

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2018100011

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter in Salinas, California, on November 8, 2018.

Claimant was represented by his mother. A Spanish-language interpreter provided assistance. Claimant did not attend the hearing.

James Elliot, Fair Hearing Designee, represented the San Andreas Regional Center (SARC), the service agency.

The matter was submitted for decision on November 8, 2018.

ISSUE

1. May SARC discontinue funding for claimant's diapers?
2. Is claimant entitled to funding for diapers pending the outcome of the appeal?

FACTUAL FINDINGS

1. Claimant is a 9-year-old boy who lives with his mother and sister in Salinas. Claimant's parents are in the process of divorcing and claimant's father has

moved out of the home. Claimant receives SARC services based on his diagnosis of autism. Claimant is not fully toilet-trained and uses pull-up diapers. Claimant is insured by Medi-Cal.

2. Claimant's 2018 Individual Program Plan (IPP) provided that his service coordinator "will request funding for diaper reimbursement based on need and SARC reimbursement guidelines as appropriate [service coordinator] will review progress annually." The IPP lists "Diaper & Nutr. Suppl." as a SARC-funded service. SARC has been funding diaper reimbursement for claimant for several years.

3. Claimant's service coordinator asked claimant's mother to provide documentation regarding her income and the income of claimant's father. Claimant's mother provided the information and reminded the service coordinator that claimant's father no longer lives in the home. Claimant's IPP reflects the fact that claimant's father does not live in the home.

4. On September 4, 2018, SARC prepared a Notice of Proposed Action (NOPA), notifying claimant's mother that "Request for SARC to fund Diapers being denied." The reason for action was described as, "Combined income exceeds the policy guidelines for diaper assistance." This NOPA did not provide citation to any specific law, regulation, or policy.

5. On September 26, 2018, SARC received a request for fair hearing from claimant's mother, who also requested an informal meeting.

6. A revised NOPA was sent to claimant's mother on September 28, 2018. This NOPA contained the identical reason for the denial of funding for the diapers, but included a list of legal authority consisting of: "WIC 4646(a), 4646.4(a)(1), 4647, 4648(a)(8), and 17 CCR 54302(a)(31)." Claimant's mother contacted SARC on October 3, and was told that she did not need to submit a new request for fair hearing. SARC discontinued funding the diapers on October 1, 2018.

7. A state level fair hearing was scheduled for November 8, 2018. No informal meeting was ever scheduled, in violation of Welfare and Institutions Code sections 4701, subdivision (i), 4710.7, and 4710.8, subdivision (b). Upon request of the administrative law judge, the parties met informally prior to the administrative hearing, but were unable to reach a settlement.

8. SARC stated at hearing that the family's income was "not the issue." Instead, SARC contended that its denial was mandated because the family had failed to pursue a Medi-Cal appeal as a possible avenue of funding for claimant's diapers.

9. No evidence of claimant's family income was offered into the record. There was no evidence presented to establish that SARC requested claimant's family to submit an appeal to Medi-Cal for funding for diapers at any time prior to the date of the hearing.

10. Claimant's mother expressed reluctance to seek funding through Medi-Cal and noted that Medi-Cal has never funded this service in the past. She is frustrated that no informal meeting was scheduled upon her request.

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

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

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 gathering information and 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. A regional center seeking to discontinue an ongoing service has the burden to demonstrate its decision is correct. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

3. Section 4701 provides that a NOPA must include the reason or reasons for the action and the specific law, regulation, or policy supporting the action. The NOPA served on claimant advised that funding was being discontinued because the family's income exceeded policy guidelines. No evidence was presented to establish the family's income. SARC did not meet its burden of establishing that services should be denied. Claimant's appeal must be granted.²

² At hearing, SARC put forth another reason for discontinuing the service, namely that it could not be sure that there is no available "generic resource" to fund the service, because claimant has not submitted an appeal to Medi-Cal. The amended NOPA contained a reference to section 4648(a)(8), which provides that a regional center cannot fund a service if there is a generic resource available, but did not set forth failure to pursue a Medi-Cal appeal as a reason for its action. Because SARC failed to provide adequate notice of this reason for discontinuing funding, claimant was deprived of the right to a fair hearing on this issue. Accordingly, this issue will not be addressed in this decision.

4. Section 4715, subdivision (a), provides that "if a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, services that are provided pursuant to a recipient's individual program plan shall be continued during the appeal procedure. ..." This is known as "aid paid pending." SARC acknowledges that the NOPA initially served on claimant was lacking in legal authority and thus did not comply with section 4701. As a result, an amended NOPA was sent on September 28, 2018. Claimant had already requested a fair hearing by this time, and was notified that another request was not necessary. Accordingly, it cannot be found that claimant failed to request a hearing "no later than 10 days after receipt" of the operative NOPA. Claimant is entitled to aid paid pending.

5. Nothing in this decision precludes SARC from requiring claimant's family to seek Medi-Cal funding in the future, provided that SARC assists the family in this process, if requested, and continues providing the service while the appeal is pending.

ORDER

1. Claimant's appeal from SARC's Notice of Proposed Action is granted. SARC shall resume funding diapers.

2, Claimant is entitled to funding for diapers retroactive to the effective date of the Notice of Proposed Action, October 1, 2018. SARC shall reimburse claimant's family for expenses incurred purchasing diapers between October 1, 2018 and the date of this decision.

DATED: _____

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.