

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**REGIONAL CENTER OF ORANGE COUNTY**

**OAH No. 2019080150**

**DECISION**

This matter was heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on October 7, 2019, in Santa Ana, California.

Claimant was represented by her father (Father).<sup>1</sup> Regional Center of Orange County (Service Agency or RCOC) was represented by Paula Noden, RCOC's Manager of Fair Hearings.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 7, 2019.

---

<sup>1</sup> Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and her family.

## **ISSUE**

1. Must the Service Agency provide funds for the purchase of diapers, disposable wipes, pureed baby food, and bibs for Claimant (Requested Items)?
2. Must the Service Agency add language regarding these Requested Items to Claimant's 2018-2019 Individual Program Plan (IPP)?

## **EVIDENCE**

Documentary: Exhibits 1-12 and A-F.

Testimonial: Amber Sasaki, RCOC Service Coordinator; Jennifer Montanez, RCOC Area Manager; Peter Himber, M.D., RCOC Medical Director; and Claimant's Father.

## **FACTUAL FINDINGS**

### **Background Information**

1. Claimant is an 11-year-old female client of RCOC who lives with her Father, Mother, and younger brother in their apartment in Irvine. Father is disabled, and Claimant's brother is also a RCOC client. Claimant is eligible for, and receives services from, the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.
2. Claimant has Cerebral Palsy and intellectual disability. She is legally blind in both eyes, uses a wheelchair which she is unable to move on her own, is non-verbal,

and requires assistance with all basic daily living needs, including feeding, brushing her teeth, toileting, dressing, and bathing. Claimant has no bladder or bowel control and uses diapers at all times. The diapers are provided by Medi-Cal/CalOptima. All of Claimant's nutritional needs are met via gastrostomy tube. The formula she receives is funded through California Children's Services (CCS)<sup>2</sup> and Medi-Cal/CalOptima. She also eats pureed baby food by mouth as part of her feeding therapy. Claimant attends elementary school in the Irvine School District.

3. RCOC funds respite services for Claimant. Medi-Cal/CalOptima is the primary funding source for Claimant's medical and dental costs. Claimant is eligible for 153.13 hours of In-Home Supportive Services funded by Medi-Cal, which also funds 40 hours per week of shift nursing hours. Claimant receives \$752.54 per month as Supplemental Security Income (SSI), to be used for medical and dental needs not otherwise covered.

### **CLAIMANT'S REQUEST FOR ITEMS**

4. On June 20, 2019, Claimant's parents first requested reimbursement for the cost of the Requested Items. Father contends that RCOC must provide Claimant with the indispensable medical supports she is unable to obtain from generic resources, in order for her to live successfully in the community and reach her full potential. Claimant requests that RCOC provide funding for: 1. Comfortably-fitting youth-sized diapers with tabs that do not cut into Claimant's sensitive skin and that will not lead to further breakdown of injured areas; 2. Disposable washcloths for diapering, especially, when Claimant is out in the community; 3. Pureed food for

---

<sup>2</sup> CCS is a state program which provides health care and services for children with certain diseases or health problems.

Claimant's feeding therapy and swallowing difficulty, so she can continue to improve her ability to eat, while at the same time desensitizing her mouth and benefitting from the natural cleansing process of eating; and 4. Bibs for excessive salivation, messy food and beverage consumption, and regurgitation, and to protect Claimant's skin from moisture and other substances.

5. Father asserts that a consumer's IPP must be responsive to that individual's needs and preferences, and must specify the type and amount of services and supports, utilizing use a person-centered approach. He also contends that, as part of the Medi-Cal waiver program, Claimant has additional protections.

6. Father explained that Claimant's need for diapers is particularly urgent in that she has outgrown her current diapers and has many accidents because the kind of diaper provided by CalOptima is simply too small to contain excrement. It is also stiff and irritates Claimant's skin. Claimant's bibs cost \$25 per month, and new bibs are purchased every other month. Claimant's parents purchase Target brand disposable wipes which cost \$14 per box; Claimant uses five boxes per month. Mother can puree baby food at home, but it is time-consuming. As the caregiver for Father and two children with special needs, Mother has limited time for this additional task. Baby food costs approximately \$90 per month, and Claimant eats such food three times daily to stimulate her oral motor development.

7. Father has been engaged in an "endless struggle with CalOptima" to obtain either the Requested Items or a written denial. (Exhibit C.) He believes that including these items in Claimant's IPP would assist him in obtaining funding for Requested Items from generic resources. Father would welcome funding for these items from any source, and he is not insistent that funding must come from RCOC, rather than from another source.

## **JULY 3, 2019 PLANNING TEAM MEETING (PTM)**

8. On July 3, 2019, a PTM was conducted regarding Claimant's request for disposable wipes, bibs, pureed food, and diapers. RCOC informed Claimant's parents that the Service Agency is unable to supplant generic resources. This assertion is supported by RCOC's Purchase of Service Guidelines (POS Guidelines).<sup>3</sup> RCOC's POS Guidelines provide that families are required to carry out the same responsibilities for their family member with disabilities as they would for their family member without a developmental disability. RCOC's POS Guidelines provide that RCOC does not fund over-the-counter infant food items. As for diapers, the POS Guidelines state that generic resources are to be utilized. (Exh. 8, pp. 46-47.)

9. RCOC suggested that Claimant's SSI funds be used to purchase diapers, disposable wipes, pureed baby food, and bibs if CalOptima or other generic funding cannot be obtained. The Service Agency offered to send a referral for Parent Mentor Services to assist Claimant's parents with exploring generic resources for the Requested Items.

## **NOTICE OF PROPOSED ACTION**

10. A Notice of Proposed Action (NOPA) letter dated July 9, 2019, was sent to Claimant's parents to memorialize its denial of funding for the Requested Items, for the reasons stated at the PTM. (Exhibit 3).

---

<sup>3</sup> The POS Guidelines were established in accordance with the Lanterman Act, which authorizes the Service Agency to develop and apply service standards.

## **AUGUST 13, 2019 INFORMAL MEETING**

11. On August 13, 2019, an informal meeting was held at RCOC to discuss Father's request for reimbursement and funding. The Service Agency advised Father that it could not authorize funding for diapers because Medi-Cal/CalOptima is a generic resource for such items. RCOC suggested to Father that Claimant's primary care provider (PCP) should provide CalOptima with a request for an alternative diaper and for bibs, based on medical necessity. The Service Agency also directed Father to the CalOptima Community Liaison for further assistance.

12. RCOC acknowledged that CalOptima does not currently fund for disposable wipes, but may begin to do so next year. In the interim, the Service Agency suggested that disposable wipes and bibs should be purchased with the SSI funds received by Claimant.

13. RCOC suggested that baby food could also be purchased with SSI, and with Cal Fresh benefits, California's implementation of the federal Supplemental Nutrition Assistance Program. The Service Agency noted that purchasing food for a minor child is a typical parental responsibility, whether or not the child has a developmental disability.

14. As for Claimant's 2018-2019 IPP, RCOC advised Father that if he disagrees with the current IPP language, he may submit a letter to that effect, which RCOC will attach to the 2018-2019 IPP.

15. As an exception based upon financial hardship, RCOC offered to authorize purchase reimbursement up to \$420 total for disposable wipes and up to \$75 total, for six months, upon approval of RCOC vendorization for purchase reimbursement. Receipts would be required for reimbursement following

vendorization. This authorization would allow time for Claimant to monitor any changes in CalOptima funding for disposable wipes and to apply for CalFresh, which provides up to \$130 per month for each eligible person. Father declined this offer at the August 13, 2019 informal meeting.

### **CALOPTIMA DENIAL OF COST OF BIBS**

16. On August 19, 2019, CalOptima denied Claimant's request for bibs on the grounds that bibs are not medically necessary "to preserve functions vital to daily life tasks." (Exhibit F.)

### **FAIR HEARING REQUEST**

17. Claimant's Father filed a timely Fair Hearing Request and this matter ensued.

## **LEGAL CONCLUSIONS**

1. Claimant's appeal is denied. The Service Agency's denial of funding for disposable wipes, bibs, diapers, and pureed baby food is upheld. (Factual Findings 1 through 16; Legal Conclusions 2 through 11.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding for Requested Items, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, he or she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services or items not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for the Requested Items, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet her needs. Claimant has failed to meet her burden.

4. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, e.g., Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

5. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with



developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

6(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

7. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[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. . . .

8. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) 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. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

9. Claimant has not yet obtained denials from all generic resources to fund each of the Requested Items. However, RCOC can provide assistance to Claimant in navigating this process with CalOptima, CCS, and other generic resources through vendors in the Parent Mentor Services Program. (Factual Findings 1-16.)

10. Claimant has not presented sufficient evidence to establish that there is no other generic funding source available for the Requested Items or that by funding the cost of the Requested Items, RCOC would not be supplanting the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for funding the items sought. (Factual Findings 1-16.)

11. Given the foregoing, the Service Agency's denial of funding for the Requested Items was appropriate.

## **ORDER**

1. Claimant's appeal is denied. Regional Center of Orange County's denial of funding for disposable wipes, bibs, diapers, and pureed baby food is upheld.

2. If Claimant's parents request that it do so, Regional Center of Orange County shall assist Claimant's parent to expeditiously obtain approval of vendorization for purchase reimbursement for disposable wipes and bibs. Upon approval of vendorization, Regional Center of Orange County shall authorize reimbursement for a

six-month period in the amount of \$420 or less for the purchase of disposable wipes, and \$75 or less for the purchase of bibs. Receipts would be required for reimbursement following vendorization.

3. If Claimant's parents request that it do so, Regional Center of Orange County shall assist Claimant's parent to monitor any changes in CalOptima funding for disposable wipes, and shall assist them in applying for the CalFresh program.

4. If Claimant's parents request that it do so, Regional Center of Orange County shall fund participation in the Parent Mentor Services Program to assist Claimant's family in navigating and accessing generic resources for disposable wipes, bibs, diapers, and pureed baby food.

5. If Claimant's parents provide it with a letter stating their disagreement with the 2018-2019 Individual Program Plan language, Regional Center of Orange County shall attach that letter to Claimant's 2018-2019 Individual Program Plan. Regional Center of Orange County shall include a discussion of Claimant's need for disposable wipes, bibs, diapers, and pureed baby food at the next Individual Program Plan meeting.

DATE:

LAURIE R. PEARLMAN

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.