

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2016100693

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on November 28, 2016, in San Leandro, California.

Claimant was represented by her mother.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay (RCEB), the service agency.

The record closed and the matter was submitted for decision on November 28, 2016.

ISSUE

Is claimant entitled to RCEB funding for a sun canopy and under stroller basket for her adaptive stroller?

FACTUAL FINDINGS

1. Claimant is an 11-year-old with Down syndrome. Claimant is small in stature and has a fair complexion. Claimant is verbal, but it can be difficult for people who do not know her well to understand her speech. Claimant uses an augmented communication device, which is a notebook-sized tablet, to help with communication.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP), dated October 29, 2014. The IPP was updated following an annual review on November 18, 2015. Shawna Atkins has been claimant's case manager until recently. A new case manager was assigned when claimant turned 11, because Atkins only works with clients between ages three and ten. The IPP and annual review note that claimant needs physical assistance with personal hygiene, engages in inappropriate behavior, can be physically aggressive, has toileting accidents, and has a tendency to run or wander away. Claimant attends school with a one-on-one aide and is performing at several grades below her age.

3. Claimant has an adaptive stroller that was supplied to her by her health insurance provider. The family uses the stroller when taking claimant into the community and when traveling. Claimant is ambulatory, but tires easily and has a tendency to wander off. They do not use the stroller every time they leave home, but do depend on it for longer outings and special events. The stroller enables claimant to participate in events that she would not otherwise be able to attend. The family anticipates using the stroller for many more years. The stroller did not come with a sun canopy or storage basket, and claimant's health insurance provider denied coverage for these items when the family inquired. This equipment costs \$296, plus sales tax, through supplier Western Rehab Solutions.

4. Claimant's family contacted Atkins in September 2016 and requested that RCEB fund the equipment. Per RCEB policy pertaining to requests for medical

equipment, Atkins referred the request to the occupational therapy department. Occupational Therapist Cindi Jindrich reviewed the request along with her supervisor, Lucy Rivello. On September 19, 2016, Jindrich wrote a letter to Case Management Supervisor Kim Limato, who was handling Atkins's workload while she was out on maternity leave. Jindrich wrote, "a medical need for these two items cannot be substantiated. Storage of her communication device, diapers, water and various supplies in the under stroller basket is more of a convenience and not a medical need. A medical need would be storage of a suction machine, nebulizer, etc. Although a sun canopy does block the sun and can prevent overheating, Down syndrome is not a diagnosis that indicates a medical need for a sun canopy."

Atkins, Limato, and Rivello testified at the hearing. They all agreed that claimant did not establish a medical need for the equipment. They believe that her needs are typical of a non-disabled child who needs to be protected from the sun and who might carry a backpack in order to transport belongings. Rivello explained that RCEB will only fund equipment if there is a medical need for the equipment as well as a relationship between the medical need and the individual's developmental disability. These decisions are made on a case by case basis. As an example, RCEB might fund nursing assistance to manage insulin for a diabetic client with intellectual disability, if the intellectual disability interfered with the client's ability to manage his or her diabetes.

5. In a Notice of Proposed Hearing dated September 21, 2016, RCEB notified claimant of the following proposed action: "Deny the purchase of a sun canopy and under stroller basket for an adaptive stroller. The request is not related to medical need for adaptive equipment." Claimant filed a Fair Hearing Request on October 10, 2016. Limato sent a letter to Claimant's parents on October 17, 2016, noting that "a medical need could not be substantiated" for the requested stroller accessories.

6. An informal meeting was held on October 26, 2016. Following the informal meeting, Case Management Supervisor Bernadette Lufrano wrote a letter, dated October 31, 2016, in which she agreed with the denial of the requested stroller equipment as "not medically necessary."

7. Claimant's mother explained that the sun canopy is necessary because claimant has fair skin and needs to be protected from the sun. There is a history of skin cancer in the family. She believes that claimant's need for shade is greater than that of an ordinary child because she is extremely resistant to using sunscreen or wearing a hat, due to her developmental disability. Claimant tires easily and if the family is on a long outing, she will nap in the stroller, creating a risk of sunburn if she is not protected.

Claimant would use the under stroller storage basket to carry sunscreen, a change of clothes which is necessary because claimant can wet herself when she is excited, and the augmented communication device. In addition, claimant has a nebulizer which was prescribed for her due to bronchiolitis. The family brings this device with them during the winter months, when claimant has been sick, or when they travel to high altitudes. Claimant has small nostrils typical of children with Down syndrome and which make her susceptible to respiratory ailments.

8. Atkins, Limato, and Rivello were unaware that client uses a nebulizer. They did not see any mention of a nebulizer when reviewing client's medical records during the process of deciding whether to fund the requested equipment. They testified that had they known about the nebulizer, they might have reached a different conclusion regarding claimant's medical need as it pertains to the request for an under stroller basket.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities.

(Welf. & Inst. Code, § 4500 et seq.¹) The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers have the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

2. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Regional centers must identify and pursue all possible sources of funding when determining whether to fund a requested service. (§§ 4659, subd. (a)(1) & 4646.4.)

3. RCEB Purchase of Service Policy #3402 governs the provision of assistive technology. Assistive technology is defined as “items designed to facilitate mobility, communication, community access or environmental control to maintain or maximize function and independence.” The requested stroller equipment falls within this policy. The policy states that “RCEB may purchase [assistive technology] when it is required for reasons related to the developmental disability and when the Planning Team believes

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

either a) the equipment or device will prevent further disabilities, maintain or improve current functioning; b) such equipment is integral to the health care or function of an individual and/or makes specialized care in the home possible; c) the equipment allows the consumer to interact optimally with his/her environment and increases independence and family/community inclusion.”

4. Claimant has a medical need for an adaptive stroller which is related to her eligible condition, Down syndrome. The stroller enables her to interact with the community and participate in family outings. Without the accessories, claimant’s use of the stroller is limited. Claimant has a need for sun protection that is not the same as the need of non-disabled children of her age. The behavioral aspects of her disability make application of sunscreen difficult. Similarly, she has a need to transport items when leaving home that is different from the need of non-disabled children her age. She requires storage for a change of clothes, since she continues to have toileting accidents, for her communication device, and, intermittently, for her nebulizer.

5. Claimant has a need for sun protection and storage for her adaptive stroller, which enables her to be included in family and community events. Her need is related to her developmental disability. RCEB shall fund these items in a cost-effective manner, not necessarily through the supplier selected by claimant’s family.

ORDER

Claimant’s appeal is granted. RCEB shall fund sun protection and storage accessories for claimant’s adaptive stroller.

DATED: December 9, 2016

_____s_____

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.