longer than 15-20 minutes applies across services and service providers. Based on the length of time that [claimant] is able to be seated I find that no bus route or bus company (public bus or contract bus) will safely meet her medical needs.

Claimant filed a timely appeal of RCEB's action, and this hearing followed.

10. Claimant's mother testified that Dr. Mahuntag's note was intended to apply to claimant's workshop, not her bus transportation. Claimant's mother's testimony on this point was credible and persuasive. CSS requested the note so that it would be able to explain to inspectors why claimant was standing instead of sitting at her day program; without the note, claimant might have to sit on a hard seat for many hours at a time at the workshop. Claimant's mother has never asserted that the note applied to transportation. While the note came up in the course of the October 1 meeting with Mobility Plus, claimant's mother never demanded that Mobility Plus transport her daughter within 20 minutes, and never expected that her daughter's transportation time would be less than 40 or 45 minutes.

11. During the pendency of this appeal, RCEB has continued to fund bus service for claimant through Kids First Transit, on an "aid-paid pending" basis. Claimant's mother is satisfied with Kids First Transit, and hopes to keep them.

LEGAL CONCLUSIONS

1. The broad purpose of the Lanterman Developmental Disabilities Services Act¹ is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (§ 4502.) Those services include an assessment of the individuals needs and, on an individual basis, selecting and providing services to meet those needs. (§§ 4642 through 4647.)

2. The rights of a developmentally disabled person and the state’s corresponding obligations to her under the Lanterman Act are implemented through the IPP procedure. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.) An IPP must include (among other things) a “schedule of the type and amount of services and supports to be purchased by the regional center . . . in order to achieve the individual program plan goals and objectives . . .” (§ 4646.5, subd. (a)(4).) A regional center must secure services and supports that meet the needs of the consumer “as determined in the consumer’s [IPP].” (§ 4648, subd. (a)(1).) Regional centers have no discretion in determining whether to implement an IPP: they must do so. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 390.) An IPP may be amended, however, to meet changing circumstances. (§ 4646.5, subd. (b).) An IPP is amended the same way it is created, by convening a meeting of the “planning team” consisting of the consumer, the consumer’s parent, and regional center representatives, to engage in an “individual needs determination.” (§ 4646.6, subd. (b); § 4646, subds. (b) & (d).)

3. On its face, Dr. Mahuntag’s restriction on sitting appears to be unqualified. RCEB was understandably reluctant to put claimant in any situation that might turn out to be inconsistent with her physician’s medical restriction. The testimony of claimant’s mother, however, who is also claimant’s conservator, is persuasive that the note was intended to apply to claimant’s day program, not to transportation to and from the day program. For that reason, Dr. Mahuntag’s August 6, 2014 note does not justify termination of claimant’s bus service to and from the CSS workshop in Antioch. Absent any justification for terminating claimant’s bus service, the law requires RCEB to continue funding that service as set forth in claimant’s IPP.

¹ The Act is found at Welfare and Institutions Code section 4500 et seq. All statutory references are to the Welfare and Institutions Code.

ORDER

The appeal of claimant from the decision of the Regional Center of the East Bay to terminate bus transportation to and from claimant's day program in Antioch is granted.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.