

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A.A.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES

REGIONAL CENTER,

Service Agency.

OAH No. 2014010816

DECISION

The hearing in the above-captioned matter was held on March 10, 2014, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Claimant was represented by her mother, C.Z. (Mother).¹ The Service Agency, South Central Los Angeles Regional Center (SCLARC or Service Agency) was represented by Johanna Arias-Bhatia, Fair Hearing Coordinator. Gloria Leonard acted as interpreter for Mother.

Evidence was received, and the case argued, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

¹ Initials are used in the place of names in the interests of privacy.

ISSUE PRESENTED

Should the Service Agency be required to obtain a stroller for Claimant, which has the feature of a reclining back, where another stroller without that feature has been provided by a generic resource?

FACTUAL FINDINGS

1. Claimant is a 12-year-old girl,² eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq,³ based on diagnoses of Cerebral Palsy, Epilepsy, and Profound Mental Retardation. (Ex. SA 6, p. 1.)⁴

2. On December 19, 2013, SCLARC issued a "Notice of Proposed Action Letter" to Claimant, which stated that SCLARC had denied requested services, the purchase of an adaptive stroller. (Ex. SA, 1, p. 1.) The rationale for the denial was that California Children's Services (CCS) had previously purchased a stroller for Claimant, and that the Claimant's request to CCS for a stroller that reclined, to make changing her diapers easier, had been denied by CCS as a duplication of services and as not medically necessary. The Service Agency took the position that the purchase of another stroller by the Service Agency would be a duplication of services

² Claimant was born in September 2011.

³ All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

⁴ Both parties numbered their exhibits, so the Service Agency exhibits will be identified as SA, and Claimant's as CL.

3. On or about January 16, 2014, Mother, acting on Claimant's behalf, submitted a fair hearing request. This proceeding then ensued. All jurisdictional requirements have been met. (Ex. SA 2.)

4. Aside from the conditions that make her eligible for services, Claimant suffers other maladies. Her primary medical diagnosis is Aicardi Syndrome, which generally refers to multiple genetic central nervous system anomalies and infantile spasms in female babies. (Stedman's Medical Dict. (25th ed. 1990) p. 1522.) Her treating medical diagnosis is spastic quadriplegia. She has also been diagnosed with intractable seizure disorder, chronic lung disease, and cortical dysplasia with absent corpus callosum. The corpus callosum is a nerve bundle that connects the two hemispheres of the brain. (Stedman's Medical Dict., *supra*, p. 355.) Claimant has bilateral hip dislocations as well as scoliosis. She had to have a tracheostomy in July 2013, because she was not getting enough oxygen while she slept, even with an oxygen tank and nasal cannula. (She also suffers from chronic lung disease, and she receives oxygen at night.) She suffered from pancreatitis in July 2013.⁵ Claimant is legally blind and is non-verbal. She is fed via a G-tube. (Ex. CL 5, p. 1, 4.) She is completely incontinent, and must wear diapers at all times.

5. Claimant lives with her parents and her older sister, who is 17. Her father works outside of the home, and Mother is her primary caretaker.

6. Claimant is non-ambulatory. For many years, she was moved about in a stroller that had a reclining back. According to Mother, that stroller was provided by CCS. After many years of use, it broke. Claimant's parents attempted to have it repaired, even contacting the manufacturer, but the needed part or parts are no longer available.

⁵ According to a medical report, Claimant was hospitalized for 25 days in June and July 2013. (Ex. CL 5, p. 1.)

7. Claimant's parents requested a new stroller from CCS. They obtained one, in approximately 2013, but it does not recline. Because the back does not recline, Claimant's Mother and other caretakers cannot tip her back—so she is flat on her back—to change her diapers. Instead, she must be lifted out of the stroller and placed on some flat surface to be changed; her diapers can't be changed if she is in a sitting position. Claimant's parents then requested another stroller that would recline. CCS denied that request, in a letter effective November 6, 2013. Generally speaking, CCS declined to provide such a stroller, identified in the letter as an adaptive stroller, on the grounds that to do so would be a duplicative service, as a stroller was previously provided. And, CCS took the position that such a stroller was not medically necessary. (Ex. SA 11.)

8. The CCS denial letter cited a regulation that defined “medically necessary benefits” as services, equipment, tests, and drugs which are “required to meet the medical needs of the Client's CCS eligible medical condition as prescribed, ordered or requested by a CCS physician and which are approved within the scope of benefits provided by the CCS program.” As to the other ground for denial, the letter stated that the requested equipment “duplicates or serves essentially the same purpose as existing equipment.” (Ex. SA 11.)

9. At some point, Claimant's parents were told that the type of stroller they received, with the fixed back, was the only type available from CCS. Ms. Webster, Claimant's special education teacher, who provides home schooling for a few hours per week, credibly testified that she has spent hours on the phone with CCS and the unit that would pass on provision of an adaptive or reclining stroller, and confirmed that a reclining stroller will not be forthcoming from CCS.

10. Dr. Ali Hoveyda,⁶ a physical therapy consultant for the Service Agency, testified that in light of Claimant's scoliosis and hip dysplasia, she should not be in a soft-backed stroller, but rather in a manual wheelchair, with a foam insert molded to her back, which would be placed behind her back when in the wheelchair. He did not deem a stroller the best mode of transport. He also appeared under the impression that Claimant's parents planned to change her diapers while out in public, something he deemed inappropriate for a 12-year-old girl.

11. Claimant's mother credibly testified that changing her daughter's diapers without a reclining back in her stroller can only be done if the child is taken out of the stroller; that testimony was supported by Ms. Webster's testimony. The child now weighs 62 pounds, and is getting too big for Mother, her primary caretaker, to move by herself. If she takes the child out of the stroller, she has to lay her down somewhere, and a horizontal surface is not forthcoming in most places outside of the home, even in a public restroom. Mother pointed out that while many restrooms have changing tables, those are not built for a 62 pound child.⁷ On the other hand, she often is able to wheel a stroller into a restroom, especially one with a handicapped stall, and if it reclined, she could then change Claimant's diapers without taking her out of the stroller.

12. The inability to readily change Claimant's diapers because the stroller will not recline had impeded the ability of Claimant and her family to venture into the community. For example, Ms. Webster testified that Individual Education Plan meetings

⁶ Why the witness is referred to as "Doctor" was not disclosed by the record, but it is fairly inferred that he has a Ph.D.

⁷ The October 2013 medical report, Claimant's exhibit 5, states at page 3 that Claimant then weighed 60.8 pounds and was 52 inches tall. This makes her too large for any changing table that one could reasonably expect to find in a public restroom.

have to be held at Claimant's house, because bringing her into the school site is not practical given the limitations on changing Claimant's diapers. Mother also recounted that the family had recently obtained passes for Disneyland, but could not utilize them because it would not be practical to take Claimant there in the current stroller.

13. Dr. Hoveyda estimated that a manual wheelchair of the type he contemplated would cost \$6,000 to \$7,000; this would include the cost of molding a back pad to support Claimant. He estimated the cost of the requested stroller would be in the area of \$3,000 to \$4,000. And, Mother pointed out that the wheelchair would weigh much more than the stroller, making it harder for her to handle, and that she could not change Claimant's diapers in the wheelchair either. Use of a manual wheelchair would still require Mother to move her daughter in and out of it when Claimant's diapers need to be changed. Having viewed the existing stroller, which was brought to the hearing, which had small wheels and a relatively light frame—apparently made of aluminum—the ALJ must credit Mother's assessment that a manual wheelchair would weigh more than an adaptive stroller.⁸

14. During the hearing, Claimant's service coordinator testified that she had referred Mother to a charitable group that might be able to provide an adaptive stroller of the type sought by Claimant's family. Mother noted that she had received the information just before the hearing. Ms. Webster testified that she spoke to the charity, but received no assurances that they would provide such a stroller.

⁸ The manual for the stroller that has been requested, the EASyS, shows two models, one weighing 17 pounds, one just over 20 pounds. (Ex. CL 4, p. 3.)

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

2. Services are to be provided in conformity with the consumer's Individual Program Plan (IPP), per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See 4710.5, subd. (a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., Code §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

4. Section 4512, subdivision (b), of the Lanterman Act states in part:

'Services and supports for person with developmental disabilities' means specialized service and supports or special adaptations of generic services and support 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 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy, . . . education, . . . recreation, . . . *adaptive equipment and supplies* . . . respite, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (Emphasis added.)

5. Services provided must be cost effective (§ 4512, subd. (b), *supra*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) It is clear that the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

6. The regional centers are required to utilize the service coordination model, in which each consumer shall have a designated service coordinator "who is responsible for providing or ensuring that needed services and supports are available to the consumer." (§ 4640.7, subd. (b).)

7. The IPP shall be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased, is made up of the disabled individual, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

8. When developing IPP's for children, the regional center is to be guided by the principles, process, and services and support parameters laid out in section 4685. (§ 4646.5, subd.(a)(3).) Section 4685 makes it a clear legislative priority that disabled children remain with their families, and the regional centers are to be innovative so that the goal can be met. (§ 4685, subd. (c)(1).) With that in mind, it should be remembered that the regional centers are specifically authorized to utilize "innovative service delivery mechanisms, including but not limited to, vouchers, . . ." (§ 4685, subd. (c)(3).) The intent that the regional centers be innovative and economical in the practices used to reach the goals set out in IPP's is also set forth in section 4651.

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

(B) Section 4659 provides, in part, that the regional centers shall identify and pursue all possible sources of funding for consumers receiving services, 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 Uniformed services, school districts, and federal supplementary security income and state supplementary income.”

10. (A) As noted in Legal Conclusion 4, section 4512, subdivision (b), provides that “„Services and supports“ for persons with developmental disabilities” means 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.” (Emphasis added.)

(B) As against the first of the three clauses in the definition quoted above, it must be concluded that a stroller of any type, or even a wheelchair, would tend to alleviate one of Claimant's disabilities, in that her cerebral palsy limits her mobility.

(C) As to the second clause of the statute quoted above, the requested device would be directed toward the physical habilitation or rehabilitation of the Claimant. Likewise, improving her mobility would go toward achievement of independence, however limited that may be in this case.

11. (A) The Service Agency has mimicked CCS, by asserting that the adaptive stroller would be a duplicative service. That ignores the point: the stroller previously provided is of very limited utility to the family, because its use creates problems with diaper changing. The Service Agency's statement in its denial, that Claimant's family sought another stroller for their convenience (ex. SA 1, p. 2, 3d par.), is simplistic while being inaccurate. Making it likely that Mother can change Claimant's diapers when away from the family home is more than a matter of Mother's convenience, and making it more likely that the child can be taken from the home, with or without all of her family, is necessary to comply with provisions of the Lanterman Act. (§ 4501, 3d par. [services should support a consumer's integration into the mainstream

of life of the community]; § 4501, 4th par. [services and supports should be available to enable the consumer to approximate the pattern of everyday living available to persons of the same age who are not developmentally disabled, and to allow the integration of the developmentally disabled into the mainstream of life within their communities]; § 4685.) Lack of the proper stroller has been and will prevent Claimant from integration into the community, and has made it more difficult for her family to care for her. (Factual Findings 4-7, 11, and 12.) That is not just a matter of convenience, but rather a matter of necessity.

(B) That the generic service, CCS, has denied the needed device, means that there is no generic source, and the Service Agency, as payer of last resort, must step into the picture, and provide a device authorized by the Lanterman Act. (Legal Conclusions 4, 10.) Under the Lanterman Act, the fact that CCS (or another generic resource) will not provide a device or service, which is necessary under the Act does not give the Service Agency a reason to deny the item or service, which is how the denial letter may be read. Instead, it triggers the obligation of the regional center to provide that service.

(C) The requested device is cost effective, roughly one-half the cost of the recommended wheelchair, which is of no more utility to the family than the current stroller because of Claimant's need to wear diapers at all times. Not only will a wheelchair not meet the Claimant's needs, it will cost twice as much money.

12. The Service Agency must provide an adaptive stroller which has a back that can recline. When it is obtained, the current stroller should be returned to CCS, so that they might find a consumer who can use it, or, if CCS approves, it may be given to the Service Agency so that it might be used by another consumer who does not have the same problems as Claimant.

ORDER

Claimant's appeal is granted. The Service Agency shall provide a stroller of the type requested by Claimant, forthwith. Upon receipt of that stroller, Claimant shall give her current stroller to CCS, or to the Service Agency.

March 19, 2014

_____/s/____

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision.