

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

AILANI C.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH Case No. 2012101162

DECISION

David Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the South Central Los Angeles Regional Center, in Los Angeles, on December 5, 2012.

Claimant Ailani C. was represented by her mother. Claimant is referred to by her last initial to protect her confidentiality. The South Central Los Angeles Regional Center (SCLARC or the Service Agency) was represented by Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager. Oral and documentary evidence was received and argument made, the record was closed and the case was submitted for decision on December 5, 2012.

ISSUE

The parties agreed that the issue to be decided by the ALJ is: Should the Service Agency provide funding for disposable bed under pads for Claimant.

## FACTUAL FINDINGS

1. Claimant is a 4-year-old girl who is eligible for Service Agency services based on diagnoses of moderate mental retardation, Cerebral Palsy and epilepsy. The services funded by the Service Agency for Claimant are diapers, two cases per month, and respite by a licensed vocational nurse (LVN) of 30 hours per month.

2. In July 2012, Claimant's mother requested that the Service Agency pay for disposable under pads for her bed, under her sheets. The under pads were prescribed by Claimant's physician. (Exhibit 4.)

3. In a Notice of Proposed Action letter (NOPA) dated September 13, 2012 (Exhibit 1), SCLARC notified Claimant it denied the request. The reasons given were that no medical necessity had been established, the pads were a convenience, and a plastic sheet could be used, which was a parent's standard responsibility.

4. Claimant filed a Fair Hearing Request dated October 12, 2012 (Exhibit 2).

5. Claimant suffers from medical conditions and complications in addition to those noted above. She is allergic to many foods and materials. Claimant is fed through a gastrointestinal tube. She has a tracheotomy. Although the tracheotomy tube was to be removed recently, it was not, due to a concern about infection. Claimant is hospitalized often. She is sick often and takes numerous medications on a regular basis. Some of the medications cause her to have diarrhea. Claimant also receives 16 hours per day of LVN nursing services funded by Medi-Cal. Claimant is totally dependent on others for her care.

6. Heidi Zander, Claimant's service coordinator, received the prescription and request for bed under pads. She referred the request to Fezem Shabaf, a Nurse Manager for SCLARC, who reviewed the available medical information and reached the conclusions that were included in the NOPA concerning lack of necessity, convenience and use of a rubber sheet. She did not contact Claimant's mother or physician to obtain any other information. Ms. Zander and Ms. Shabaf both testified that there is a process whereby Medi-Cal can be requested to fund for items such as the under pads, referred to as a

treatment authorization request (TAR) , however neither of them had SCLARC staff submit a TAR.

7. Ms. Shabaf has been a registered nurse for 30 years, has worked for the Service Agency for 27 years, and has been the Nurse Manager for 17 years. Her primary focus in reviewing the request was whether there was a medical necessity for the under pads. She did not see anything establishing such a necessity. She was not aware of the issue concerning Claimant's medications and diarrhea. Nor was she aware, as later stated by Claimant's mother, that Claimant was allergic to rubber sheets and that rubber sheets were already being used, with sufficient bedding to keep Claimant from being in direct contact with the rubber sheet.

8. Ms. Zander suggested to Claimant's mother that she should look to other sources for funding of the under pads, such as the diaper supply company. Claimant's mother asked the diaper company, who informed her that the prescription had been denied because the under pads were not covered. Claimant's mother next asked her Medi-Cal social worker, who told her Medi-Cal would not cover the under pads and that she should ask the Service Agency.

9. According to Ms. Shabaf, both the diaper company and the social worker should have submitted a TAR to see if Medi-Cal would pay for the under pads. Ms. Shabaf was not aware that Claimant's mother had made the requests and received the replies noted above from the diaper company and the social worker. She was not aware of the medical indications for the under pads, including diarrhea and leakage, until she heard the testimony of Claimant's mother at the hearing.

10. In her testimony, Ms. Zander stated that she could not recall: whether the family asked California Children's Services to supply the under pads; whether Claimant's mother told her she had contacted the diaper company; whether she asked if Claimant's mother had received any written denials of the requests for under pads; whether Claimant's mother told her of the issue of Claimant's medications, diarrhea or leakage; or

whether she told Claimant's mother about the TAR process for the under pads. She was not aware of the use of a rubber sheet or of the other medical indications for the under pads until she heard the testimony of Claimant's mother at the hearing.

11. Claimant's mother credibly testified to the concerns she has over Claimant's diaper leakage, diarrhea, and bedding. She must wash four or five loads of laundry per day due, in part, to these issues. There are also four other siblings in the home. Claimant's mother had learned from other parents that regional centers had paid for under pads and was uncertain why SCLARC would not do so.

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. Where a consumer seeks to have a new service provided by the Service Agency, the consumer has the burden to demonstrate that the service should be provided. In this case, Claimant had the burden to show that the Service Agency should provide funding for the under pads.

3. Welfare and Institutions Code section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow such persons, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most

independent, productive and normal lives possible.” The regional centers will work with consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (Welf. & Inst. Code, § 4502.)

4. Welfare and Institutions Code section 4646.5 defines the content of the planning process for an Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services. Under Welfare and Institutions Code section 4512, subdivision (b), services are to be determined based on the consumer’s needs, including consideration of the effectiveness of each option in meeting to goals stated in the IPP and the cost-effectiveness of each option.

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

“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. . . . 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, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

6. Under Welfare and Institutions Code section 4647, subdivision (a), “service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process;

assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary."

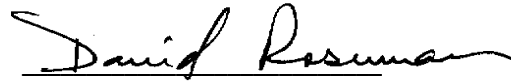
7. Under Welfare and Institutions Code section 4648, subdivision (a)(1), "In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including . . . securing needed services and supports. It is the intent of the Legislature that services 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 in the consumer's individual program plan . . . ."

8. SCLARC did not meet the statutory requirements for providing service coordination in this matter. No attempt was made to contact Claimant's mother or physician to gather relevant information whether there was a medical necessity for the under pads. Nor did SCLARC assist Claimant's mother in the TAR process to determine if Medi-Cal or other generic resources would provide the funds. Claimant sustained her burden of establishing that there is a medical necessity for the under pads.

## ORDER

Claimant's appeal of South Central Los Angeles Regional Center's decision to deny funding for disposable under pads granted. South Central Los Angeles Regional Center shall provide funds for disposable under pads.

DATED: December 12, 2012

A handwritten signature in black ink, reading "David Rosenman". The signature is fluid and cursive, with the first name "David" and last name "Rosenman" clearly distinguishable. It is positioned above a horizontal line.

DAVID ROSENMAN

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.