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. 2015030932

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on August 10, 2015, in Los Angeles, California.

Claimant was represented his parents. South Central Los Angeles Regional Center (SCLARC or regional center) was represented by Johanna Arias-Bhatia.

Evidence was received and the matter was deemed submitted for decision on August 10, 2015.

ISSUE

Did the regional center properly deny claimant's request for an adaptive stroller?

FACTUAL FINDINGS

1. Claimant is a 16-year-old boy who is a regional center consumer based on a diagnosis of mild mental retardation, now known as intellectual disability under the DSM-5. Claimant also suffers from medically intractable epilepsy and cerebral palsy. (Exhibit A.)

2. Claimant lives with his parents and two older sisters.

3. On March 9, 2015, claimant and his parents participated in an annual contact

with Samantha Jackson, claimant's service coordinator. The consumer contact report states that claimant has been medically stable with no hospitalizations or emergency room visits this year. Further, the report noted that claimant's seizures have been somewhat controllable due an implanted stimulator.

4. Claimant is ambulatory and can walk short distances but typically uses a stroller when at home, at school or in the community. Claimant's mother testified that claimant experiences regular seizures and sometimes his seizures are disruptive in the classroom. On those occasions, claimant's mother will pick him up from school and take him home. She has difficulty taking him out of his stroller or wheelchair to place him in the car.

5. On October 1, 2014, claimant received a new wheel chair which was funded by California Children Services (CCS) and provided by Kaiser Permanente. The wheel chair has wheel locks, a tie down feature, reclining back, special cushions for the seat and backrest, a two point adjustable head rest, pelvic harness and a safety belt. Sometime after receiving the wheel chair, claimant's parents requested funding from the regional center to purchase an adaptive stroller for claimant.

6. On February 25, 2015, the regional center issued a Notice of Proposed Action (NPA) denying claimant's request for an adaptive stroller. The regional center indicated in the NPA that the requested adaptive stroller is a duplication of services and that an adaptive stroller is not medically necessary. The regional center based its decision on Welfare and Institutions Code sections 4659 and 4648, subdivision (a)(8). The NPA states in pertinent part:

> Per CCS representative, [claimant] currently uses a manual wheel chair for use at school and it was recommended that to meet his postural needs. A new wheel chair was issued to [claimant] on 10/01/14. [Claimant] currently receives monitoring services (occupational therapy) and physical therapy) from CCS every three months.

> According to SCLARC funding guidelines, equipment/services are not duplicated when provided by a generic agency. In this case, since consumer just received a manual wheel chair from CCS, SCLARC is unable to fund an adaptive stroller that serves the same purpose as the manual wheel chair.
>
> SCLARC is the last resort for funding of services such as funding for medically necessary equipment. SCLARC considers an “adaptive stroller” a duplication of existing equipment. . . In addition, there is no medical justification for
>
> SCLARC to fund for the same type of DME (durable medical equipment).
>
> Some of the below are factors why funding is being denied by SCLARC:

(1) Duplication of services (adaptive stroller is considered to be type of wheeled mobility device similar to a manual wheel chair, which consumer already has).

(2) Medically not justifiable as the family is asking for this DME for the family’s convenience. No documentation has been provided that DME is medically necessary.

7. Claimant’s father testified that they are appreciative of his new wheel chair, however, the family is requesting funding from the regional center for a new adaptive stroller because a stroller is easier to fold and easier to place in their car when they transport claimant. Claimant’s mother testified that it is very difficult for her to transfer claimant from his wheel chair to a car seat. It is also difficult to load the wheel chair into the vehicle because of the weight of the wheel chair. Claimant currently has an adaptive stroller that is somewhat worn and there is a tendency for certain bolts to loosen. While the stroller is in a somewhat

dis-repaired condition, it is repairable.

8. Until recently, the family would transport claimant in a 1991 minivan. It has become more difficult to transport claimant in this vehicle. However, the family recently purchased a 2015 Toyota minivan, which can be modified with a movable car seat that would make it easier to transfer claimant from his wheel chair to the car seat. In addition, a car ramp could be utilized with this vehicle.

9. Endenne Dupree, an Occupational Therapy Consultant for the regional center, testified that her main concern is for the family to be able to safely transfer claimant from his wheel chair to the car seat. Ms. Dupree noted that regardless of whether claimant has a stroller or a wheel chair, the more difficult part of transporting claimant is transferring claimant from his wheel chair or stroller to the car seat. She further testified that modifying the new van with a movable car seat and/or a ramp would make it easier for the family to transport claimant.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (b) of the Lanterman Developmental Disabilities Services Act (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 supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habitation or re-habilitation 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 or, when appropriate, the consumers family, and shall include a consideration of a range of service options proposed by the 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. Services and supports listed in the individual program plan may include, but are not limited to . . . adaptive equipment and supplies. . . .

2. 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).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question. Within the bounds of the law each client's particular needs must be met, taking into account the needs and preferences of the individual and the family. This requires an active participation by the consumer and his legal guardians. (See Welf. & Inst. Code, §§ 4646, subds. (a) and (b), & 4648, subd. (a) (2).)

4. Services provided must be cost-effective (Welf. & Inst. Code, § 4512, subd., (b)), 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. *(See, e.g.,* Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children

and families.

5. Welfare and Institutions Code section 4648, subdivision (a)(8) states:

> (8) 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.

6. Welfare and Institutions Code section 4659, subdivision (a), states in pertinent part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required toprovide or pay the cost of providing services, including Medi- Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. [¶] . . .[¶]

(c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In- Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

7. Claimant has recently been provided with a wheel chair by another government

agency (CCS). An adaptive stroller is a similar type of durable medical equipment as claimant's wheel chair. The family now has a new minivan that can be modified to make it easier and safer to transfer claimant from his wheel chair to a car seat. Further, the minivan can utilize a ramp. Pursuant to Welfare and Institutions Code sections 4648, subdivision (a)(8), and 4659, subdivision (a), the regional center is prohibited from funding the requested adaptive stroller. Therefore, cause exists to affirm the decision of the South Central Los Angeles Regional Center denying claimant's request for an adaptive stroller.

//

//

//

ORDER

The South Central Los Angeles Regional Center's Notice of Proposed Action denying claimant's request for an adaptive stroller is affirmed. Claimant appeal is denied.

DATED: August 19, 2015

Humberto Flores

HUMBERTO FLORES
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.