

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

OAH No. 2014110364

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter on December 10, 2014, in Pomona, California. Daniela Santana, Program Manager, Fair Hearings, represented San Gabriel/Pomona Regional Center (Service Agency or SCLARC). Claimant's mother, F.W. (mother), represented claimant, who was present.<sup>1</sup> B.W., claimant's father, B.W. (father), was also present and testified at the proceeding. Oral and documentary evidence was received and the matter was submitted for decision on December 10, 2014.

ISSUE

Is Service Agency obligated to fund the cost for a van conversion for a van to be purchased by parents?

FACTUAL FINDINGS

1. Claimant is a 18 year-old male who is conserved by his biological mother and father and is eligible for regional center services based on a diagnosis of cerebral palsy and epilepsy. Mother and father are divorced and claimant has no siblings. Mother currently resides alone with claimant during the weekdays, and claimant resides with his father on weekends. Claimant is non-ambulatory and requires a wheelchair to traverse his environment. He cannot independently move the manual wheelchair and requires complete assistance getting in and out of the wheelchair. Claimant is five feet, four inches tall and

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<sup>1</sup> Claimant's mother and father's initials are used in lieu of their names to protect claimant's and parents' privacy.

weighs over 150 pounds. He has gained significant weight as he has aged and as a result of the medications he is required to take. Claimant requires complete assistance with his self-care needs such as bathing, dressing, brushing his teeth and toileting, and has limited communication skills. He displays a variety of self-injurious and disruptive behaviors. Claimant will on a daily basis gag himself and make himself vomit if not given attention. He frequently spits on others, attempts to tip over his wheelchair, bites his hands, and hits his head on his headrest when not given attention. Although claimant enjoys being out in the community, he will become overwhelmed in large crowds or if he is in a loud environment. Mother reports that claimant suffers from sporadic seizures that are typically triggered by lack of sleep or over stimulation due to excitement.

2. Pursuant to claimant's August 7, 2014 Individual Program Plan (IPP), Service Agency provides 30 hours of Licensed Vocational Nurse (LVN) respite per month. Claimant also receives 345 hours per month of In-Home Support Services (IHSS) shift nursing. The IPP planning team also concluded that claimant is unable to safely access public transportation due to the severity of his disability. Service Agency does not dispute that claimant needs total care and constant supervision as a result of his disability.

3. On September 24, 2014, mother requested SGPRC to fund service charges for inspection equipment (ceiling lift rail and portable lift) for claimant's home. Service Agency previously funded the purchase of this equipment in 2012, but mother requested funding of a service charge of \$250 and repair costs for this equipment. Service Agency denied funding for the service charges and repair costs for the equipment stating that SGPRC purchased the equipment as a one-time purchase and it was not responsible for maintenance of the equipment. Mother also requested SGPRC to fund a van conversion because of mother's difficulty in lifting claimant from his wheelchair into the family car. Service Agency denied the request to fund the van conversion stating the van conversion was not medically necessary and that generic resources such as ACCESS were available for use by claimant.

4. On October 31, 2014, Service Agency notified claimant that it denied the request to fund "inspection charges of equipment (ceiling lift rail and portable lift) and fees for any repairs" (Exh. 1), and issued a Notice of Proposed Action (NOPA) advising claimant of his right to appeal. The NOPA failed to indicate that mother's request for a van conversion had also been denied by SGPRC. On October 31, 2014, mother filed a Fair Hearing Request (FHR) on behalf of claimant appealing Service Agency's denial of funding for van conversion. Mother did not appeal the denial of funding for the inspection charges and repair costs for the ceiling lift rail and portable lift. Although the October 31, 2014, NOPA did not include the denial of funding for the van conversion, at hearing Service Agency and mother stipulated that the NOPA should have included Service Agency's September 24, 2014, denial of funding for the van conversion. Consequently, the van conversion issue may be considered on appeal by claimant's FHR. All jurisdictional requirements were satisfied and this hearing ensued.

5. Mother currently drives a Ford Edge automobile which she transports claimant to and from his medical appointments and community outings. Claimant has multiple

medical and therapy appointments each month due to his severe disability. Claimant's manual wheelchair does not fold or convert for transport in mother's automobile, and thus cannot be used when she reaches her destination. Mother uses a collapsible portable stroller to transport claimant when taking him to medical appointments and community outings. The collapsible stroller is not optimal or safe for transporting claimant. Claimant must be lifted from his wheelchair or portable stroller into the family automobile to transport. Mother expressed serious concerns about dropping claimant while lifting him from his wheelchair or portable stroller in and out of the family car and fears that claimant may be seriously injured as a result of transporting him in this manner. When lifted claimant frequently becomes apprehensive and fearful and is very tense. His body becomes extremely rigid which makes it more difficult for mother to lift him.

6. Mother has LVN assistance but the LVNs are not required to assist mother with lifting claimant in and out of the automobile, although some may assist on occasion. Mother, however, even with the assistance of an LVN, still has difficulty lifting claimant in and out of the family automobile. Typically, claimant requires two to three people to lift him because he weighs over 150 pounds. Mother on occasion is required to lift claimant alone and claimant weighs substantially more than mother. On weekends, father also finds that lifting claimant unassisted into an automobile in this manner is a challenge for him. He too fears that claimant will inevitably be dropped and seriously injured when lifting him in this manner.

7. Mother and father have agreed to purchase a van to facilitate transporting claimant and his wheelchair when taking him to medical appointments and community outings, and to alleviate the need to manually lift claimant into the family automobiles. Parents believed this is a safer alternative for transporting claimant and seeks to have Service Agency pay only the cost of the van conversion for the van they will purchase. Parents sought funding for the van conversion from California Children Services (CCS), County of Los Angeles. On December 14, 2014, CCS notified mother that her request for funding for a "van lift" was denied because the item was not a CCS benefit, and was not a medically necessary benefit. (Exh. A.)

8. Mother provided three cost estimates for the van conversions: Aero Mobility (\$25,500); Ability Center (\$27,950); and MobilityWorks (\$26,475). The estimated cost for parents to purchase a new 2014 van is approximately \$32,000 to \$34,000.

9. Parents have not applied for ACCESS transportation through Service Agency. However, ACCESS would not be appropriate for claimant because of the frequency of his medical and therapy appointments and the need for claimant to be on time for the appointments. Mother and father do not consider ACCESS to be a dependable mode of transportation and because claimant's medical and therapy appointments are difficult to schedule, if he is late due to transportation delays, claimant risk missing critical services until rescheduling is possible. ACCESS also does not provide 24-hour service and operates by scheduled pick-up only. Parents also fear that in the event of a medical emergency, ACCESS would not be available and the inability to expediently transport claimant for

medical assistance places claimant at an extreme risk of further injury or harm. ACCESS transport is also not considered viable for claimant because of his self-injurious and disruptive behaviors, which include spitting on others. He also has a propensity for sporadic seizures if he becomes over stimulated or excited, which happens when he is in a loud or unfamiliar environment. ACCESS transport frequently involves multiple passengers and presents an environment that will likely trigger seizures or disruptive or self-injurious behaviors by claimant.

10. SGPRC POS policy regarding the purchase of medical, dental and equipment services, including van conversions, provides that the regional center may purchase such equipment for either children or adults if the requested equipment: (1) is associated with, or has resulted from a developmental disability; (2) is deemed to be medically necessary; (3) the need for the equipment has been reviewed and approved by regional center consultants or clinicians; and (4) the consumer or client is not eligible for Medi-cal, CCS, private insurance or another third party payor coverage or these funding resources have denied the request to fund the necessary equipment. (Exh. 4.) Service Agency asserted that the van conversion is not medically necessary and therefore denied funding for the equipment.

## LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant asserts that Service Agency improperly denied funding for a van conversion, equipment not previously funded by the Service Agency. Consequently, Claimant bears the burden of proving, by a preponderance of the evidence, that the Service Agency's actions were inappropriate. (See Evid. Code, §§ 500 and 115.)

2. The Lanterman Developmental Disabilities and Services Act, Welfare and Institutions Code section 4500, et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) Under the Lanterman Act individuals with developmental disabilities have the right to services and supports directed toward the achievement of the most independent and normal lives possible. Services and supports should be flexible and individually tailored to the consumer and, where appropriate, his or her family. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Consumers and, where appropriate, their parents, are empowered to make choices in all life areas. (Welf. & Inst. Code, §§ 4501& 4502, subd. (j).) Regional centers must respect the choices made by consumers and their parents. (Welf. & Inst. Code, § 4646, subd. (a).)

3. The Lanterman Act provides that "[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be 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." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (b), 4651, subd. (a), 4659, and 4697.) A regional center is also required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subd. (a), 4647, subd. (a); 4646.4, subd. (a)(2); and 4646.5, subd. (a)(4).) "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." (Welf. & Inst. Code, § 4648, subd. (a)(8).)

6. When purchasing services and supports, regional centers must conform to their purchase-of-service guidelines. (Welf. & Inst. Code § 4646.4, subd. (a)(1).) The Lanterman Act requires the Department of Developmental Disability (Department) to review the guidelines "to ensure compliance with statute and regulation." (Welf. & Inst. Code § 4434, subd. (d).) Reflecting the Department's interpretation of statute and regulation, the guidelines are not entitled to the deference given to a regulation but are rather entitled to a degree of deference dependent upon the circumstances in which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

7. The evidence established that transporting claimant in the family automobile in the manner currently used by parents presents increased risks of injury for claimant. Claimant is non-ambulatory, cannot independently move his wheelchair or portable stroller, and must be manually lifted into and out of the family automobile to facilitate transport. Claimant is totally dependent upon others for his self-help needs as a result of his very serious disability. As he's gotten older, his weight has increased, both as a result of his age and the medications he takes for his disability. Consequently, manually lifting claimant has become increasingly more difficult and the risk of parents accidentally dropping him and causing serious injury has become a real and imminent possibility.

8. The van conversion requested by claimant would allow parents to safely transport claimant without the requirement of lifting him from his wheelchair each time he is transported. A van conversion qualifies as adaptive equipment which is included under the services and supports which are provided under the Lanterman Act to assist disabled claimants to remain in the family home and to achieve an independent and normal life as possible. (Welf. & Inst. Code, § 4512, subd. (b).) SGPRC denied funding for the van conversion based on its POS policy that requires requested equipment to be medically necessary. However, a service policy established by a regional center to generally govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services*

(1985) 38 Cal.3d 384, 390-393.) Nor may a regional center decide which services and supports it will provide based solely upon a fixed policy. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The evidence established claimant's disability renders him totally immobile. Without a mechanized van conversion to load claimant's manual wheelchair for transport, there is substantial risk that claimant may be injured by parents manually lifting him in and out of the current family automobile. The evidence also established that ACCESS transport is not a viable alternative for claimant because of his disruptive and self-injurious behaviors.

9. Parents have made the choice to purchase a new van to facilitate the safe transport of claimant and seek the Service Agency's assistance to fund the van conversion for this vehicle. The Lanterman Act empowers claimant and his parents to make such choices in all life areas, and Service Agency is required to respect these choices. (Welf. & Inst. Code, §§ 4501, 4502, subd. (j), and § 4646, subd. (a).) The current family automobile does not accommodate claimant's wheelchair, and as result, parents are forced to transport claimant using a portable stroller which is not designed to safely transport a person with claimant's significant disability. The risk of injury to claimant as a result of parents being required to manually lift him in and out of his wheelchair or portable stroller is significant. Mother is no longer able to lift claimant because his has gotten older and heavier and substantially outweighs mother. Although Service Agency determined that the van conversion was not medically necessary, claimant's and his parents circumstances, i.e., claimant's exposure to significant injury, take precedence over Service Agency's POS policy.

10. The cost to purchase a van is estimated to be \$32,000 to \$34,000. The van conversion parents seek would cost approximately \$25,000 to \$28,000. Parents have sought, and been denied funding by CCS, a generic resource for such equipment. Given parents' willingness to pay for the van themselves, requiring Service Agency to fund the van conversion would be a cost effective means of obtaining this needed adaptive equipment to facilitate the safe transport of claimant and maintain claimant's ability to continue to live independently with his family. Accordingly, Service Agency should fund the van conversion based on the lowest estimate provided by parents of \$25,500. As a condition precedent to Service Agency funding claimant's van conversion, claimant's parents must first provide proof that they have purchased a van which is available to be converted for claimant's transport.

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ORDER

Claimant's appeal of the Service Agency's denial of funding for a van conversion is granted. Upon claimant's parents' presentation of proof to SGPRC that they have purchased a van for claimant's transport, SGPRC shall pay \$25,500 for the required van conversion.

DATED: December 23, 2014



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MICHAEL A. SCARLETT  
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.