

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2020120529

DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 22 and 23, 2021.¹

Claimant was represented by his mother (Mother).²

¹ The above-entitled matter was heard simultaneously with claimant's two other matters designated as OAH Nos. 2020120527 (homemaker services) and 2020120531 (additional ABA hours). Separate decisions are being issued for those two matters.

² Claimant and his family members are identified by titles to protect their privacy.

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on February 24, 2021.

During her subsequent review of the documentary evidence, the ALJ noted Service Agency's exhibits included an incomplete copy of claimant's individual program plan (IPP), which was admitted as Exhibit 21. On March 4, 2021, the ALJ issued an order reopening the record for Service Agency to file and serve a complete copy of the IPP by March 9, 2021, and for Mother to file a written response, if any, by March 11, 2021. Service Agency filed a complete copy of the IPP, which was marked and admitted as Exhibit 26. The ALJ's order reopening the record was marked and admitted as Exhibit 27.

The record closed and the matter was re-submitted on March 11, 2021.

ISSUE

Should Service Agency be required to fund the purchase of assistive technology equipment for claimant, specifically, an iPad Air 10.5 256 GB with WiFi/hotspot, an Apple Pencil 1st Gen, programs/apps including Everyday Speech, Gemini Educational Systems, and Model Me Kids, and the Apple Care two-year extended warranty?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-27; claimant's exhibits A-I, K-P, R.

Testimonial: Rosa Chavez, SGPRC Associate Director of Family and Transition Services; Monica Romero, SGPRC Manager of Family Services; Nancy Ojeda, SGPRC Service Coordinator; Elena Sanchez, Executive Director, Parents' Place Family Resource and Empowerment Center; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a three-year-old boy who is eligible for regional center services based on his diagnosis of Autism Spectrum Disorder.

2. By a letter dated November 18, 2020, and a Notice of Proposed Action (NOPA) dated November 17, 2020, Service Agency notified Mother of its decision to deny her request for assistive technology (AT) equipment, specifically, an iPad with WiFi/hotspot, an Apple Pencil, three specific programs/apps, and the Apple Care extended warranty. Service Agency based the denial on Welfare and Institutions Code sections 4646.4 and 4648.5. The letter and NOPA explained:

Communication technology support is typically addressed via a child's educational programming. It would be appropriate to pursue this request further with [school district]. Regional Center Service Coordinator and Educational Specialist are available to support you with the IEP process. Your request was presented to the Exceptional Service Review Committee on 11/3/2020. As well, this request has been denied. You have also been informed that SG/PRC can forward your request for an iPad to our

Lending Library program. You have declined the referral as you prefer for the iPad to belong to [claimant] indefinitely, not loaned.

(Exh. 4, pp. 166-170.)

3. On December 3, 2020, Mother filed a fair hearing request to appeal Service Agency's denial of her request for AT equipment. Mother explained the basis for her request, as follows:

[Claimant's] request for AT supports started when he was 2yr 5 months (11/2019) [.] SGPRC did not provide appropriate assessments until a judge ruled to use another assessor with supporting data for the appropriateness of the AT equipment (Ipad). SGPRC funded the new assessment and will not honor the assessor [']s recommendations now that [claimant] is 3.6 and still without an IEP. Should the judge deem it appropriate I would like SGPRC to Fund the 3 programs and the Ipad (4th Gen Apple iPad Air 256GB) and Apple Pencil2/+Care for [claimant] to keep and utilized [s/c] for supporting his IPP Goals and OT, Speech, ABA services.

(Exh. 5.)

Claimant's Background

4. Claimant lives at home with Mother, his father, two brothers (ages 14 and 15), and his sister (age 5). Claimant's father works outside the home. Mother is the primary care giver for claimant and his siblings.

5. Prior to age three, claimant received early intervention services from Service Agency under the Early Start program. Claimant turned three years old on June 24, 2020. Although Service Agency determined claimant was eligible to receive services under the Lanterman Act, Mother filed fair hearing requests under Early Start seeking to continue claimant's Early Start services past the age of three. One of the fair hearing requests resulted in a decision by ALJ Eric Sawyer, issued on June 5, 2020, which ordered regional center to conduct a new AT assessment. (See Exh. 6.) Another fair hearing request resulted in a decision by ALJ Eileen Cohn, issued on September 14, 2020, in which ALJ Cohn decided, among other things, that claimant was not entitled to AT equipment as compensatory services under Early Start. (See Exh. 9.)

6. Nancy Ojeda is claimant's service coordinator for his services under the Lanterman Act. Starting on July 1, 2020, Ms. Ojeda began contacting Mother to set a date and time for a planning team meeting to develop claimant's initial IPP under the Lanterman Act. Eventually an initial IPP meeting for claimant was held on September 28, 2020. Mother signed the IPP in February 2021.

7. Pursuant to the IPP, Service Agency is currently funding for claimant to receive LVN respite, 64 hours per month, plus a one-time set of 20 hours from his Early Start case; and ABA/Behavioral Health Services provided by Center for Autism Related Disorders (CARD), 24 hours per week of direct service and 21 hours per month for

supervision. In addition, claimant receives speech therapy, occupational therapy, and physical therapy funded by medical insurance and/or Medi-Cal.

8. The IPP states claimant does not yet have an individual education plan (IEP) in place with his school district. The school district's assessments have been delayed due to the COVID-19 pandemic. The IPP states claimant has participated in one of three assessment sessions.

AT Assessment

9. ALJ Sawyer's decision issued on June 5, 2020, ordered that Service Agency "shall provide funding of a new assistive technology assessment, which shall consider whether an iPad is appropriate for [claimant] for receptive and expressive communication purposes." (Exh. 6, p. 193.) Service Agency funded an AT assessment in accordance with Judge Sawyer's order.

10. On July 1, 2020, Nancy Tsubokawa, MA, CCC-SLP, conducted an AT assessment of claimant. Ms. Tsubokawa summarized her findings and recommendations in a written report dated July 10, 2020. Ms. Tsubokawa's assessment was based on in-home observation, informal and formal assessment, parent report, and review of records. During the assessment, Ms. Tsubokawa observed that claimant "accessed and attended to a child music video on the family iPad for 5 minutes." (Exh. 7, p. 199.)

11. Based on her assessment, Ms. Tsubokawa opined that claimant "does require the use of an assistive technology device to access a social-emotional curriculum and to make progress towards his communication goals." (Exh. 7, p. 201.) Ms. Tsubokawa found the assessment results "showed that [claimant] was able to demonstrate skills to access a tablet via touch access and can attend to a video for

greater than 5 minutes.” (*Ibid.*) Ms. Tsubokawa recommended claimant “be provided a dedicated device such as a tablet, whereby an evidence-based video modeling program targeting social-emotional regulation, can be downloaded and accessed throughout the day.” (*Ibid.*) She also recommended claimant “be provided an educational program on said dedicated device.” (*Ibid.*) Her report listed examples of such educational programs, including Everyday Speech, Gemini Educational Systems, and Model Me Kids. Ms. Tsubokawa recommended claimant’s parents “work closely with [claimant’s] current Speech-Language Therapist to decide on what program would work best for [claimant] and his family.” (Exh. 7, pp. 201-202.) Ms. Tsubokawa’s report did not specifically recommend an iPad or Apple Pencil as requested by Mother.

12. On July 14, 2020, Mother made a written request to Service Agency to fund the purchase of an iPad Air 10.5 256 GB, an Apple Pencil, and the software recommended in Ms. Tsubokawa’s report. Mother provided Service Agency with price information for the requested equipment and software. (Exh. 10.)

13. On July 21, 2020, Service Agency sent a letter to Mother notifying her, among other things, that her request for AT equipment was denied and an IPP meeting was needed to determine appropriate services and supports for claimant. The letter stated in pertinent part:

As well, you further requested assistive technology and software programs and apps as recommended by the AT assessor with a specific request for \$500 per fiscal year to support software and app purchases. The Judge’s order was for assessment of [claimant’s] receptive and expressive language needs and this assessment was completed. Your request for AT is outside the scope of the Judge’s ruling.

Current POS policy for up to \$500 for training and development does not apply to this type of request. An IPP meeting is still needed to determine appropriate services and supports for [claimant].

(Exh. 8.)

14. ALJ Cohn's decision, issued on September 14, 2020, noted Mother failed to provide sufficient evidence as to how the AT she requested would be incorporated into claimant's existing therapies and services. In finding claimant was not entitled to AT as a compensatory service under Early Start, ALJ Cohn noted AT was a new service that had to be reviewed as part of the IPP process and considered in the context of services provided by the school district and claimant's IPP goals.

15. On September 30, 2020, Mother provided Service Agency with a Statement of Hardship in support of her request for AT equipment. Mother described the financial hardship as follows: "I have a family size of 6 with one income and on a repayment plan with a bankruptcy. I am unable to obtain these items [i.e., an iPad and programs] on my own, it creates a financial hardship to my family. We live pay check [sic] to paycheck." (Exh. 11.) Mother indicated she was requesting funding for an iPad and programs "per SGPRC AT assessment report." (*Id.*) Mother explained the iPad would be used to help maintain or improve claimant's social development, communication, family recognition, dental hygiene, and life skills. The ABA programs and videos, and access to apps, would help with claimant's deficits in all areas of development, and facilitate collaboration among his service providers and help aid claimant with his short-term and long-term IPP goals. (*Id.*)

16. On October 14, 2020, Ms. Ojeda presented Mother's request for AT equipment to the Exceptional Service Review (ESR) Committee. The ESR Committee meets weekly to consider exceptions to SGPRC's Purchase of Service (POS) Policy. The ESR Committee denied Mother's request and explained the basis for the denial as follows: "Team feels current speech and ABA providers can make recommendations to promote speech. Through IEP process, school can target augmentative communication device, apps, and recommendations. Pursue data package through IEP or low cost internet access. SGPRC can refer to Lending Library program while school completes their assessments and supports family with needed technology. Educational Specialist can support family in IEP process." (Exh. 12, p. 249.)

17. On October 15, 2020, Mother provided claimant's school district with Ms. Tsubokawa's AT assessment report and requested the school district fund AT equipment for claimant. On October 29, 2020, Mother notified Ms. Ojeda by email that the school district was currently denying her request for AT equipment and programs but agreed to consider her request once the school district completes their own assessment. (Exh. I.)

18. On October 28, 2020, Mother sent Ms. Ojeda an email regarding new information and modification of the AT request and reasoning. Mother explained the use of the iPad would be to help claimant develop his communication for in-home supports across all services. Mother indicated the school district "is considering providing the AT equipment and Software programs, however it would be for school use only. If I wanted the AT equipment and Software during home supports and distance learning that it would fall under the Regional Center and his IPP, as the schools are currently closed and [claimant] has not developed his IEP as of yet." (Exh. I.)

19. In her October 28, 2020 email to Ms. Ojeda, Mother described how she intended to use the iPad with claimant, as follows:

I would also like for the Ipad to be utilized as a Home Support across all services that [claimant] is getting such as OT, PT, Speech, and ABA for collaboration of goals. Also, to support [claimant's] IPP goals such as brushing his teeth (Tooth brush comes with an APP), Down loading free APPs that can aid [claimant] in his development and his interaction in a community setting which would be supported with ABA, as well as to be able to down load music, videos, pictures for all therapy services and collaboration. [Claimant] would be able to store and share if needed (videos, pictures, and audio of himself) for collaboration with all therapy services. The Ipad should belong to [claimant] due to privacy issues and access of Apps and managed by parent only. [Claimant] should be able to store and exchange personal information (as parent deemed appropriate) pertaining to [claimant] such as Medical, personal Pictures, video, therapy Goals, across all therapy services.

(Exh. I, p. 2.)

20. On October 29, 2020, Ms. Ojeda was directed by her manager to return to the ESR Committee to present the AT request with Mother's new information and reasoning set forth in her October 28, 2020 email. Ms. Ojeda made a second presentation to the ESR Committee, which again denied the request.

21. Claimant currently has access to AT equipment. There is a “family iPad” that Ms. Tsubokawa observed claimant using during the July 1, 2020 assessment. (Exh. 7, p. 199.) Additionally, in September 2020, Mother picked up a Chromebook provided by claimant’s elementary school for him to use for distance learning. (Exh. 24, p. 442.)

22. Ms. Ojeda testified to Service Agency’s efforts to support Mother’s AT request. In October 2020, Ms. Ojeda presented Mother’s request to the ESR Committee twice. The ESR Committee denied the request both times on the grounds that funding the AT equipment was the school district’s responsibility.

23. On October 29, 2020, Service Agency submitted a request for funding AT equipment for claimant to the Richard D. Davis Foundation. The Foundation is a separate entity which supports regional center families by providing funding for services and supports that are not part of SGPRC’s POS Policy. The Foundation denied the funding request for claimant on the grounds that the requested AT equipment was something claimant’s school was responsible to provide. (Exh. 14.)

24. Ms. Ojeda advised Mother of the Technology Lending Library, which loans iPads to regional center consumers. Ms. Ojeda completed the referral form but was unable to submit it because Mother would not give her consent for Service Agency to make the referral. Mother did not want a loaned iPad because of her concerns claimant’s personal information might become accessible on a loaned device.

25. Maria Elena Sanchez is the Executive Director of Parents’ Place Family Resource and Empowerment Center (Parents’ Place), which helps families with children with disabilities connect to the regional center system and resources. Parents’ Place operates the Technology Lending Library (Library) in collaboration with regional centers. The Library program was started in December 2020. The Library loans devices

(iPads) and provides connectivity to enable families to access therapies, community programs, and parent training through the internet, as well as communicate with regional center service coordinators. The iPads are loaned to families for six-month periods. When the iPad is returned after the six-month period, anything saved on the device is removed and the device is reprogrammed. Ms. Sanchez testified Parents' Place policy does not allow loaned iPads to be used for educational apps or school district purposes. Parents are not allowed to download apps or programs on the loaned iPads without Parents' Place permission. If a parent wishes to download a free app, the parent must bring the iPad to Parents' Place to download the app.

26. Ms. Sanchez testified there are currently 115 families using iPads borrowed from the Library. Although the Library has a total of 250 devices, only 65 of the devices have internet connectivity. However, the Library's devices were recently updated, and Ms. Sanchez is aware of 15 more devices having connectivity. Ms. Sanchez testified there are 23 families on the waiting list for the 15 devices.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the service agency's decision. Claimant, through Mother, timely requested a fair hearing and jurisdiction for this case was established. (Factual Findings 1-3.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) In this case, claimant requests AT equipment and supports that Service Agency has not previously agreed to provide. Therefore, claimant has the burden of proving by a preponderance of the evidence he is entitled to the requested funding for AT equipment. (See Evid. Code, § 500.)

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4648, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (*Ibid.*)

4. Section 4646.5, subdivision (a)(1), provides that the planning process for an IPP shall include, among other things, “[g]athering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.”

Subdivision (a)(1) further provides: "Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible."

5. Pursuant to section 4646.4, subdivision (a), when purchasing services and supports for a consumer, a regional center shall ensure 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.

6. Pursuant to section 4648.5, subdivision (a)(3), regional centers may not purchase "educational services" for children age three to 17. However, an exemption may be granted pursuant to subdivision (c), on the basis of "extraordinary circumstances" when the regional center determines "the service is a primary or critical

means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs."

7. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

8. Regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, including school districts, and private entities, to the extent they are liable for the cost of services for the consumer. (§ 4659, subd. (a)(1)-(2).)

Analysis

9. For the reasons explained below, Service Agency properly denied Mother's funding request to purchase AT equipment for claimant.

10. Mother presented insufficient evidence to establish the AT equipment and programs she requests will be effective in meeting the goals stated in claimant's IPP. Claimant is currently receiving services to help him meet his IPP goals, specifically ABA/behavioral services funded by Service Agency, and speech, occupational, and physical therapies funded by private insurance and/or Medi-Cal. Mother presented no assessment or recommendation from claimant's current service providers that the requested iPad, programs, and Apple Pencil are needed for claimant's therapies in order for him to meet his IPP goals. Ms. Tsubokawa, who is not one of claimant's service providers, only recommended that a tablet device is appropriate for claimant

to access a social-emotional curriculum and make progress towards his communication goals. Ms. Tsubokawa did not recommend an iPad or the specific iPad requested by Mother, or an Apple Pencil. Although Ms. Tsubokawa's assessment report identified some of the educational programs available on the market, she did not recommend a specific program for claimant. Instead, Ms. Tsubokawa left it to claimant's parents to work with his speech therapist to determine the appropriate program for claimant.

11. Mother's request for AT equipment has not yet been considered by the IPP planning team through the IPP process. Ms. Tsubokawa's assessment occurred before claimant's IPP was developed and signed by Mother. Mother's request for funding authorization based on Ms. Tsubokawa's assessment is premature. The IPP planning team must consider the responsibility of claimant's school district to provide some or all of the requested AT equipment. Service Agency is prohibited from expending funds for services the school district has the legal responsibility to provide. The development of claimant's IEP by his school district is in process. The school district has informed Mother it cannot make a decision on her AT request until the school district completes its own assessments.

12. The IPP planning team must also consider and determine the cost-effectiveness of the AT equipment requested by Mother. While a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire but must provide a cost-effective use of public resources. The preferences of the consumer and his parents is one factor, but not the only factor, in determining appropriate services and supports for the consumer.

13. Claimant is not currently without access to AT resources. Claimant has access to the “family iPad” which Ms. Tsubokawa observed him using during her AT assessment. Claimant also has a Chromebook provided by his school district which he can use for distance learning and working on the IPP goals identified as the school district’s responsibility to address. The Technology Lending Library is another resource claimant can access for his AT equipment needs. Mother’s preference for claimant to have a device that belongs only to him does not foreclose the Technology Lending Library as an available resource for meeting claimant’s AT needs. A borrowed iPad would give claimant and his therapy providers the opportunity to work with an iPad and determine whether an iPad or similar tablet device would be effective and necessary for meeting the IPP goals supported by a particular therapy.

ORDER

Claimant’s appeal is denied. Service Agency is not required to fund the purchase of assistive technology equipment for claimant, specifically, an iPad Air 10.5 256 GB with WiFi/hotspot, an Apple Pencil 1st Gen, programs/apps including Everyday Speech, Gemini Educational Systems, and Model Me Kids, and the Apple Care two-year extended warranty.

DATE:

ERLINDA G. SHRENGER
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.