

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DOMINIQUE W.

OAH No. 2012030337

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER

Service Agency.

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California heard this matter on July 2, 2012, in Pomona, California.

Daniela Martinez, Fair Hearings Coordinator, represented the San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant's mother (Mother) represented Dominique W. (Claimant). Claimant did not attend the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on July 2, 2012.

ISSUE

Whether SGPRC must fund a wheelchair ramp conversion for Claimant's family vehicle.

FACTUAL FINDINGS

1. Claimant is an 11 and one-half year old boy born October 20, 2000. Claimant lives with his mother and older brother in Arcadia, California. Claimant is eligible for regional center services based upon a diagnosis of Moderate Mental Retardation. Claimant is non-verbal and is not able to walk independently. He uses a walker and manual wheelchair. Consistent with his Moderate Mental Retardation, Claimant has difficulties with adaptive skills, communication, social interactions and social skills. Claimant also has tantrums several times a week. Claimant requires assistance with toileting and all daily activities.

2. Claimant's parents are divorced, but his father is involved in his life. In the last few months, Claimant's father has taken a more active role, because Mother has been undergoing treatment for ovarian cancer. Claimant's Mother was diagnosed with cancer in 2011 and has been undergoing chemotherapy. She is expected to make a full recovery, but has been weak and exhausted for an extended period of time. Claimant's father and older brother have provided assistance with Claimant's needs during her recuperation.

3. Claimant and his Mother use Access Transit, a curb to curb shared transportation system for disabled persons who are not able to safely use the regular bus system, for medical appointments and some of his activities. Access is funded by the local transit authority. Services are available seven days per week with an appointment. Mother would like to have a wheelchair ramp conversion on the family van at a cost of approximately \$10,000 to make it easier to transport Claimant to his appointments and recreational activities in a neighboring town and to transport him if needed, in the evenings. Accordingly, Claimant has requested that SGPRG fund a wheelchair ramp conversion in the approximate amount of \$10,000.

4. On February 1, 2012, SGPRC sent Claimant a Notice of Proposed Action advising Claimant that the request had been denied based upon Welfare and Institutions Code 4646.4, subdivision (2), on the basis that Claimant's needs are met by the generic resources available through Access.

5. On February 29, 2012, Claimant appealed the denial and requested a hearing.

6. Claimant's Individual Program Plan (IPP) dated July 25, 2011, sets forth six objectives/outcomes for Claimant as follows:

- (1) Claimant will maintain good health and have medical exams yearly to minimize risk of medical issues;
- (2) Claimant will enhance daily living skills and reduce resistive aggressive behaviors;
- (3) Claimant will improve his ability to make friends;
- (4) Claimant's mother will take a break from Claimant's total care so she can be rested;
- (5) Claimant will continue improving his mobility and have appropriate equipment to get around and beyond his community; and
- (6) Claimant will inform his mother when he needs assistance going to the restroom.

7. An addendum IPP dated April 24, 2012, provides an additional objective/outcome that for supervision of Claimant, SGPRC will fund the services of an adult to supervise Claimant while his parents are working.

8. Claimant receives 117 hours per month of respite care and diapers funded by SGPRC.

LEGAL CONCLUSIONS

1. SGPRC contends that under Welfare and Institutions Code section 4646.4, subdivision (2), it must deny funding of the wheelchair van ramp conversion because Claimant's IPP objectives and needs are met by generic resources. Claimant contends that the wheelchair ramp conversion is necessary to transport Claimant to out of town recreational activities and at night. For the reasons set forth below, Claimant's appeal is denied.

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

3. The Lanterman Act¹ 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 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

¹ The Lanterman Developmental Disabilities Service Act, Welfare and Institutions Code section 4500, et. Seq.

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.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and

most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

7. The SGPRC purchase of service policy provides the following with respect to transportation services:

The regional center may purchase transportation services from available public transportation systems (in the form of a bus pass or Access coupons) or purchase private transportation companies vendored by the regional center, or family members may become vendored for reimbursement of mileage costs...

For minors living at home, the regional center shall take into account the family's responsibilities for providing transportation services similar to those provided for a child without disabilities. Parents, legal guardians, or care givers are expected to provide for routine transportation, such as to medical appointments, from afterschool programs, to and from Saturday programs, and to and from programs during times when public schools are not in session. The regional center may provide transportation to the above services if the family provides sufficient documentation to demonstrate that they cannot provide or arrange transportation.

8. The wheelchair ramp conversion is that type of "specialized services and supports or special adaptations of generic services" contemplated by the Welfare and Institutions Code section 4512, subdivision (b). However, Claimant did not establish by a preponderance of the evidence that the wheelchair ramp conversion was required to meet the objectives of his IPP or that the generic resources that are provided by Access are not sufficient to meet Claimant's needs and the objectives of his IPP. While Access is not the most convenient mode of transportation, the evidence at hearing established that Claimant's needs and IPP objectives are currently being met by a combination of generic resources including support from his family and Access.

9. Based upon findings of fact 1 through 8 and legal conclusions 1 through 9, Claimant did not prove by a preponderance of the evidence that SGPRC must fund the wheelchair ramp conversion.

ORDER

Claimants' appeal is denied. SGPRC is not required to fund Claimant's wheelchair van ramp conversion at this time.

DATED: July 20, 2010

/s/

GLYNDA B.GOMEZ
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.