

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2015020092

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 17, 2015, in Torrance, California.

Gigi Thompson, Manager Rights Assurance, represented the Harbor Regional Center (HRC or Service Agency). Claimant¹ was represented by his father (Father), who also serves as Claimant's co-conservator.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on July 17, 2015.

ISSUE

Must the Service Agency fund transportation services for Claimant that, in addition to round-trip door-to-door service from the home of Claimant's mother (Mother) in Redondo Beach to Claimant's day program in Redondo Beach, including, door-to-door one-way service from Father's office in San Pedro to Claimant's day program on every other Monday, and round-trip door-to-door services from Father's office to Claimant's day program during the entire month of August?

FINDINGS OF FACT

1. Claimant is a 47-year-old man and a consumer of the Service Agency. Specifically, Claimant has been diagnosed with moderate intellectual disability, cerebral palsy, and epilepsy, and is eligible for services pursuant to the Lanterman Developmental

¹ Party title is used in lieu of Claimant's name in order to protect Claimant's privacy.

Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² Claimant's parents are divorced. Claimant's main residence is with his Mother, which is within the Service Agency's catchment area.

2. Mother and Father have been divorced for many years, and serve as Claimant's co-conservators. Pursuant to the custody agreement between the two, Father is entitled to custody of Claimant every other weekend, beginning at 6:00 p.m. on Friday until Monday morning, and during the entire month of August. On the weekends in which Claimant should be in Father's custody, Father retrieves Claimant from Mother's home at 6:00 p.m. on the Friday beginning the weekend.

3. Claimant has attended Canyon Verde Day Program (day program) since 1998, which is located in Redondo Beach, California. From the beginning, the Service Agency has funded door-to-door transportation services to and from Claimant's day program. In that regard, the Service Agency has contracted with several different transportation vendors that have provided Claimant with such services over the past 17 years. All of them, during their respective periods of service, provided Claimant with continuous round-trip transportation services from Mother's residence in Redondo Beach to Claimant's day program, approximately 5.12 miles one-way, and, on every other Monday, provided transportation services from Father's office in San Pedro, California, located within the Service Agency's catchment area, to Claimant's day program, approximately 13.69 miles one-way. Additionally, all of the vendors provided round-trip transportation services during the month of August from Father's office to Claimant's day program. All of these transportation arrangements were made directly between Claimant's parents and the vendors. At hearing, Hiram Bond, a program manager at the Service Agency, explained that in lieu of communicating with the Service Agency, clients typically communicated directly with the transportation vendors regarding pick-up and drop-off requests, or service suspensions stemming from a client's illness or vacation plans.³

4. Claimant's Individual Family Services Plan (IFSP), dated October 23, 2014, stated that the Service Agency would continue to provide Claimant with door-to-door transportation services to and from Claimant's day program through November 30, 2015. Specifically, the IFSP noted that the service contract with Pride Transportation Services (Pride) had been terminated on July 21, 2014, because Pride had gone out of business. Consequently, the Service Agency funded transportation services with Ideal Transportation Services (Ideal). The contract period with Ideal commenced on July 28, 2014 and is scheduled to end on November 30, 2015. The IFSP included no information concerning specific routes or pick-up and drop-off locations; however, according to Father's

² All statutory references are to the Welfare and Institutions Code.

³ Despite this, as early as July 29, 1999, the Service Agency made a note of a telephone call it received from Father's current wife (Claimant's stepmother) advising, in essence, that Claimant would need to be picked up from Father's San Pedro location through the month of August.

uncontroverted testimony, he, Mother, and/or Claimant's stepmother have discussed generally at IFSP meetings throughout the years, the transportation arrangements regarding picking up Claimant from Father's office every other Monday, and providing round-trip transportation to and from Father's office during the month of August.

5. As with Claimant's previous transportation vendors, Ideal provided Claimant with continuous round-trip transportation services from Mother's residence in Redondo Beach to Claimant's day program, and, on every other Monday, provided transportation services from Father's office in San Pedro to Claimant's day program. Additionally, during the month of August, Ideal provided Claimant with round-trip transportation services to and from Father's office.

6. On December 30, 2014, Ideal advised the Service Agency that it could no longer provide transportation services from Father's office every other Monday, and could not, during the month of August, provide round-trip transportation services to and from Father's office. At hearing, Mr. Bond explained that Ideal could no longer accommodate Claimant because of routing difficulties to Father's office. No one from Ideal testified at hearing.

7. The Service Agency concluded that Ideal was not required to accommodate Claimant by providing service to or from Father's office, because the Service Agency's Transportation Service Request (TSR) with Ideal included services in a Zone B transportation region, where Mother resided, which cost approximately \$13 for the 5.12 mile trip, and not in a Zone D transportation region, where Father's office was located, which cost approximately \$16 for the 13.69 mile trip.

8. On January 7, 2015, the Service Agency sent Father a letter stating that it was not aware that transportation companies contracted by it had been providing services from Father's office to Claimant's day program, and that the Service Agency had not authorized Ideal to provide services beyond the route from Mother's home to Claimant's day program. The letter also stated that Ideal advised the Service Agency it could no longer provide the transportation services to or from Father's office, because it posed a "conflict" for the transportation company. Accordingly, the Service Agency advised it would not fund for Claimant's transportation to and from Father's office, but would continue funding service from to and from Mother's home.

9. On the morning of Monday, January 9, 2015, before Father received the Service Agency's letter, Claimant stood outside of Father's office and waited for the Ideal bus. However, the bus never came. No one from the Service Agency or Ideal had telephoned Father and advised that Claimant would not be receiving any transportation services from his office on that day. When Claimant's stepmother telephoned the Service Agency to ascertain the reason for Ideal's failure to pick up Claimant, the Service Agency advised that the bus could no longer pick up Claimant from Father's San Pedro office because it was more than 10 miles from the day program, and Ideal had no available route to accommodate Claimant. Based on their observations, Father and/or Claimant's stepmother

advised the Service Agency that three other students from Claimant's day program, who were also clients of the Service Agency, routinely rode the bus with Claimant and lived in Zone D. Two of those students lived within one-quarter mile of Father's office, according to the credible testimony of Father, as one of those students is a relative and the other's mother his patient. At hearing, Mr. Bond admitted he had no knowledge about the three clients from Zone D who shared a bus with Claimant.

10. On January 21, 2015, Father filed a Fair Hearing Request on behalf of Claimant for the "sudden refusal of transportation that has been in place since 1998."

11. On May 11, 2015, the Service Agency explored the cost of transporting Claimant by taxi, and learned it would cost \$41 for each 13.69 mile ride from Father's office to Claimant's day program. Consequently, the Service Agency determined the taxi option was cost prohibitive. The Service Agency also determined that public transportation or use of the Access transportation system would be inappropriate for Claimant due to safety, health, and behavioral issues.

12. The Service Agency advised Father that he could participate in the Parent Choice Transportation Program, where the Service Agency would reimburse Father \$2.50 per trip to take Claimant to, or retrieve from, his day program. Father declined, because, as an orthopedic surgeon with a full-time private practice, neither he, nor Claimant's stepmother, who serves as Father's full-time x-ray technician, is available to take Claimant to, or retrieve him from, school. In order to participate in the Parent Choice Transportation Program, Father would have to delegate the transportation to Claimant's stepmother, and then hire an x-ray technician to take the place of Claimant's stepmother, costing him thousands of dollars. Similarly, hiring a third party to transport Claimant could cost Father significantly more than \$2.50 per trip.

13. Since January, when Ideal ceased Claimant's transportation services from Father's office, Father has had to return Claimant to Mother's home on Sunday nights, cutting into limited time in which Claimant can spend with Father.

LEGAL CONCLUSIONS

The Service Agency must continue to provide Claimant transportation services from Father's office, as discussed in more detail below.

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), and 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

“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, normal lives. The 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities.”

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the

content of the IPP and the services to be purchased, is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer’s changing needs. (§ 4646.5, subds. (a)(7) and (b).)

7. Section 4648, subdivision (a)(6)(D), provides that “the cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer’s individual program plan, consistent with the particular needs of the consumer”

8. Pursuant to section 4648.35, subdivision (b), regional centers must fund “the least expensive transportation modality that meets the consumer’s needs, as set forth in the consumer’s IPP or IFSP.” Subdivision (c) provides that regional centers must fund, when required, “from the consumer’s residence to the lowest-cost vendor that provides the service that meets the consumer’s needs.”

9. Reliance on a fixed policy “is inconsistent with the Act’s stated purpose of providing services ‘sufficiently complete to meet the needs of each person with developmental disabilities.’ (§ 4501.)” (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer will be selected on an individual basis. (*Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

10. Section 4706, subdivision (a), provides the Administrative Law Judge a broad grant of authority to resolve all issues regarding services to a developmentally disabled person.

11. The legal doctrine of equitable estoppel is available in cases where one party has acted in reliance on the statements or actions of another. The requisite elements for equitable estoppel are the same whether applied against a private party or the government: (1) the party to be estopped was apprised of the facts, (2) the party to be estopped intended by conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended, (3) the party asserting estoppel was ignorant of the facts, and (4) the party asserting estoppel suffered injury in reliance on the conduct. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

12. Appellate courts have held that “estoppel is barred where the government agency to be estopped does not possess the authority to do what it appeared to be doing.” (*Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870 (estoppel not available where retirement board lacked authority to classify as safety members employees who did not meet statutory definition).) However, cases such as *Medina* are not directly applicable. Although regional centers are provided with substantial state funding, by definition they are not considered “state agencies,” but instead are defined as “private nonprofit community agencies.” (§ 4620, subd. (b).) Thus, the Service Agency is not a government agency.

13. Here, Claimant met his burden of establishing that the Service Agency must fund for transportation services for Claimant that, in addition to round-trip door-to-door service from the home of Mother in Redondo Beach to Claimant’s day program, must fund for door-to-door one-way service from Father’s office in San Pedro to Claimant’s day program on every other Monday, and round-trip door-to-door services from Father’s office to Claimant’s day program during the entire month of August. In January 2015, the Service Agency endorsed the termination of transportation service to and from Father’s office, asserting that, from the beginning, it had funded only for services to and from Mother’s home in Zone B, and had no knowledge about any other transportation arrangements in Zone D. However, the evidence shows that all transportation vendors contracted by the Service Agency over the past 17 years have adhered to transportation arrangements from Father’s office, and while it is unclear whether the Service Agency paid the transportation vendors additional money for transportation services to Zone D, the evidence shows the Service Agency did, in fact, have knowledge of these arrangements. Specifically, as early as July 29, 1999, the Service Agency made a note of a telephone call it received from Claimant’s stepmother advising, in essence, that Claimant would need to be picked up from Father’s San Pedro location through the month of August. Additionally, through the uncontroverted testimony of Father, he, Mother, and/or Claimant’s stepmother have discussed generally at IFSP meetings throughout the years, the transportation arrangements regarding picking up Claimant from Father’s office every other Monday, and providing round-trip transportation to and from Father’s office during the month of August.

14. The Service Agency also presented an argument that Ideal could no longer provide transportation services to Father’s office in San Pedro, because, despite its location within the Service Agency’s catchment area, Ideal had no available route to San Pedro. However, the Service Agency proffered no corroborating testimony from an Ideal representative attesting to this fact, thereby rendering the Service Agency’s argument unpersuasive, especially in light of competent evidence to the contrary. Specifically, Ideal certainly had a route from July 2014 through December 2014, when it transported Claimant from Father’s office on every other Monday and provided round-trip transportation during the month of August 2014. The Service Agency proffered no credible evidence establishing the route no longer existed, and given the uncontroverted testimony of Father, who routinely observed three other Service Agency clients from Claimant’s day program ride the bus with Claimant, who live in Zone D, it is reasonable to conclude that no such evidence exists.

15. The Service Agency argues that because regional centers are mandated to provide service and supports through the most cost-effective means, pursuant to section 4648, subdivision (a)(6)(D), and fund the least expensive transportation modality that meets the client's needs, pursuant to section 4648.35, subdivision (b), the parent-vendored option, namely the Parent Choice Transportation program that reimburses parents \$2.50 per trip, would be the most appropriate mode in which to shuttle Claimant to and from Father's office. However, the specific language of section 4648, subdivision (a)(6)(D), provides that "the cost of providing services or supports of comparable quality by different providers, *if available*, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer" (Emphasis added.) In the instant matter, Father convincingly testified that he and Claimant's stepmother are not available to serve as vendors by participating in the Parent Choice Transportation Program, because Father has a full-time orthopedic private practice, and Claimant's stepmother serves as Father's full-time x-ray technician. In order to participate in the Parent Choice Transportation Program, Father would have to delegate the transportation to Claimant's stepmother, and then hire an x-ray technician to take the place of Claimant's stepmother, costing him thousands of dollars. Similarly, hiring a third party to transport Claimant could cost Father significantly more than \$2.50 per trip.

16. The Service Agency argues there is no provision within the Lanterman Act that requires regional centers to provide transportation to a secondary location in order to facilitate a custody agreement. The short answer is that the Lanterman Act does not have to go into that level of detail regarding transportation services. Tens of thousands of consumers around the state may have transportation needs for any number of reasons, and need to go to any number of places in a given week or month. The notion that the Legislature would have to spell out every possibility in order for a regional center to authorize some sort of transportation is not supported by any legal authority.

17. Further, the argument seems to assert that a child of divorced parents does not have a need to spend time with his or her non-custodial parent. Experience teaches that just the opposite is true. Claimant needs to spend time with his father, and needs transportation services to do so, and the Service Agency is obligated to meet that need, which until a few months ago, cost a few dollars per month. (See Factual Finding 7.) The Lanterman Act requires those needs to be met, and the Service Agency is required to use innovative means to meet those needs.

18. The regional centers are to be guided by the principles, process, and services and support parameters laid out in section 4685. (§ 4646.5, subd.(a)(3).) Section 4685 makes it a clear legislative priority that disabled children remain with their families, and the regional centers are to be innovative so that the goal can be met. (§ 4685, subd. (c)(1).) While Respondent is an adult, he is still the child of his parents, and still living with them. That is not only to his benefit, it is to the benefit of the state, because he is not housed away from his parents at great expense to the taxpayers; it should be recalled that one of the main purposes of the Act is to avoid institutionalization; and placing Claimant in a group home is

functionally equivalent. Finally, regional centers are specifically authorized to utilize “innovative service delivery mechanisms, including but not limited to, vouchers, . . .” (§ 4685, subd. (c)(3).) The intent that the regional centers be innovative and economical in the practices used to reach the goals set out in IPP’s is restated in section 4651.

19. Alternatively, equitable principles require the Service Agency to transport Claimant just as they have since 1998, until the need for the services changes and are documented in Claimant’s IFSP, accordingly. Specifically, when considering the legal doctrine of equitable estoppel, the evidence shows that the four requisite elements exist to estopped the Service Agency from ceasing services to Father’s office.

20. The first element, which requires a showing that the party to be estopped was apprised of the facts, has been met, as set forth in Legal Conclusion 13. Despite its claims to the contrary, the Service Agency had knowledge of the vendors providing transportation services for Claimant from Father’s office every other Monday, and to and from Father’s office during the month of August. The second element, which requires a showing that the party to be estopped intended by conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended, has been met, as the Service Agency’s lack of objection to the transportation arrangements over the course of 17 years resulted in Father’s reasonable reliance that such arrangements would continue, at least through the end of Ideal’s contract period as set forth in Claimant’s latest IFSP.

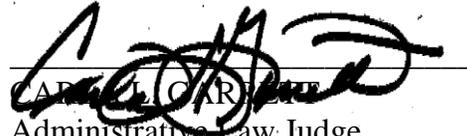
21. The third element, which requires a showing that the party asserting estoppel was ignorant of the facts, has been met, as Father had no idea that such transportation arrangements were objectionable to the Service Agency, given the 17 years it failed to express an objection. The fourth element, which requires a showing that the party asserting estoppel suffered injury in reliance on the conduct, has been met. The evidence shows that since January, when Ideal abruptly ceased Claimant’s transportation services from Father’s office, Father has had to return Claimant to Mother’s home on Sunday nights, cutting into the limited time in which Claimant can spend with Father. If Father were to keep Claimant in his custody through Monday morning, as he is entitled, or through the entire month of August, Father would incur significant costs associated with delegating transportation to Claimant’s stepmother, as he would be required to hire an x-ray technician to take the place of Claimant’s stepmother.

22. In light of the above, the Service Agency must continue transportation services for Claimant that, in addition to round-trip door-to-door service from the home of Mother to Claimant’s day program, includes door-to-door one-way service from Father’s office to Claimant’s day program on every other Monday, and round-trip door-to-door services from Father’s office to Claimant’s day program during the entire month of August. If, as the Service Agency has claimed, Ideal has no available route to Father’s office, despite evidence that Ideal serves three other clients who live near Father’s office, the Service Agency must locate a different transportation vendor to accommodate Claimant, accordingly.

ORDER

Claimant's appeal is granted. As such, the Service Agency must continue transportation services for Claimant that, in addition to round-trip door-to-door service from the home of Mother to Claimant's day program, includes door-to-door one-way service from Father's office to Claimant's day program on every other Monday, and round-trip door-to-door services from Father's office to Claimant's day program during the entire month of August.

Date: July 31, 2015


CAROL GARBUTT
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.