

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2016090086

DECISION

The fair hearing in this matter was heard by Administrative Law Judge Marcie Larson (ALJ), Office of Administrative Hearings (OAH), State of California, on November 21, 2016, in Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Claimant's mother represented claimant, who was present at the hearing.

Rudy Carrasco, Spanish language interpreter, translated the proceedings.

Evidence was received, the record was closed and the matter was submitted for decision on November 21, 2016.

ISSUE

Is ACRC required to fund the purchase of an adaptive tricycle for claimant?

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FACTUAL FINDINGS

1. Claimant is a 15-year-old boy who is eligible for ACRC services based on his diagnosis of intellectual disability and spastic cerebral palsy. Claimant also has seizures, which have been controlled with medication. He receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et seq.)

2. Claimant did not walk until after he had surgery in 2012, to release his tendons. Thereafter, claimant has been able to walk with assistance. Claimant uses foot orthotics, a gate-trainer and a wheelchair. In April 2016, claimant's mother contacted ACRC to request assistance in locating and purchasing an adaptive tricycle for claimant. Victor Gonzalez, claimant's service coordinator, testified at hearing that he conducted internet research and provided claimant's mother with resource information on how to obtain funding for the adaptive tricycle through charities and claimant's medical insurance.

3. On July 11, 2016, Mr. Gonzalez received an email from Denise Morales, an employee of Numotion, a company that sells adaptive tricycles. The email contained various attachments, including a funding request for an adaptive tricycle for claimant, and several letters from various entities, including California Children's Services (CCS) and River City Medical Group, denying claimant's request for funding for an adaptive tricycle.

4. On July 15, 2016, claimant, his mother and Mr. Gonzalez met for claimant's annual Individual Program Plan (IPP) meeting. During the meeting, claimant's mother informed Mr. Gonzalez that she intended to appeal CCS's decision to deny her request to fund an adaptive tricycle for claimant. On July 22, 2016, Mr. Gonzalez met with his supervisor, Jennifer Bloom, to discuss claimant's request for an adaptive tricycle.

5. On August 9, 2016, ACRC issued a Notice of Proposed Action (NOPA) to claimant's mother, stating that her request to purchase a specialized tricycle for claimant was denied. ACRC advised claimant's mother that:

There was "no assessed need for the purchase of the specialized tricycle because [claimant] is already receiving through his SELPA and school district services which are sufficient to address the physical effects of his developmental disability. For example, [claimant] is currently participating in the M.O.V.E. Program, which provides [claimant] specialized orthopedic services on a daily basis through his teacher and instructional staff, and have helped [claimant] make great improvement in his mobility. Also, [claimant] had access to a tricycle at school, and during the summer break he was allowed to bring it home. In addition, the school district is providing monthly 30-minute Physical Therapy consultations. It would not be cost-effective for ACRC to duplicate the services already being provided by the SELPA/school district.

Further, Physical Therapy is a special education "related service" which [claimant's] SELPA and school district are legally required to provide him pursuant to the IDEA. Regional centers are prohibited from supplanting the budget of generic resources such as [claimant's] SELPA and school district by funding services which the generic resources are required to provide.

Finally, you as [claimant's] parent are expected to privately fund or provide recreational activities, such as the opportunity to ride a tricycle, for [claimant] just as you would for any other minor child in the family, whether or not the child has a disability.

6. Claimant's mother filed a Fair Hearing Request and a request for an informal meeting, with ACRC on or about August 21, 2016. An informal meeting took place which included claimant's mother, Mr. Gonzalez, Ms. Bloom and Robin Black, Legal Services Manager and Designee of the ACRC Executive Director, on September 12, 2016. At the informal meeting, claimant's mother explained that for approximately three months, claimant had difficulty walking. Claimant needed to exercise his legs to get more strength to help his ability to walk. She further explained that an adaptive tricycle was available for claimant's use at school, but the tricycle is not always available to claimant because it is used by other children at the school as well. Claimant's mother would also like to have a tricycle available to claimant at home and to take on trips to the park and when the family goes camping. The tricycle would be used for recreation and therapeutic purposes. ACRC confirmed at the informal meeting that its decision to deny claimant's request for funding was based on the reasons set forth in the Notice of Proposed Action.

7. On September 19, 2016, Ms. Black issued an informal meeting Fair Hearing Decision. ACRC denied claimant's request for funding of the adaptive tricycle, on several grounds including that: (1) it was not medically necessary; (2) it was not primary or critical for ameliorating the effects of claimant's developmental disabilities; (3) it was not necessary to keep claimant in the family home; (4) alternative services are available to meet claimant's needs to ameliorate the physical effects of his cerebral palsy; (5) the school district is responsible for funding any educationally necessary services, and Medi-

Cal is responsible for funding any medically necessary services, to address the physical effects of claimant's cerebral palsy; and (6) community resources exist to provide free adaptive sports equipment. Claimant's mother appealed the informal meeting Fair Hearing Decision.

8. Ms. Bloom is a Client Services Manager at ACRC. She testified at hearing. Ms. Bloom supervises Mr. Gonzales and has been involved in reviewing claimant's request that ACRC fund an adaptive tricycle. Ms. Bloom reviewed several letters claimant's mother submitted from claimant's pediatrician, physical therapist, Shriner's Hospital and Easter Seals. These letters explain that an adaptive bicycle would be beneficial for claimant. However, no medical provider has stated that an adaptive tricycle is medically necessary for claimant.

9. Mr. Bloom explained that while an adaptive tricycle would benefit claimant, it is not the primary or critical means for ameliorating claimant's developmental disability, nor is it necessary to enable him to remain in the family home. The treatments that are the primary means for ameliorating claimant's developmental disability are physical therapy, the use of foot orthotics, a gate-trainer and wheelchair. Additionally, the M.O.V.E. program administered by the Department of Education is embedded throughout claimant's day at school and incorporates movement, walking and exercise. Claimant also uses an adaptive tricycle and gate-trainer at school.

10. Claimant's mother testified that claimant's doctor only sees him for five minutes and as a result cannot attest to whether an adaptive tricycle is medically necessary. Claimant's mother sees him every day. She understands his needs and believes that he would benefit from the adaptive tricycle. Claimant's physical therapist has recommended that claimant use the tricycle to strengthen his muscles. Although claimant's school provides an adaptive tricycle, claimant must share it with three other children, which means he does not always have access to it at school.

11. There was no evidence presented to demonstrate that the adaptive tricycle is medically necessary. The evidence also did not establish that the adaptive tricycle is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of his developmental disability. There was no evidence to establish that an adaptive tricycle is necessary to enable claimant to remain in his home. As a result, ACRC is not required to fund the purchase of an adaptive tricycle for claimant. Consequently, claimant's appeal must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code sections 4700-4716.) Claimant requested a fair hearing to appeal ACRC's denial of his request to fund an adaptive tricycle.

2. The burden is on claimant to establish that ACRC is obligated to purchase an adaptive tricycle, which is a new benefit. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

3. Welfare and Institution Code section 4648.5 provides in relevant part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

[¶...¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

4. Claimant failed to establish that the adaptive tricycle is medically necessary. As a result, pursuant to Welfare and Institution Code section 4648.5, subdivision (a)(4), ACRC is not required to fund the purchase of an adaptive tricycle unless claimant qualifies for an exemption. Claimant failed to establish that he qualifies for an exemption under Welfare and Institution Code section 4648.5, subdivision (c). There is no evidence that the adaptive tricycle is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's developmental

disability, or the service is necessary to enable claimant to remain in his home and no alternative service is available to meet his needs.

5. ACRC may not fund services which are available from other resources. (See Welf. & Inst. Code, § 4659.) ACRC also "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." (Welf. & Inst. Code, § 4648, subd. (a)(8).) Claimant receives services for his developmental disability through his school district. Additionally, Medi-Cal is obligated to provide claimant with any medically necessary services. Claimant has the option to appeal the denial by CCS of his request to fund the adaptive tricycle.

ORDER

Claimant's appeal is DENIED. ACRC is not required to fund an adaptive tricycle for claimant.

DATED: December 5, 2016

MARCIE LARSON

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).)