

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2014061232

DECISION

Administrative Law Judge B. Andrea Miles, State of California, Office of Administrative Hearings, heard this matter in Stockton, California on November 18, 2014.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director of Case Management.

Claimant was represented by her mother. Neil Fromm, Community Specialist, Area Board Six of the State Council on Developmental Disabilities, acted as an advocate for Claimant.

Oral and documentary evidence were received and argument heard. The record was closed and the matter was submitted on November 18, 2014.

ISSUE

Should VMRC fund the purchase of a Convoid stroller for Claimant?

FACTUAL FINDINGS

JURISDICTIONAL INFORMATION

1. Claimant is a 16-year-old girl who receives services from VMRC pursuant to the Lanterman Developmental Disabilities Services Act on the basis of profound intellectual disability and cerebral palsy.

2. On June 6, 2014, VMRC sent Claimant's mother a Notice of Proposed Action, notifying her of VMRC's proposed action to deny Claimant's request for funding the purchase of a Convaid Stroller. VMRC's proposed action was based on its belief that the purchase of the stroller was not the most cost effect method of meeting Claimant's travel needs. On June 16, 2014, on Claimant's behalf, Mother filed a fair hearing request in order to appeal VMRC's decision not to fund the purchase of a Convaid stroller.¹

3. On August 20, 2014, VMRC held an informal meeting with Mother. Following the meeting, VMRC sent Mother a letter dated August 27, 2014, notifying her that VMRC was upholding its prior decision not to fund the purchase of a Convaid stroller for Claimant. VMRC denied the request on the grounds that Claimant's community access needs were being met through the use of Claimant's wheelchair and the wheelchair lifting system on Claimant's family's van. The letter noted that during the informal meeting, Claimant's mother had indicated that the stroller was being requested for those times when the family's van was unavailable and for those times when

¹ Welfare and Institutions Code section 4710.7, subdivision (a), provides that, upon requesting a fair hearing, a claimant has the right to request a voluntary informal meeting with the service agency director or his or her designee. Under section 4710.6, subdivision (a), if an informal meeting is requested, the service agency and the claimant shall determine a mutually agreed upon time for the meeting.

Claimant wanted to spend time with non-immediate family members, who did not have vehicles with wheelchair lifting systems. VMRC made a determination that other more economical and cost effective options were available to meet Claimant's transportation needs in the event that the family van was unavailable. The letter addressed Mother's other noted concern by indicating that people's normal social interactions with extended family were not solely dependent upon the use of an automobile.

BACKGROUND INFORMATION

4. Claimant lives with her parents in Stockton. Claimant cannot be left unattended as she requires assistance at all times. Claimant, who weighs approximately 100 pounds, is non-ambulatory and currently uses a manual wheelchair for mobility, but Claimant cannot physically control the wheelchair herself. Claimant's physical condition requires her to use a very heavy recliner/tilt-in-space wheelchair, which can only be transported in a vehicle that is equipped with a wheelchair lift. In 2010, Claimant's family's van was equipped with a wheelchair lift, at VMRC's expense, so that Claimant could be transported while seated in her wheelchair.

5. Claimant's 2013 Individual Program Plan (IPP) was developed on October 1, 2013. Claimant's IPP includes long and short term goals and desired outcomes. Desired outcomes are generally stated as objectives for the consumer and include services and supports needed to achieve those outcomes. Claimant's October 2014 IPP includes the goal of providing Claimant with a means of mobility and the goal of providing Claimant with appropriate equipment for assistance.

6. On November 22, 2013, Claimant was evaluated by Brian Edwards, a rehabilitation technology supplier, and Robin Pasteriski, a physical therapist with California Children's Services, to determine whether a light weight stroller would be appropriate for Claimant's use. Claimant previously used a similar type of light weight stroller, but as the Claimant grew, she was unable to continue using that stroller. The

evaluation determined that not only would a light weight stroller be appropriate for Claimant, but that Claimant would be able to continue utilizing the stroller into adulthood due to Claimant's current size and age. The recommended Convaid stroller would cost approximately \$2,200.

7. Ms. Pasteriski's knowledge of Claimant's physical needs and limitations is well founded, as she has provided Claimant with physical therapy services for a number of years. Ms. Pasteriski provided Mother with a letter which detailed her opinion regarding Claimant's need for a Convaid stroller. That letter was entered into evidence, without objection at the hearing in this matter. Mother's testimony supported Ms. Pasteriski's findings.

CLAIMANT'S NEED FOR A CONVAID STROLLER

8. Claimant would like the opportunity to be able to visit her extended family members, who live in the San Francisco Bay Area, and be able to accompany them on family trips. However, unless Mother accompanies Claimant on those visits and trips, Claimant is unable to participate because Claimant's extended family members do not have vehicles that are capable of transporting Claimant's wheelchair. At times, circumstances have prevented Mother from participating in those visits and trips. As a result, Claimant has missed out on several opportunities to attend family trips.

9. During visits and trips with extended family members, it would not be feasible for Claimant's extended family members use Claimant's family's van, which has a wheelchair lift, to transport claimant because those family members are not covered by the van's insurance policy. The requested Convaid stroller folds down so it is capable of being transported in any standard vehicle. Therefore, the Claimant's use of the stroller would permit Claimant to be transported in any of the extended family members' vehicles.

10. Claimant is a teenager girl who would like the opportunity to participate in activities without the presence of her mother. Visits and trips with extended family members would provide Claimant with that opportunity, while also allowing Claimant to bond with her extended family members. The Lanterman Act was enacted with the purpose of preventing disabled persons from being separated from their families and community and enabling disabled persons to enjoy the same approximate pattern of the everyday living of nondisabled persons of the same age. Generally, non-disabled teenagers have the opportunity to experience spending time away from their parents for extended periods of time and the opportunity to bond with extended family members. The use of a Convaid stroller would allow Claimant access to her extended family members and enable Claimant to enjoy some of the same types of everyday living experiences of nondisabled teenagers. Additionally, by allowing Claimant the opportunity to be away from her mother for extended periods of time, Claimant would have an opportunity to develop a greater degree of independence.

11. The combined weight of Claimant and Claimant's wheelchair makes it difficult to push the wheelchair for any substantial distance. Mother has difficulty pushing Claimant in her wheelchair for a mile or longer. This situation has prevented Claimant from being able to participate in certain outings. The light weight nature of the Convaid stroller lends itself to being pushed for extended periods of time and distance. As such, the use of a Convaid stroller would allow Claimant to participate in more community outings. The absence of a Convaid stroller has prevented Claimant from participating in several family trips over this past summer.

12. The fact that Claimant's wheelchair cannot be transported in a non-specialized vehicle prevents Mother from being able to rely on friends and family to transport Claimant in the event that the family van is not available or Mother is not available to transport Claimant. An example of this limitation occurred during the

hearing in this matter. Mother had to hurry through the hearing proceeding in order to be able to pick Claimant up from school, as no one else was able to transport Claimant in her wheelchair.

13. The family van and the family van's wheelchair lift require maintenance every few months. During some of those occasions, the van has remained unavailable for as long as two weeks. While the van is being serviced or is unavailable due to experiencing mechanical problems, Mother does not have a method for transporting Claimant. The lack of transportation causes Claimant to be home-bound and isolated from the community.

14. The use of the Convaid stroller provides an added safety benefit for Claimant by allowing Claimant to be transported in a car seat instead of her wheelchair. Currently, Claimant remains seated in her wheelchair while being transported in the family van with the wheels of Claimant's wheelchair secured by straps on the floor of the van. VMRC's occupational therapy expert pointed out that in the event of a traffic collision, Claimant would be more protected by being seated in a car seat than by being seated in her wheelchair.

ALTERNATIVE FORMS OF TRANSPORTATION PROPOSED BY VMRC

15. VMRC contends that the combination of Claimant's wheelchair and the family's van, which has a wheelchair lift, provide sufficient and cost-effective solutions to address Claimant's need for mobility. VMRC further contends that in the event that the family's van is unavailable, other more cost-effective forms of transportation, such as Dial-A-Ride and public transportation are available for Claimant.

16. At the hearing, VMRC indicated that on those occasions when the family van was unavailable that VMRC would provide Claimant with public transit vouchers or pay for Dial-A-Ride. VMRC argues that funding Dial-A-Ride and public transportation is a far more cost-effective solution than funding the purchase a Convaid Stroller.

However, VMRC's analysis was based on the premise that a transportation solution was only needed for the short term, while the family van was unavailable due to undergoing repairs or maintenance.

17. Dial-A-Ride is an agency separate and apart from VMRC. Dial-A-Ride has an application process which requires that an individual's completed application be approved prior to the accessing of its services. VMRC indicated it would assist Mother in completing the application process. In order to use Dial-A-Ride, a consumer must call Dial-A-Ride to set up an appointment for transport. As such, Dial-A-Ride does not work well for situations where a person needs immediate transport. This limitation would prevent Mother from utilizing Dial-A-Ride for emergency situations where she needs someone else to transport Claimant because Mother and/or the family van were unavailable.

18. Generally, only one attendant would be allowed to accompany Claimant on board the Dial-A-Ride vehicle. This would prevent Claimant and her mother from traveling with any other family members on Dial-A-Ride.

19. A round-trip ride with Dial-A-Ride costs approximately \$6. VMRC would be willing to fund the Dial-A-Ride service on a short-term basis while the family's van is unavailable to due maintenance or repair. On the other hand, in the event that Dial-A-Ride was needed on a long term or regular basis, VMRC would require Claimant to prove that all other resources, such as the assistance of other family members, had been exhausted prior to approving funding for Dial-A-Ride. VMRC's reasoning was somewhat circular on this point, as Claimant would only need the services of Dial-A-Ride because she lacked other resources, such as other family members, who have a vehicle outfitted with a w wheelchair lift.

20. VMRC also proposed providing Claimant with a regional transit pass so that Claimant could utilize public transportation. However, not all regional transit busses

are equipped with wheelchair lifts, so Claimant's ability to access that form of transportation would be limited.

21. At the hearing, VMRC focused the presentation of its case on establishing the existence of cost-effective transportation solutions for Claimant in the event that the family van was not available due to needed repairs or maintenance. VMRC did not address Claimant's argument that she needs the stroller in order to provide her with access to visits and trips with her family members, and participate in community outings. Additionally, VMRC did not establish the existence of any alternative sources of funding which would have been available to pay for the purchase of a Convaid stroller for Claimant.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The standard of proof in this case is a preponderance of the evidence, as no applicable law or statute requires otherwise. (Evid. Code, § 115.) In seeking government benefits, the burden of proof falls on the person requesting the benefits. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Therefore, Claimant bears the burden of proving by a preponderance of the evidence that VMRC should fund the purchase of a Convaid Stroller for Claimant.

INTRODUCTION –THE FRAMEWORK OF THE LANTERMAN ACT

2. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.)²

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (See §§ 4640 et seq.) Under the Lanterman Act, a consumer's needs and the services and supports required to achieve the consumer's goals are identified as part of the individual program planning process. (§§4646 et seq.)

HAS CLAIMANT ESTABLISHED A NEED FOR A CONVAID STROLLER?

4. The IPP and the provision of supports and services is intended to be "centered on the individual and family[,] . . . take into account the needs and preferences of the individual and family, where appropriate[,] . . . be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (§§ 4646, subd. (a), 4646.5.)

5. Claimant's October 2013 IPP included the goal of providing Claimant with a means of mobility and the goal of providing Claimant with appropriate equipment for her assistance. The funding of the purchase of a Convaid Stroller for Claimant is directly aligned with both of those stated goals. The use of a Convaid stroller would significantly increase Claimant's mobility and access to the community, and not just on those occasions when the family's van is unavailable to transport Claimant.

² All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

6. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community."

7. The use of a Convaid stroller would provide Claimant with increased access to her extended family members and to the community at large. Claimant's reliance on the family van, as her sole form of transport, has prevented Claimant from having the opportunity to enjoy the same freedoms and experiences of non-disabled person of her same age. Claimant has been denied the opportunity to expand her level of independence by being able to spend extended periods of time away from her mother, who is her primary caretaker.

8. Although Claimant's wheelchair provides claimant with mobility, Claimant's wheelchair can also limit her mobility. The chair is heavy and difficult to push for any real time or distance. That limitation has prevented Claimant from being able to participate in certain family and community outings. Claimant's use of a light weight Convaid stroller would increase the number of places which Claimant can reach and increase the number of events Claimant can experience.

DO OTHER MORE COST EFFECTIVE SOLUTIONS OR FUNDING SOURCES EXIST TO SATISFY CLAIMANT'S ESTABLISHED NEED?

9. The Lanterman Act requires regional centers to provide services and supports in a cost-effective manner, and to exhaust other resources to meet a consumer's needs, including funding from other government agencies, insurance, and

natural supports from a consumer's family and community supports. (§§ 4646, 4646.4, and 4646.5.)

10. VMRC's argues that the most cost-effective use of its resources would be to fund Claimant's use of public transportation or use of Dial-A-Ride, in the event that the family van was unavailable on a short-term basis. If the issue in this case was simply limited to Claimant's need for transportation in the event that the family van was unavailable on a short term basis, VMRC's argument would be persuasive. However, VMRC's argument fails to address the totality of circumstances surrounding Claimant's need for a Convaid stroller.

11. Claimant has shown that she has a legitimate need for a Convaid stroller which goes far beyond a need for a stroller on a short-term basis. The question then becomes whether a more cost-effective solution exists or whether other funding resources are available to meet Claimant's needs. During the course of the hearing, VMRC did not propose any alternative cost-effective solutions which would afford Claimant the opportunity to participate in visits and trips with her extended family members or for allowing Claimant with expanded access to the community.

12. Section 4646.4, subdivision (a) (4), requires Regional Centers to take into consideration whether "[T]he family's responsibility for providing similar services and supports for a minor child without disabilities . . ." when developing, reviewing or modifying the IPP. The need for a Convaid stroller is not the type of support that a minor child without disabilities would require. As such, the modification of Claimant's IPP to include the funding of a Convaid stroller does not fall under the auspices of section 4646.4, subdivision (a)(4).

13. Claimant established that she had a direct and real need which can only be satisfied through the use of a Convaid stroller. Ultimately, Claimant proved, by a

preponderance of the evidence, that VMRC should be responsible for funding the purchase of a Convaid stroller for Claimant.

ORDER

Claimant's appeal is granted. Accordingly, Valley Mountain Regional Center shall fund the purchase of a Convaid stroller for Claimant.

Dated: December 3, 2014

A handwritten signature in black ink, appearing to read "B. Andrea Miles", is written over a horizontal line.

B. ANDREA MILES

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)