BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. SOUTH CENTRAL LOS ANGELES REGIONAL CENTER, Service Agency.	OAH No. 2014060863

DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter on July 22, 2014, in Los Angeles, California. Johanna Arias-Bhatia, Fair Hearing Governmental Affairs Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant's Mother, R.B. (Mother), was present and represented Claimant.[1] Bernadette Buckley, Qualified Interpreter, was present and provided Spanish language interpretation for the proceedings. Oral and documentary evidence was received and the matter was submitted for decision on August 5, 2014.

ISSUE

Should Service Agency Fund Claimant's Request for an Adaptive Stroller?

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[1] Claimant's Mother's initials are used in lieu of her name to protect Claimant's and Mother's privacy.

FACTUAL FINDINGS

1. Claimant is a 12 year-old girl who is eligible for regional center services based on a diagnosis of severe intellectual disability and cerebral palsy. Mother reports that Claimant is also epileptic, although this condition is not a basis for regional center eligibility. Claimant is non-ambulatory and relies on a powered wheelchair for transport to medical appointments, family outings and to and from school. Mother must use either the wheelchair or a regular stroller that she purchased at a garage sale to transport Claimant when using the family automobile. Mother requested an adaptive stroller to replace Claimant's wheelchair when she is transporting Claimant in the family car because the wheelchair is heavy and must be taken apart to transport in the family automobile. She asserts that the wheelchair is no longer practical to transport Claimant to medical appointments or family outings because of the weight of the chair and the difficulty in breaking the wheelchair down for transport. She states that an adaptive stroller would be lighter and could be folded for relative ease in transporting in the family automobile.

2. On June 4, 2014, Service Agency notified Claimant that it had denied her request to fund the adapted "specialized" stroller and issued a Notice of Proposed Action (NOPA) advising her of her right to appeal. On June 16, 2014, Claimant submitted a Request for Fair Hearing. All jurisdictional requirements were satisfied and this hearing ensued.

3. Service Agency conducted Claimant's triennial Individual Program Plan (IPP) meeting on June 11, 2013. Mother reported that Claimant continued to experience one to two seizures per day and was taking seizure medication. Claimant could walk 10 unsteady steps with hand support, but spent a lot of time sitting in her stroller when at home. Claimant uses leg braces and a stroller when Mother takes her for trips outside of the home. However, when being transported to school on the school bus, Claimant uses

the powered wheelchair provided by California Children Services (CCS). She attends school five days per week, nine months per year. Service Agency provides case management services and 16 hours per month of in-home respite services. Service Agency and Mother agreed that Mother would pursue physical therapy services for Claimant through CCS.

4. Mother requested funding for the adaptive stroller from SCLARC after the June 11, 2013 IPP. Service Agency referred Mother to CCS as a generic resource for the adaptive stroller. On August 7, 2014, CCS denied Claimant's request to fund the adaptive stroller on the grounds that the equipment duplicated or served essentially the same purpose as existing equipment (powered wheelchair) provided by CCS. Claimant has had the powered wheelchair for over nine years. CCS changed Claimant's wheelchair when she was four years-old, and the current wheelchair has been in use, with periodic modifications by CCS, for approximately eight years. CCS last modified the wheelchair about three months prior to this hearing. CCS apparently did not consider Mother's difficulty in transporting the powered wheelchair when denying her request for the adaptive stroller.

5. Service Agency denied Mother's request to fund the adaptive stroller citing the availability of generic resources for provision of the equipment. It further determined that the adaptive stroller was duplicative of existing equipment and there was no medical justification for the equipment. Service Agency concluded that Mother's request for the adaptive stroller was based on her desire to obtain equipment that would make it more convenient or practical for her to transport Claimant; not because of a medical necessity for the adaptive stroller. Mother admitted that the adaptive stroller had not been prescribed or recommended by a physician, but maintained that the powered wheelchair was impractical and difficult to transport.

6. Beth I. Jacobs, SCLARC's Occupational Therapist consultant, testified that because Claimant had been diagnosed with Scoliosis, had a propensity to drool, and was vitamin D deficient, proper seating when transporting Claimant was paramount. Ms. Jacobs stated that the powered wheelchair was more appropriate to transport Claimant and that the adaptive stroller created an increased risk for orthopedic and medical problems.

7. After CCS denied Claimant's request to fund the adaptive stroller, Service Agency referred Mother to Variety Children's Charity (VCC) as another generic resource to pursue the purchase the requested equipment. Mother attempted to contact VCC but was unsuccessful in getting a response.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., Hughes v. Board of Architectural Examiners (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant asserts that Service Agency improperly denied funding for an adaptive stroller, equipment not previously funded by the Service Agency. Consequently, Claimant bears the burden of proving, by a preponderance of the evidence, that the Service Agency's actions were inappropriate. (See Evid. Code, § 115.)

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500, et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[t]he 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." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subdivision (b), 4640.7, subdivision (b), 4651, subdivision (a), 4659, and 4697.)

5. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subdivision (a), 4647, subdivision (a); 4646.5, subdivision (a)(4)). "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." (Welf. & Inst. Code, § 4648, subd. (a)(8).)

6. CCS currently provides a powered wheelchair to Claimant that has been modified to meet her medical and physical needs. CCS denied Mother's request for an adaptive stroller because the agency believed the equipment was duplicative of the wheelchair that was currently meeting Claimant's transportation and mobility needs. CCS is the generic resource that provides such services to consumers of the regional centers, particularly non-ambulatory consumers suffering from cerebral palsy such as Claimant. CCS considered Mother's request and determined that the wheelchair as modified, better served Claimant's needs, although consideration was not given to Mother's difficulty in transporting the wheelchair.

7. Mother's request for the adaptive stroller is based on her desire to eliminate the need to breakdown the heavy powered wheelchair when transporting Claimant in the family automobile. Mother stated that the adaptive stroller was more convenient and practical. Mother has not established that the adaptive stroller is required for Claimant's medical needs and she did not provide a physician's recommendation or prescription for the equipment. To the contrary, the evidence suggested that an adaptive stroller may not be appropriate for Claimant's medical condition and would increase the risk of medical orthopedic problems if the powered wheelchair, which has been modified to meet Claimant's medical needs, is not used.

8. The thrust of Mother's request to fund the adaptive stroller arises from her difficulty in transporting the wheelchair in the family vehicle. Mother's request for this equipment has not been shown to be medically necessary or safe for Claimant's use. Mother's convenience cannot override Claimant's apparent medical and orthopedic need for the wheelchair which provides more support. To the extent Mother is experiencing difficulty moving or transporting the wheelchair, Mother should explore other options which may include retrofitting the family automobile with a wheelchair lift, rack or carrier that would conceivably remove the necessity to break down the wheelchair each time Claimant is transported in the family vehicle. Mother should inquire to both CCS and Service Agency about the feasibility of providing such a retrofit.

9. Absent a medical justification for the adaptive "specialized" stroller that has been authorized by Claimant's physician, Mother's request for this equipment was properly denied by SCLARC. Without medical justification for the stroller, Claimant's powered wheelchair is presently meeting her required transportation and mobility needs.

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ORDER

Claimant's appeal of the Service Agency's denial of funding for an adaptive "specialized" stroller is denied.

DATED: August 12, 2014

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MICHAEL A. SCARLETT

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.