

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2015100888

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Torrance, California on December 16, 2015.

Mary Hernandez, Director of Adolescence and Adult Services, represented Harbor Regional Center (HRC or service agency). Parents represented Claimant.¹

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on December 16, 2015. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

Whether HRC should reimburse Parents' costs of providing round-trip transportation between Claimant's residence and Claimant's day program.

FACTUAL FINDINGS

1. Claimant is a 22-year-old, conserved consumer of HRC due to his qualifying diagnoses of Intellectual Disability (Severe) and Epilepsy. Claimant's most recent Individual Family Service Plan (IFSP), which is dated July 7, 2015, indicates that Claimant has a history of seizures. Claimant is non-verbal and unable to communicate his needs and wants. Claimant is ambulatory, but requires the use of a stroller when in public. Claimant requires

¹ To preserve confidentiality, Claimant and Parents are not identified by their names.

assistance to meet all of his self-care needs. Claimant has no community awareness or safety skills. Claimant requires supervision at all times. Claimant resides with his parents and his siblings. Mother is Claimant's primary care-giver. (Exhibit 6.)

2. In July 2015, Claimant exited the unified school district where he had been attending school, and he was expected to commence a therapeutic day program located 4.5 miles from his residence on September 2, 2015. To facilitate Claimant's attendance at his day program, Claimant's IFSP provides for HRC-funded, round-trip transportation between Claimant's residence and day program.

3. Antoinette Perez is an HRC program manager knowledgeable about Claimant's needs and supports and the operations of Roundtrip, which is an HRC-contracted transportation vendor. Ms. Perez's credible testimony establishes that HRC has contracted with Roundtrip to provide Claimant with transportation services at a rate of \$26 per day. Roundtrip factors its cost of doing business, which includes but is not limited to employee salaries, fuel, acquisition and maintenance of a fleet of vehicles, and liability insurance, into the rate of compensation that it charges HRC for a consumer's transportation. Roundtrip personnel are trained to address the special needs of HRC consumers. According to Ms. Perez, for families eschewing HRC-funded, contract transportation services in favor of family-provided transportation, HRC's established practice is to compensate those families at a rate of \$2.75 for a one-way trip or \$5.50 for a round trip per day.²

4. Before Roundtrip was able to begin transportation services for Claimant,³ Mother communicated to HRC that she preferred to use her personal vehicle to transport Claimant to and from his day program. Mother expressed her concern that Claimant would have a seizure while being transported and that no one would know what to do. Mother believes that only she will know how to respond in the event that Claimant experiences a seizure while commuting to or from his day program. Mother testified, "It is best for me to pick up and drop off. I'm the best person to care for him. It is not about the money. It is about his safety. He needs 24-hour supervision. The people on the bus are not people trained to take care of my son."

5. Since September 2, 2015, Mother has been transporting Claimant to and from his day program. Mother is requesting reimbursement for expenses incurred in connection with her transportation of Claimant. Mother asserts that her expenses are for the costs of the one hour spent driving to and from Claimant's day program when she drops him off and then return to her residence in the morning; the one hour spent driving to and from Claimant's day program when she picks him up and then return to her residence in the afternoon; and the associated mileage, which consists of 9 miles for the morning round trip and another 9 miles

² Ms. Perez's testimony did not explicate how the family-provided transportation rate was derived.

³ There was a delay in the start date of Claimant's transportation services for reasons not determinative of the issue presented for resolution in this matter.

for the afternoon round trip for a total of 18 miles per day. Mother has calculated that she should be reimbursed at a rate of \$9 per hour for her time and a rate of \$0.58 per mileage.⁴

6. HRC has denied Mother's request for reimbursement for family-provided transportation in any amount greater than \$5.50 per day. Mother filled a Fair Hearing Request, and these proceedings ensued.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act, developmentally disabled persons in California have a statutory right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4620, 4646-4648;

⁴ In a September 29, 2015 letter to Claimant's service coordinator, Mother itemized her request for reimbursement as follows:

DROP OFF

I leave our home at 12:30PM and it takes us approximately 30 minutes in street traffic to arrive at [Claimant's] program which is 9.1 miles away. I drop off [Claimant] and return home . . . which should account for another 30 minutes and 9.1 miles.

PICK UP

I leave home at 4:30PM in order to arrive at the day program in time for when [Claimant] has completed his day which accounts for approximately 30 minutes and 9.1 miles. We then return home accounting for an additional 30 minutes and 9.1 miles.

I spend approximately 2 hours total (2 round trips) per day transporting him to and from his program, driving a total of 36.4 miles. I would like for my time to be paid at your respite rate of \$9.00 per hour and the California mileage reimbursement rate of 58 cents per mile. I have calculated the rate to be \$18.00 (time) + \$21.11 (mileage) = \$39.11 per day. [Claimant] attends his program 5 days a week totaling . . . \$195.55. (Exhibit 4.)

At the hearing it was established that the distance traveled between Claimant's residence and Claimant's day program is 4.5 miles one way or 9 miles round trip. (Exhibit 9.) Thus, Mother's calculation that Claimant's day program is located 9.1 miles from Claimant's residence is erroneous. At the hearing it was also established that HRC is guided by the Internal Revenue Service standard mileage rate taxpayers use in computing the deductible costs of operating an automobile, which is \$0.57.5 per mile. (Exhibit 8.) Even accounting for these errors and adjustments, for the reasons set forth in Legal Conclusions 1 through 6, Claimant's Mother is not entitled to reimbursement for family-provided transportation in an amount in excess of \$5.50 per day.

Association for Retarded Citizens—California v. Department of Developmental Services (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code, § 4501.)

2. Services and supports for persons with developmental disabilities are defined as “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 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. Services and supports listed in the individual program plan may include, but are not limited to, . . . transportation services necessary to ensure delivery of services to persons with developmental disabilities.” (Welf. & Inst. Code, § 4512, subd. (b).)

3. Regional centers play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing IFSPs for the individual with developmental disabilities, for taking into account the needs and preferences of the individual and the family, and for promoting community integration, independent, productive, and normal lives, and stable and healthy environments. Regional centers are additionally responsible for ensuring that the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting the goals stated in the IFSP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

4. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of proving by a preponderance of evidence his entitlement to the services and supports. (Evid. Code, §§ 115 and 500.)

5. In this matter, Claimant’s statutory right to transportation services necessary to ensure the delivery of services offered at his day program is not disputed. As set forth in Claimant’s IFSP, HRC has authorized funding for round-trip transportation through its contracted vendor in order for Claimant to access his day program. Mother, however, has expressed a preference for transporting Claimant to and from his day program herself, and her preference is to be respected. It is typical for the members of a family to provide each other with transportation. But having chosen not to use HRC’s contracted transportation vendor, Mother cannot impel HRC to contravene the mandates of the Lanterman Act to

ensure the delivery of services in a cost-effective manner. The evidence does not establish that Mother maintains a fleet of vehicles requiring her to incur associated expenses. Consequently, there is no basis for reimbursing Mother at a rate comparable to the rate of compensating a contracted vendor such as Roundtrip. Having chosen not to use Roundtrip, Mother is entitled only to the established rate of reimbursement for family-provided transportation, which is \$5.50 per day.

6. Cause does not exist for HRC to reimburse Claimant's Parents for family-provided, round-trip transportation between Claimant's residence and day program at a rate greater than \$5.50 by reason of Factual Findings 1 through 5 and Legal Conclusions 1 through 5.

ORDER

1. Claimant's appeal is denied.

2. In the event that Claimant declines Harbor Regional Center's offer to provide Claimant with transportation services to and from his day program through Roundtrip, Harbor Regional Center shall reimburse Claimant's Parents for family-provided transportation at a rate of \$5.50 per day.

DATED: December 22, 2015

DocuSigned by:

C2CF22333C46434...

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.