

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for a Massage Chair:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016111020

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 26, 2017.

Claimant's representative did not appear. At 11:17 p.m., the night before this hearing, claimant's representative sent in e-mail stating that he "will not make it tomorrow for the hearing. I do not want to reschedule. I'm in the process of obtaining the chair for [claimant] and I will just wait to see the outcome." (Exhibit A.)

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

IRC established that satisfactory service had been effectuated on claimant. Claimant's representative's e-mail advised that he did not want to reschedule, which was interpreted to mean he was not requesting a continuance. Even if he had, the e-mail did not establish good cause for his failure to appear. IRC elected to proceed with a prove-

up hearing. The record was opened, evidence was received, and the matter was submitted on April 26, 2017.

ISSUE

Should IRC fund claimant's request for a massage chair?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On October 21, 2016, IRC notified claimant that his requests for IRC to fund a massage chair was denied.

On November 15, 2016, claimant requested a fair hearing. Claimant was thereafter given notice of this hearing.

EVIDENCE PRESENTED AT HEARING

2. Claimant is an almost 17-year-old male who qualified for regional center services on the basis of a diagnosis of autism spectrum disorder. He also has a chronic medical condition of speech disturbance, although he is verbal and speaks in complete, understandable sentences.

3. Claimant's Individual Program Plan identified his abilities and needs. The personal/emotional growth section documented that claimant displays socially inappropriate behaviors several times per day including emotional outbursts, meltdowns, and impatience. Claimant's parents provide him with a sensory diet as recommended by claimant's rehabilitation center, to help claimant alleviate anxiety and decrease his instances of inappropriate behaviors. Claimant previously received ABA services funded by his insurer that recently ended, and his parents use the recommended techniques to help claimant de-escalate when his behaviors occur.

Claimant's parents requested that IRC fund a massage chair to be used as part of claimant's sensory diet for massage therapy.

4. The Sensory Diet Introduction from the rehabilitation center was introduced in evidence. The document advised that in January 11, 2013, the sensory diet was being implemented to determine if it would help decrease claimant's behaviors. The Introduction indicated that claimant was under responsive to movement input, that he rocks and spins, that he was under responsive to proprioceptive input as he used excessive force during fine motor tasks, that he struggled to control his muscle movements, and that he was over responsive to touch input and this area needed further exploration. Sensory diet activities to be used were also attached to the Introduction. No documentation regarding the results of either the diet or the activities has been provided to IRC.

5. On March 28, 2016, claimant's insurer denied coverage for the requested massage chair. The insurer advised that the requested chair did not meet the definition of durable medical equipment: equipment designed for repeated use which is medically necessary to treat the illness, and improve functioning, or prevent further deterioration. The insurer advised that it had claimant's case reviewed by an independent developmental behavior pediatrics physician specialist who agreed with the denial and noted that the only clinical records submitted was a well check that described that the child had an intellectual disability and was under immunized. The insurer advised claimant of his appeal rights.

6. Documentation for the \$8,000 Daiwa Legacy massage chair that claimant requested provided product detail specifications.

7. IRC's purchase of service policy indicated that IRC may purchase incidental medical services after private and generic resources have been exhausted and will consider using the most cost-effective services first. Requests must be accompanied by

an insurance denial. IRC cannot purchase experimental treatments, therapeutic devices not clinically determined or scientifically proven to be effective, and evaluations not related to the developmental disability. IRC can purchase occupational/physical therapy for consumers who have a demonstrated need and who do not qualify for services through generic resources.

8. Annette Richardson, an IRC occupational therapist for the past 16 years, described her job duties and work on claimant's massage chair request. Ms. Richardson's testimony is summarized as follows: after claimant made his request, she was tasked with contacting the family to discuss the request, she left a message and they never returned her calls; the request stems from the idea that when claimant becomes overwhelmed he rocks back and forth and engages in inappropriate behaviors; the hope is the chair will negate those behaviors; a formal occupational therapy evaluation of claimant regarding his manual sensory needs has not been performed; IRC has no information regarding the results of the sensory diet allegedly given to claimant; the documentation regarding the sensory diet indicates it will be implemented, but no follow-up information was provided to IRC; a massage chair is a passive tool, and active participation is better for individuals with claimant's condition; the massage chair claimant seeks is a generic chair that anyone can buy at the mall; there is no evidence that this chair would work for claimant; many of the activities identified in the Sensory Diet Introduction are a much better option for claimant than the chair; and this chair "definitely does not" ameliorate or alleviate claimant's developmental disability.

Ms. Richardson supported IRC's decision not to fund the purchase of the chair.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent

the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

[S]pecialized 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

5. Welfare and Institutions Code section 4646, subdivision (a), provides in part:

It is the intent of the Legislature to ensure that the [IPP] 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 provisions of services to consumers and their families be effective in meeting the goals stated in the [IPP], 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 requires the regional center to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

7. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency

possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer's individual program plan

[¶] . . . [¶]

- (8) Regional Center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

[¶] . . . [¶]

- (16) Notwithstanding any other law or regulation, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown.

Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice...

8. Welfare and Institutions Code section 4648.5 suspended the regional centers' authority to purchase various services including nonmedical therapies, which included but were not limited to, specialized recreation, art, dance, and music.

9. Welfare and Institutions Code section 4659 requires the regional center to identify and pursue all possible sources of funding including, but not limited to, governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, federal supplemental security income and the state supplementary program, and private entities, to the maximum extent they are

liable for the cost of services, aid, insurance, or medical assistance to the consumer. Subject to certain limitations, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. This section "shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay."

EVALUATION

10. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating his need for the requested service and support, a massage chair. Claimant failed to meet that burden. He provided no formal evaluation identifying the necessity for that massage chair, no evidence that it was suitable for his needs, and no evidence that the chair would ameliorate or alleviate his developmental disability.

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ORDER

Claimant's appeal from the Inland Regional Center's determination that it will not fund the purchase of a massage chair is denied. Inland Regional Center shall not fund the purchase of that chair.

DATED: May 10, 2017

MARY AGNES MATYSZEWSKI

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 ninety days.