

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2015120704

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 16, 2016, in Van Nuys, California.

Stella Dorian, Fair Hearings Manager, represented North Los Angeles County Regional Center (NLACRC). Claimant represented himself.

The matter was submitted on February 16, 2016.

ISSUE

Should NLACRC be required to fund the cost of using Claimant's preferred transportation provider instead of reimbursing Claimant for the cost of using Access Paratransit (Access) for transportation to and from Claimant's work program.

Claimant contends that he should be permitted to change his transportation from Access to R&D/Diversified Transportation (R&D) because Access picks him up and drops him off a half block from his apartment, the Access van is too hot in the summer time, his reimbursements from NLACRC are not timely and impact his budget, his walker was damaged, the ride home takes too long, and on Thursdays he arrives home after his wife has already left for church choir practice.

NLARC contends that Access is the least costly transportation provider and meets Claimant's needs as identified in his Individual Program Plan (IPP). NLACRC further contends that Claimant's preferred provider is substantially more expensive and will not deliver Claimant home any sooner than does Access. NLACRC also contends that it makes timely reimbursements to Claimant and that his complaints about Access can be addressed directly with the vendor with the help of either his service coordinator or Independent Living Skills (ILS) provider.

For the reasons set forth below, Claimant's appeal is denied.

FACTUAL FINDINGS

1. Claimant is a 56-year-old man who is eligible for regional center services based upon his diagnosis of Borderline Intellectual Functioning and Specific Developmental Disorder, Not otherwise specified. Claimant uses a walker due to a knee injury and wears glasses. Claimant lives with his wife, also a regional center client, in their own apartment.

2. Claimant has attended a work program known as "Build" since April of 2013. He participates in Build each week day from 8:00 a.m. to 3:30 p.m. Claimant is rarely late and is usually on site at 7:30 a.m. ready to work. Claimant arrives home between 5:00 p.m. and 6:00 p.m. each day. Claimant's wife attends choir practice on Thursdays and must leave home by 6:00 p.m. in order to be on time. When Claimant arrives late on a Thursday, he is unable to see his wife for most of the day. They are both sad when this happens.

3. Claimant's Individual Program Plan (IPP) provides that he attend Build each week day and contains a transportation plan which provides that Claimant is reimbursed at a rate of \$2.75 each way for 5 roundtrips on Access Paratransit in order to attend the Build Program. Although Claimant had previously taken the Metropolitan Transit Agency (MTA) bus, this was discontinued because he was injured by another passenger on the bus and continued to have difficulties with other passengers.

4. Claimant's IPP also provides for 12 hours per month of ILS for assistance with shopping, budgeting, making appointments, self-advocacy and emergency preparedness. Claimant's ILS worker assists him in preparing his Access reimbursement requests. Usually, his reimbursement checks are received 5 to 10 days after submission of his reimbursement requests.

5. Claimant receives \$1,112 in Supplemental Security Income (SSI) and an additional \$285 per quarter of SSP funds. He also receives subsidized housing from the Section 8 program. As part of his IPP, Claimant's ILS worker has helped him with budgeting for these and other expenses.

6. Claimant's apartment is located in a "no gridlock" zone which makes it illegal for the Access van drivers to stop in front of his building. Instead, they are required to stop around the corner out of the "no gridlock" zone for safety reasons. R&D would also not be permitted to stop in front of Claimant's home because of stopping/parking restrictions in the "no gridlock" zone.

7. Claimant found the Access van to be too hot in the summer. He compared the temperature in the Access van to an R&D van that was waiting at the site for other consumers and found the later to be much cooler inside during the summer. Claimant's walker was also damaged when it fell from the Access van during passenger loading. Although it is still usable, there is visible damage. Claimant is addressing his concerns about the temperature in the summer and damage to his walker directly with Access with the help of his NLACRC service coordinator and his ILS worker.

8. Leticia Leon, Manger of Operations for R&D, credibly testified that as a transportation broker, R&D locates appropriate routes and vendors for its clients, many of which are Regional Center consumers. In Claimant's circumstances, the daily round trip cost for his transportation to and from Build would be \$42 per day. The trip would take the same time or longer than the current Access van ride based upon traffic patterns in the heavily congested San Fernando Valley.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)¹ An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of his request that to fund the costs of his transportation to and from work using R&D.

2. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

3. When one seeks government benefits or services, the burden of proof is on him or her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, NLACRC has not before agreed to provide funding for R&D transportation. Therefore, Claimant has the burden of proving that he is entitled to the relief he requests in this matter.

4. The purpose of the Lanterman Act is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation 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 productive and independent lives in

¹ All further statutory references are to the Welfare and Institutions Code.

the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as NLACRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives.

6. Welfare and Institutions Code section 4512, subdivision (b), defines services and supports for persons with developmental disabilities 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. Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code §§ 4646, 4646.4, 4646.5, 4647, and 4648.)

7. Welfare and Institutions Code section 4646, subdivision (a), requires that services be effective in meeting consumer needs, and maintain a balance between reflecting consumer and family preference on the one hand while being cost-effective on the other hand. In addition, section 4648, subdivision (a)(6), requires regional centers, when selecting service providers, to consider the provider's ability to deliver quality services which can accomplish all or part of the consumer's individual program plan, the provider's success in achieving objectives set forth in the consumer's IPP, the costs of providing the service compared to other providers, and reasonable progress toward objectives as well as the consumer's choice of provider.

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 4648.35, subdivision (b), provides that a regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.

10. Welfare and Institutions Code section 4648.35, subdivision (c), provides that a regional center shall fund transportation, when required, from the consumer's residence to the

lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.

11. R&D provides a specialized service or support or a special adaption of a generic resource as required by Welfare and Institutions Code section 4512, subdivision (b), and as such may in some cases meet the requirements for funding by a regional center. However, in this case, Access is the provider of the least expensive transportation that meets Claimant's needs. Moreover, R&D, Claimant's preferred provider, does not provide an appreciable difference in service warranting the substantially higher cost in this circumstance. Claimant's concerns about temperature and damage to his walker can be addressed directly with Access with the assistance of Claimant's ILS worker and NLACRC service coordinator. Accordingly, NLACRC has established that its denial of funding is appropriate. In addition, NLACRC established that there are other resources, such as Access that although not as convenient or desirable, that can provide transportation to Claimant.

ORDER

Claimant's appeal is denied.

DATED: February 22, 2016

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Glynda B. Gomez
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 ninety (90) days.