

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2015071115

DECISION

Administrative Law Glynda B. Gomez, Office of Administrative Hearings, State of California, heard this matter on November 2, 2015, in Pomona, California. Daniela Santana, Fair Hearing Coordinator, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC). Claimant's Mother (Mother) and Father (Father) (collectively Parents) were present and represented Claimant.¹ A qualified Spanish language interpreter translated the proceedings. Oral and documentary evidence was received on November 2, 2015. The parties agreed that the record would remain open until November 13, 2015 for Claimant to submit: (1) photographs and a description of the adaptive stroller she requested and (2) proof that California Children's Services and Medi-Cal had denied her request to fund the purchase of the adaptive stroller. On November 13, 2015, Claimant submitted a photocopy of a photograph of the adaptive stroller and a description together with a request for additional time to obtain a copy of a denial from California Children's

¹ Claimant and her parents are not referred to by name to protect their privacy.

Services or Medi-Cal. The documents were marked and admitted as Exhibit A. Service agency did not oppose the request for an extension of time. Claimant was granted an extension until December 11, 2015, to submit a copy of a denial letters. Claimant did not file anything further and the record was closed on December 11, 2015 and the matter submitted for decision.

ISSUE

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

FACTUAL FINDINGS

1. Claimant is a 9 year-old girl who is eligible for regional center services based on a diagnosis of severe intellectual disability and epilepsy. Claimant is non-verbal and non-ambulatory. Claimant sits with support, but is unable to grasp or hold items and is not toilet trained. She wears glasses for Strabismus and is fed via a g-tube. Claimant is completely dependent for all of her needs. She relies on a wheelchair for transport to medical appointments, family outings, and to and from school. The wheelchair was purchased by California Children's Services (CSS).

2. The wheelchair is heavy and difficult for Mother to place in her vehicle. Mother is petite and has been experiencing symptoms of back strain from lifting Claimant and her wheelchair. Mother usually takes care of Claimant and Claimant's younger sibling by herself while her husband works. Mother must use the wheelchair to transport Claimant when using the family automobile. Mother asserts that an adaptive stroller would be lighter and could be folded for relative ease in transporting Claimant in the family automobile. Mother asserts that she will not be able to continue transporting Claimant because of the physical toll on her own body caused by the wheelchair. Mother requested that CSS purchase an adaptive stroller. Mother testified that her request was denied because a wheelchair had already been provided by CSS. However, Claimant was unable to

provide documentation of the denial at hearing or within a reasonable period of time after the hearing.

3. On June 24, 2015, Service Agency notified Claimant that it had denied her request to fund the adaptive stroller and issued a Notice of Proposed Action (NOPA) advising her of her right to appeal. Claimant submitted a timely Request for Fair Hearing. All jurisdictional requirements were satisfied and this hearing ensued.

4. Service Agency denied Mother's request to fund the adaptive stroller citing the availability of generic resources for provision of the equipment and that 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 acknowledged that the adaptive stroller had not been prescribed by a physician, but maintained that the wheelchair was difficult to transport.

5. At hearing, Service Agency also asserted that Access, a transportation service for the disabled, would be appropriate for Claimant and that Access personnel would assist with the wheelchair so that Mother would not further injure herself. A review of the Access information provided by the Service Agency reveals that Service Agency's assertion is incorrect. The Access brochure provided by the service agency indicates that someone like Claimant, with profound disabilities, would require that a personal assistant accompany her and address her wheelchair needs. (Exhibit 5)

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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 the 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 provided a wheelchair to Claimant. Mother testified that CCS denied her request for an adaptive stroller because a wheelchair had already been provided. Her testimony was not contradicted and is credited. Therefore, generic resources have been exhausted.

7. Mother's request for the adaptive stroller is based on her concern about the pain she is experiencing and the concern that she will permanently injure herself and be unable to care for Claimant. 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. However, she has established that due to her size and lack of physical strength, she will be unable to continue lifting Claimant and the wheelchair into the family automobile on a long-term basis. Therefore, Claimant has established that her needs cannot be met without an alternative to the heavy wheelchair.

8. Claimant's request for this equipment has not been shown to be medically necessary for Claimant's use. However, it has been shown that Claimant's caregiver is having difficulty providing for Claimant's needs because of the physically demanding aspects of transporting the wheelchair and that the adaptive stroller is necessary and in order to have Claimant's transportation needs met on an ongoing basis.

ORDER

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

DATED: December 28, 2015

GLYNDA B. GOMEZ
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.