

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

D.B.,

Claimant

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013110746

DECISION

This matter was heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 10, 2013, in Alhambra, California.

Judy Casteñada, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

D.B. (Claimant or DB) represented herself and appeared telephonically¹.

Evidence was received, the record was closed, and the matter was submitted for decision on December 10, 2013.

ISSUE

Whether the Service Agency must fund an open authorization for Claimant's door to door private transportation for all purposes.

¹ Due to complications with Claimant's transportation arrangements, Claimant was not able to attend the hearing in person.

FACTUAL FINDINGS

1. DB is a fifty-two year-old woman eligible for regional center services based upon her diagnosis of cerebral palsy. Claimant is non-ambulatory and uses a wheelchair at all times. She is also under the care of a psychiatrist for symptoms of anxiety.

2. Claimant lives alone in her childhood home. Her sister lives in a house behind her on the same property. Claimant has declined all regional center services except transportation and has declined In-Home Support Services and Department of Rehabilitation services. She receives \$968 in Supplemental Security Income (SSI).

3. Although Claimant does not work at this time, Claimant worked for the Alhambra Episcopal home for 10 years. During that time, she received door to door transportation from Caravan funded by ELARC and was pleased with the service. After she stopped working, the service was discontinued. ELARC does not fund transportation for Claimant. At her August 21, 2013 Individual Program Plan (IPP) meeting, Claimant expressed her dissatisfaction with Access Services, a shared ride program for the disabled, provided by the Metropolitan Transit Association (MTA) and requested that door to door private transportation be funded by ELARC for all of her needs through an open authorization. Access is generic resource. On October 31, 2013, ELARC issued a Notice of Proposed Action denying Claimant's request based upon its purchase of service policy and the availability of generic resources to meet Claimant's needs. At hearing, Claimant's request was narrowed to transportation for medical, dental, optical, and psychiatric appointments. Claimant estimated that she has a minimum of one medical appointment, two dental appointments, one optical appointment and three psychiatric appointments per year. ELARC did not agreed to fund the transportation request for those medical appointments, but agreed to consider funding the request if Claimant tries Access and bus service and is unable to use those services.

4. Claimant credibly testified that she has tried Access service several times and has been dissatisfied because the vans have not been clean and the service has not been reliable. Claimant cited an instance in which feces were on the floor of the van, got on her wheelchair wheel, and on her hands when she tried to clean her wheels. Claimant was humiliated by the incident. Claimant is afraid that because she is confined to a wheelchair and vulnerable, she will be an easy target for crime and violence if left stranded by Access. These fears cause her substantial anxiety. Her fears and concerns are not without a basis in fact. Claimant has been stranded approximately three times by Access. Claimant has taken the bus with a friend a few times, but is

concerned about taking the bus alone for many of the same reasons she is concerned about Access. Additionally, she is concerned that her wheelchair adaptations make it lower to the ground than a standard wheelchair and bus drivers may not see her and therefore, not stop to pick her up. Claimant's family and friends provide for her transportation needs for shopping and recreational purposes on the weekend, but are not available on weekdays for medical appointments because of their work schedules.

5. ELARC's purchase of service policy provides that:

ELARC will not fund specialized transportation services for an adult individual who can safely access and utilize public transportation....

Adult individuals may qualify for consideration to receive specialized transportation funding when all other generic and natural transportation sources have been explored with the individual/family and determined not to be available. ELARC will fund and use the least restrictive and least expensive transportation modality that meets the consumer's needs as documented in the IFSP/IPP. When it is deemed that only Specialized Transportation Services for the consumer is available then, the lowest cost provider will be selected that is closest in proximity of the individuals' residences that is able to meet his/her needs as documented in the IFSP/IPP.

6. The Purchase of Service Policy also provides that:

The need for transportation service must relate directly to the presence of a developmental disability and the need for such a service must be documented in the IPP/IFSP.

Transportation for activities not identified in the IFSP or IPP is the responsibility of consumers, their families, or residential service providers.

7. Claimant's IPP provides the following Desired Outcomes:

[Claimant] will continue to live independently and maintain the current least restrictive home setting 24 hours per day.

[Claimant] will continue to participate in activities of her liking, in the least restrictive setting.

[Claimant] will maintain optimal health status by having medical and dental exams yearly, and other medical services as needed.

[Claimant] will continue to schedule all her psychiatric appointments.

[Claimant] will continue to display safety awareness while out in the community.

[Claimant] will continue to socialize with family and friends.

[Claimant] will make an effort to use Access Service.

8. Claimant has not made medical appointments because she is fearful of using Access and being stranded and does not have family or friends available to transport her on weekdays during normal business hours when such appointments are available.

LEGAL CONCLUSIONS

1. ELARC contends that under Welfare and Institutions Code section 4646.4, subdivision (2), Claimant must use generic resources including Access, the bus system, or friends and family for transportation and that Claimant's IPP objectives and needs can be met by generic resources. Claimant contends that it is necessary for her to use private transportation services for medical related appointments. For the reasons set forth below, Claimant's appeal is granted, in part.

2. The burden of proof is on Claimant as the party seeking to change the status quo. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

3. The Lanterman Developmental Disabilities Services Act (The Lanterman Act)² sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation

² Welfare and Institutions Code section 4500, et. seq.

from family and community” and “to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.” Under the Lanterman Act, regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “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, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) “Services and supports may include adaptive equipment and supplies...travel training, transportation services necessary to ensure delivery of services to individuals with developmental disabilities...” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made “on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (*Ibid.*)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

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 the 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.

6. Welfare and Institutions Code section 4646.4, subdivision (a), provides:

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.

7. Welfare and Institutions Code section 4648, subdivision (8) provides that 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.

8. Welfare and Institutions Code section 4648.35, subdivision (a) provides that a regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.

9. Welfare and Institutions Code section 4659, subdivision (a) provides that the regional centers shall identify and pursue all sources of possible funding for consumers receiving regional center services.

10. The transportation requested by Claimant is the type of "specialized services and supports or special adaptations of generic services" contemplated by the Welfare and Institutions Code section 4512, subdivision (b). However, ELARC established by a preponderance of the evidence that the needs and the outcomes/goals of her IPP, except those related to her medical appointments, can be met by use of the generic resources that are

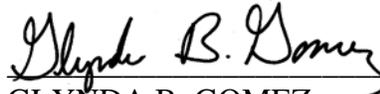
available from Access or her family and friends. The evidence at hearing established that although private transportation was preferred by Claimant and provided Claimant with a safer and more comfortable transportation, Claimant's IPP outcomes and objectives, except those related to medical appointments, will be met by the generic resources available through Access, family and friends.

11. Based upon factual findings 1 through 8 and Legal conclusions 1 through 10, Claimant proved by a preponderance of the evidence that her needs to attend seven medical appointments per year cannot be addressed through generic resources. Accordingly, ELARC is required to fund up to seven round trip, door to door, private transportation trips for medical, dental, optical and psychiatric appointments for Claimant per calendar year. ELARC is not required to have an open authorization for private transportation and is not required to fund transportation for any other purpose because the preponderance of the evidence shows that Claimant's other needs for transportation are all met by generic resources. However, ELARC may fund additional private transportation in a particular instance, at its discretion, if generic resources do not meet Claimant's needs.

ORDER

Claimants' appeal is granted only to the extent that ELARC shall fund round trip private door to door transportation for a total of up to seven appointments related to medical, dental, optical or psychiatric appointments for Claimant. Claimant's appeal is denied in all other aspects.

DATED: December 16, 2013


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings