

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

v.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016051178

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 8, 2016, in Pomona, California.

G. Daniela Santana, Fair Hearing Manager, represented the San Gabriel/Pomona Regional Center (SGPRC or Service Agency). Claimant was represented by his mother (Mother). Alma Villegas, Certified Interpreter, provided Spanish language translation services during the hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on July 8, 2016.

ISSUE

Must the Service Agency provide funding for the purchase of a stroller for Claimant?

FINDINGS OF FACT

1. Claimant is an eight-year-old boy who lives with his parents and older brother within the Service Agency's catchment area, and is a consumer of the Service Agency. Specifically, Claimant has been diagnosed with autism, and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code sections 4500, et seq.¹ Claimant is non-verbal, is not toilet-trained, exhibits disruptive social behaviors, such as spitting, slapping, scratching, pushing, and throwing items, and is very resistive in the home and community. He also picks up items from the floor and puts them in his mouth, does not follow safety rules when out in the community, elopes, and does not pay attention to ongoing traffic. Claimant is currently receiving adaptive skills training.

2. The Service Agency issued a Notice of Proposed Action (NOPA) on April 28, 2016, denying Claimant's request for the Service Agency to fund for a stroller. Mother believed that strapping Claimant in a stroller would address some of Claimant's safety issues in public, such as preventing him from eloping, picking up items from the floor, and engaging in socially disruptive behavior. On May 17, 2016, Mother filed a Fair Hearing Request on Claimant's behalf. All jurisdictional requirements have been met.

3. When Mother initially requested the Service Agency to provide funding for a stroller, Claimant's service coordinator presented the request to the Service Agency's Exceptional Services Committee (the Committee). The Committee consisted of a client-rights attorney, clinician, behaviorist, manager, and one or two directors. The Committee denied the request for two reasons: (1) Claimant was ambulatory and demonstrated no medical need for a stroller; and (2) the use of restraints could interfere with Claimant's personal rights.

¹ All statutory references are to the Welfare and Institutions Code.

4. Additionally, SGPRC denied Claimant's request, because it concluded Claimant failed to meet the criteria for such purchases, as set forth in SGPRC's Purchase of Service Policy (the Policy). The Policy provided that equipment and supply services and supports could be purchased to improve or maintain an individual's health status. However, with respect to general health care needs, "parents of minors are expected to provide for all . . . equipment, and supplies for their children through private insurance, California Children's Services, or other sources of health care and funding available to the general public." (Exhibit 9, page 20.) The Service Agency may purchase equipment and supplies for children or adults if the following criteria are met:

1. The needed treatment or equipment is associated with, or has resulted from a developmental disability, developmental delay or an established risk condition.

AND

2. The requested treatment or equipment is deemed to be medically necessary.

AND

3. The regional center consultant or clinicians have reviewed and approved the need for such treatment or equipment.

AND

4. The individual is not eligible for Medi-Cal, California Children's Services, private insurance or another third party payer coverage or these funding resources have denied the necessary equipment or services in writing and the regional center has determined that an appeal of the denial is not warranted.

(Id.)

5. Claimant's March 14, 2016 Individual Program Plan (IPP) included no reference to the use of a stroller. It did, however, include goals designed to address Claimant's behaviors and elopement issues, such as adaptive skills training (33 hours per

month), referrals to behavior intervention workshops, and community-based parent training. Claimant also receives 30 hours per month of behavior respite services. Moreover, Claimant attends a non-public school specifically designated for children with autism, and receives services to address his behaviors pursuant to the goals set forth in his Individualized Education Program (IEP).

6. Mother provided compelling testimony at hearing describing Claimant's behavioral issues, which require constant supervision. Mother does not restrain Claimant at home, but while out in public, it is nearly impossible to control him, because he is getting bigger, stronger, and does not follow instructions. Additionally, adaptive skills services have not worked for Claimant, according to Mother, as Claimant will not cooperate. As such, Mother believes a stroller will help Claimant become engaged in the community without posing a continual safety hazard to himself or others.

7. Claimant presented no medical evidence or expert testimony demonstrating Claimant's need for a stroller.

LEGAL CONCLUSIONS

The Service Agency is not required to fund for a stroller for Claimant, as discussed in more detail below:

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). A consumer's choice plays 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 §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a),

4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (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).)

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

“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. 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'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, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . . 4.

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires 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.) 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 disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to 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 determines the content of the IPP and the services to be purchased, is made up of the disabled individual, or his or her 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).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

7. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

8. Here, Claimant failed to meet the burden of establishing that the Service Agency should be compelled to fund for a stroller. While Mother successfully established that Claimant suffers from a great deal of behavioral and safety issues, Mother presented no persuasive evidence, such as reports or expert testimony, showing that Claimant required a stroller for medical purposes or otherwise. The evidence shows that Claimant is currently receiving adaptive skills services, as well as services from his school to address his behavior, pursuant goals set forth in his IPP and IEP. While Mother has yet to see the kind of improvement Claimant requires to interact in the community without posing a danger to himself or others, there is no evidence demonstrating that the procurement of a stroller would be the best course for Claimant. For the foregoing reasons, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied.

Date: July 18, 2016

CARLA L. GARRETT

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.