

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2017120498

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on February 1, 2018, at Pomona, California.

Daniela Santana, Fair Hearing Representative, appeared and represented the San Gabriel/Pomona Regional Center (the Service Agency).

Claimant's mother¹ appeared as claimant's authorized representative.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

¹ Claimant and her family are not identified by name in order to protect their privacy.

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to fund the purchase of an AngelSense GPS Tracker device and the related activation and subscription fees.

EVIDENCE CONSIDERED

Exhibits. Service Agency's Exhibits 1-7; and claimant's Exhibits A-B.

Testimony. Daniela Santana; and claimant's mother

FACTUAL FINDINGS

1. Claimant is an 11-year-old girl and a Service Agency consumer based on diagnoses of autism and moderate intellectual disability. She lives with her parents and her nine-year-old brother. She is ambulatory, able to run, and ride a bike or scooter, with no limitations. However, she is "mostly non-verbal" and "communicates through simple gestures such as pointing, shaking head, or leading by the hand." (Ex. 3, p. 2.)

2. Pursuant to her most recent Individual Program Plan (IPP), claimant receives "speech therapy for 40 minutes per week, occupational therapy for 180 minutes per month, adapted P.E. for 270 hours per month, [and] behavior 300 minutes per week." (Ex. 3, p. 7.) Claimant receives Applied Behavior Analysis (ABA) training six days per week. The Service Agency currently funds 20 hours per month of respite care. The Arcadia Unified School District funds special education services, including a one-on-one aid for claimant in the classroom "due to her eloping behaviors." (Ex. 3, p. 7.)

3. Claimant has a history of eloping. As described in claimant's most recent Individualized Education Program (IEP) with the school district, claimant is not consistent in transitioning between locations "due to escape behavior." (Ex. 5, p. 3.) A desired outcome of regional center services is "to increase [claimant's] safety awareness, and decrease her eloping behaviors." (Ex. 3, pp. 10-11.)

4. To prevent elopement from the house, claimant's mother has attempted to secure the house by installing locks on doors and gates, and deactivating the garage door. Claimant has been receiving regular behavioral training six days per week, and has been taught safety measures, such as looking both ways before crossing the street, holding her mother's hand, and staying close. Claimant's parents share the responsibility of supervising claimant.

5. Nonetheless, claimant continues to have a tendency to wander. On one occasion, claimant rode her bicycle approximately one mile from the house and was located only with the assistance of the police. On another occasion, she disappeared at a family gathering overseas and was found in a nearby house after the family spread and searched the neighborhood.

6. Claimant's mother discovered the AngelSense GPS Tracker, a device promoted to be "the only monitoring solution designed by autism parents for autism parents." (Ex. A.) The technology provides a "proven solution for wandering" with an ability to "share your child's real time location with your trusted first responders, family, friends, teachers & neighbors to quickly bring your child home safe." (Id.) The device costs \$199 to activate, plus \$40 per month in subscription charges.

7. On August 2, 2017, respondent requested regional center funding for the device during a face-to-face meeting with Jacqueline Valdivias, the service coordinator assigned to claimant's case. On August 3, 2017, the service coordinator conferred with a program manager and "advocated for the family to receive the device due to safety reasons." (Ex. 4, p. 2.) However, the purchase of such equipment was subject to Exceptional Service Review (ESR), a committee of consultants or clinicians. Pending review by the ESR committee, the service coordinator provided claimant's mother with information about alternative sources of funding, including Medi-Cal or private insurance.

8. Claimant's mother filed a claim with HealthCare Partners Medical Group for private insurance coverage. On October 12, 2017, the insurance claim was denied "because there is a lack of medical necessity." (Ex. B.)

9. November 1, 2017, the service coordinator called claimant's mother to inform her that the ESR committee denied funding for the tracking device, and recommended that the eloping behaviors be addressed in the existing behavioral programming.

10. The Service Agency has a published Purchase of Service Policy (POS Policy) that governs the purchase of equipment and supply services and supports. The POS Policy was approved by the Service Agency's Board in December 2009 and by the Department of Developmental Services (DDS) in July 2010. With respect to the purchase of medical, dental, equipment, and supplies, the POS Policy states in pertinent part as follows:

General health care needs for regional center clients are similar to the needs of all members of the community. Ordinarily, parents of minors are expected to provide for all medical and dental care, 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. (Ex. 7, p. 20.)

11. Pursuant to the terms of the POS Policy, the Service Agency may purchase equipment for either children or adults if all of 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; (2) The

requested treatment or equipment is deemed medically necessary; (3) The regional center consultants 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.

12. On November 20, 2017, the Service Agency issued a Notice of Proposed Action, denying claimant's request to fund the purchase of an Angel Sense tracking device and the related activation and subscription fees. On December 2, 2017, claimant filed a Fair Hearing Request.

13. At the hearing, claimant's mother testified that she requested regional center funding for the device because she spends money on additional training and services for claimant. In the past, she has paid \$50 per hour for social skills training, \$75 per lesson for music instruction, and \$45 per 20-minute swimming lesson. She is unemployed, but her husband works. Claimant presented no evidence to show that the device is medically necessary, but requested funding based on the safety features offered by the device.

14. The fair hearing representative for the Service Agency testified that funding may be available for some of the additional programs that claimant's parents have paid for privately, but that those services have not been addressed during the IPP process. The representative further testified that claimant may qualify for Extended Year Services, which are designed for consumers with "the constant need for a supervised structured setting beyond school program to promote and maintain positive behavior." (Ex. 7.) Pursuant to the POS policy, the Service Agency will fund Extended Year Services under the following circumstances:

The child/youth exhibits behaviors that require intervention beyond that expected of a generic childcare or recreational setting. These behaviors may include aggressive, assaultive or self-abusive behavior, property destruction, or other behaviors which might endanger the client or others. Additional behaviors may include significant tantrums, wandering away, extreme hyperactivity or self-stimulatory behaviors. These services are purchased only when they are necessary to maintain the client in his/her family/foster home. (Ex. 7, p. 12.)

15. Whether and to what extent Extended Year Services may be incorporated into claimant's existing behavioral programming has not been discussed at an IPP meeting.

LEGAL CONCLUSIONS

BURDEN OF PROOF AND STANDARD OF PROOF

1. Claimant bears the burden of proof as the party seeking government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)

2. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

CLAIMANT'S RIGHTS AND SERVICE AGENCY'S RESPONSIBILITIES

3. The Frank D. Lanterman Developmental Disabilities Act (Lanterman Act) sets forth the Service Agency's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) To

comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.)

4. The determination of which services and supports a regional center will provide is 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 [IPP] participants, the effectiveness of each option in meeting the goals stated in the [IPP], and the cost-effectiveness of each option.” (Welf. & Inst. Code, § 4512, subd. (b).)

5. The rights of developmentally disabled persons and the corresponding obligations of the state toward them under the Lanterman Act are governed by the IPP procedure, and regional centers have wide discretion in determining how to implement the plan agreed upon by the IPP participants. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.)

6. Regional centers are mandated to ensure the establishment of “an internal process” when an IPP is developed, reviewed, or modified. (Welf. & Inst. Code, §4646.4, subd. (a).) This internal process requires adherence with federal and state law and regulation, and must ensure all of the following when purchasing services and supports:

- (A) Conformance with the regional center’s purchase of service policies, as approved by the DDS. (Welf. & Inst. Code, §§ 4434, subd. (d), and 4646.4, subd. (a)(1).)
- (B) Utilization of generic services and supports when appropriate. (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)
- (C) Utilization of other services and sources of funding, including Medi-Cal and private insurance. (Welf. & Inst. Code, §§ 4646.4, subd. (a)(3), and 4659.)

(D) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. (Welf. & Inst. Code, §4646.4, subd. (a)(4).)

7. The California Legislature intended the DDS to be the agency charged with the authority and responsibility to monitor regional centers so that an individual consumer eligible for services and supports under the Lanterman Act receive the services and supports identified in his or her IPP. (Welf. & Inst. Code, § 4500.5, subd. (d).) As part of its responsibility to monitor regional centers, DDS is required to collect and review printed materials issued by the regional centers, including purchase of service policies and other guidelines utilized by regional centers when determining the services needs of a consumer, and to take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of the Lanterman Act or any related regulation. (Welf. & Inst. Code, § 4434, subd. (d).) Reflecting the Department's interpretation of statute and regulation, the guidelines are not entitled to the deference given to a regulation but are rather entitled to a degree of deference dependent upon the circumstances in which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

8. Regional centers cannot deny requested services and supports on the basis of a general policy not to provide such services and supports. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225.) Reliance on an inflexible policy is inconsistent with the Lanterman Act's stated purpose of providing services "'sufficiently complete to meet the needs of each person with developmental disabilities.'" (*Id.* at 232, citing § 4501.) The Lanterman Act clearly contemplates that services for each regional center consumer will be selected "'on an individual basis.'" (*Id.* at 233, citing *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

SERVICES AND SUPPORTS

9. In this case, claimant is ambulatory with a tendency to elope. The AngelSense GPS Tracker is a device that will help claimant's parents locate claimant if she elopes. However, the purchase of such equipment does not conform with the Service Agency's POS Policy, as approved by DDS, because the device is not a medical necessity. Although the device will help the family track claimant, it will be ineffective at increasing claimant's safety awareness or decreasing her eloping behaviors, agreed upon objectives of regional center services.

10. Other regional center services and supports, included Extended Year Service, are more appropriate to treat claimant's impulsive behavior to wander and teach safety skills. Moreover, claimant has been privately paying for services that the Service Agency may fund. These additional services and supports have not been fully addressed in the IPP process.

11. The preponderance of the evidence does not establish that claimant is entitled to funding for the purchase of the AngelSense GPS Tracker. The evidence was insufficient to show that the Service Agency denied claimant's service requests based on a general policy not to provide such services and supports. The Service Agency has provided services and referrals based on the individual needs of claimant, including behavioral intervention to increase claimant's safety awareness, and decrease her tendency to wander. The Service Agency identified additional services and supports during the fair hearing that may be available and appropriate to redress claimant's escape behaviors, which warrants the scheduling of an IPP meeting at the earliest opportunity.

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ORDER

Claimant's appeal is denied. The Service Agency shall not fund the purchase of the AngelSense GPS Tracker device or the related activation and subscription fees. The parties shall schedule an IPP meeting within 90 days of this Decision.

DATED:

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.