

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL POMONA REGIONAL CENTER, Service Agency.**

**OAH No. 2019060598**

**DECISION**

Jeremy Cody, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 21, 2019, in Pomona, California.

Daniel Ibarra, Fair Hearing Representative, represented San Gabriel/Pomona Regional Center (Service Agency).

Claimant's mother (Mother)<sup>1</sup> appeared and represented claimant, who was not present. Mother was assisted by a Spanish language interpreter.

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<sup>1</sup> Family titles are used to protect the privacy of claimant and her family.

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

## **ISSUE**

Whether Service Agency is required to fund the purchase of a lightweight stroller-type wheelchair for claimant.

## **EVIDENCE CONSIDERED**

*Documents:* Service Agency's exhibits 1-11.

*Testimony:* Daniel Ibarra, Fair Hearing Representative; Mother.

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is an 18-year-old female consumer of Service Agency who qualifies for regional center services based on diagnoses of Epilepsy and Profound Intellectual Disability. She also has a diagnosis of Lennox-Gastaut Syndrome. Claimant lives at home with her mother and siblings. She attends an Adult Transitional Program through her school district and is bussed to and from school in her manual wheelchair on an accessible bus/van. Claimant's other transportation needs are met by her mother.

2. Claimant is entirely dependent on her mother to complete hygiene tasks such as bathing, dressing, and combing her hair. Claimant does not have control over

her bowel/bladder movements; she requires a diaper at all times. Claimant suffers from multiple seizures each day and, as a result, spends long periods of time in her wheelchair during school and at home. She is non-verbal and communicates through grunts, moans and gestures.

3. Claimant's most recent individual program plan (IPP) is dated March 6, 2019. A Physical Therapist Consultation Note, which specifically addressed the issue of claimant's wheelchair, was added as an addendum to the IPP on July 31, 2019. (Ex. 4.)

4. Claimant's current wheelchair is a tilt-in-space manual wheelchair that is designed with a custom seating system. It was purchased with funding by claimant's Medi-Cal insurance (via Health Net Citrus Valley Independent Physicians). The wheelchair is used for transport to and from school, and is used during school and at home, during meals and other activities.

5. In 2017, Mother submitted a request to California Children's Services (CCS) to fund the purchase of a lightweight stroller-type wheelchair. On September 25, 2017, CCS deferred the request to Medi-Cal based on its finding that the requested product was "not related to a CCS medically eligible condition." (Ex. 9.) On August 14, 2018, Medi-Cal, via Citrus Valley Independent Physicians, denied the request as "not medically indicated." (Ex. 8.)

## **Service Agency Decision**

6. On April 3, 2019, Mother submitted a request to Service Agency to fund the purchase of a lightweight stroller-type wheelchair for claimant. Mother claimed that the existing wheelchair is too heavy for her to load into her vehicle and that this hinders her ability to enable claimant to participate in community events. Service Agency's Exceptional Services Review denied the request due to claimant already

having a wheelchair funded by her medical insurance and CCS, and the availability of generic services such as Access Services.

7. On May 2, 2019, Service Agency issued a Notice of Proposed Action (NOPA), denying claimant's request for funding for a lightweight stroller-type wheelchair. The stated reasons in the NOPA for the denial were that claimant's current wheelchair is sufficient to meet her medical needs and that generic resources such as Access Services and transportation services funded by claimant's medical insurance, are available to address Mother's concerns. (Ex. 1, p. 1.)

8. On June 4, 2019, Mother filed a Fair Hearing Request, on claimant's behalf, to appeal Service Agency's decision.

9. On July 31, 2019, a physical therapy consultation was conducted for the Service Agency by physical therapist Laura Sutton, who met with claimant, Mother and Service Coordinator Atalia Morales. Ms. Sutton examined the current tilt-in-space wheelchair, reviewed the Mother's options for transporting claimant, and prepared a written report, entitled "Physical Therapy Consultation," as an addendum to the IPP. (Ex. 4.)

10. Ms. Sutton's report noted that claimant's current wheelchair is specifically designed for individuals who experience seizures, like claimant. Claimant has more than 10 seizures per day that cause her to rock and sway in a forceful manner, which could cause her to fall from the chair. Additionally, claimant tends to sit in her wheelchair without full regard for her balance; her movements can be sudden and strong, putting added pressure on the chair and creating the risk of tipping over. Claimant's current wheelchair is suited to her because it will not tilt with the force of her swaying or the movements caused by her seizures. The wheelchair is also designed

to recline and therefore is well-suited for mealtimes. The chair also provides postural support to allow claimant to sit in it for long periods of time. (Exs. 4 and 11.)

11. Ms. Sutton also wrote: "The stroller-style manual chair seating is soft and so does not provide the best positioning support such as is present in her tilt-in-space manual wheelchair, but it does provide convenience as it can easily be folded and placed into the vehicle and would weigh about 30 pounds. While this chair is not specifically recommended it is also not specifically detrimental when used for shorter periods of time." (Ex. 4.)

## **Evidence Presented at Hearing**

12. At the hearing, Service Agency's Fair Hearing Representative, Mr. Ibarra, testified that Service Agency denied claimant's request because it determined that the requested lightweight stroller-type wheelchair was not medically necessary, and that generic services were available to meet claimant's transport needs, as addressed in the NOPA, the Physical Therapist Consultation Note, and an email by claimant's service coordinator. (Exs. 3, 4, and 11.) Furthermore, Mr. Ibarra noted that the request did not meet two of the criteria specified in Service Agency's Purchase of Service Policy.

13. Service Agency's Purchase of Service Policy (Ex. 10, p. 21) provides that medical equipment may be purchased 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 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 the appeal of the denial is not warranted.

14. Mr. Ibarra testified that Mother's request failed to meet two of the four requisite criteria of Service Agency's Purchase of Service Policy regarding the purchase of medical equipment: the requested wheelchair was determined not to be medically necessary (Criteria No. 2); Service Agency's consultant did not approve the need for the requested equipment (Criteria No. 3).

15. Claimant's evidence at the hearing consisted of Mother's testimony. Mother testified that the current wheelchair is too heavy for her, making it difficult for her to carry and use it when she transports claimant in her Suburban SUV. Mother places the wheelchair in the back of the SUV without disassembling it. Claimant's current wheelchair, fully assembled, weighs about 50-60 pounds. The wheelchair can

be disassembled into components of no more than 25 pounds each. (Ex. 4.) Mother admitted that she is aware the wheelchair can be disassembled, but she doesn't do it because she is concerned that she will replace something incorrectly and lose a part. Mother noted that on two occasions over the past two years she has experienced back pain significant enough to require medical treatment as a result of her loading the wheelchair on and off of her SUV. As to using other available resources for transport, Mother testified that until the hearing, she had not been aware that generic supports, such as Access Services, or other transport services covered by claimant's medical insurance, were available. As a result, she has never attempted to use such services to meet claimant's transport needs.

## **LEGAL CONCLUSIONS**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.)<sup>2</sup> An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a hearing to appeal Service Agency's denial of funding in order to purchase a lightweight, stroller-type, manual wheelchair for claimant. Therefore, jurisdiction for this appeal was established. (Factual Findings 1, 6-8.)

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

2. The party asserting a claim for a government benefit or service generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that she is entitled to Service Agency funding for the purchase of a lightweight, stroller-type manual wheelchair.

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers play a critical role in the coordination and delivery of services and supports. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. The Lanterman Act also provides that "[t]he 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, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (§ 4512, subd. (b).)

5. When purchasing services and supports, a regional center is required to ensure conformance with its purchase of service policies, utilization of generic services and supports when appropriate, and utilization of other sources of funding as contained in section 4659. (§ 4646.4, subd. (a).)



6. Section 4659 requires regional centers to “identify and pursue all possible sources of funding for consumers receiving regional center services,” including but not limited to “[g]overnmental or other entities or programs required to provide or pay the cost of providing services,” including Medi-Cal and Medicare.

7. In this case, claimant is currently receiving funding of an appropriate model wheelchair through other generic sources, such as Medi-Cal. Claimant’s evidence failed to establish that claimant’s current wheelchair is inadequate to meet her medical needs. To the contrary, Service Agency presented uncontested evidence that the current, tilt-in-space manual wheelchair is specifically designed and outfitted to suit claimant’s medical condition.

8. Claimant failed to meet her burden to prove she is entitled to Service Agency funding for the purchase of a lightweight, stroller-type manual wheelchair. Service Agency’s reasons for denying claimant’s funding request are supported by the evidence. First, Mother’s request for a lightweight stroller-type wheelchair is not based on a medical need, given that the current specialized wheelchair is well-suited to address claimant’s medical condition. Second, Mother is obligated under the Lanterman Act to utilize generic services and supports when available. Mother admitted she has not attempted to use generic services, such as Access Services or medical transportation services funded by claimant’s medical insurance, that appear to be available to assist in meeting claimant’s transport needs. Third, Service Agency funding of a lightweight stroller-like wheelchair would not be in conformance with its Purchase of Service Policy for medical equipment. The requested wheelchair is not medically necessary and Service Agency’s consultants have not approved the need for such equipment. (Factual Findings 1-15, Legal Conclusions 1-7.)

## **ORDER**

Claimant's appeal is denied. San Gabriel/Pomona Regional Center is not required to fund the purchase of a lightweight stroller-type wheelchair for claimant.

DATE: November 1, 2019

JEREMY CODY

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.