

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER.

OAH No. 2020020847

DECISION

Administrative Law Judge Chantal M. Sampogna, Office of Administrative Hearings (OAH), State of California, heard this matter on March 22 and May 24, 2021, by videoconference.

Claimant's mother (Mother) appeared by telephone and videoconference and represented Claimant, who was not present.¹ Court-certified Spanish interpreter Sonia Hernandez appeared by video conference and provided translation assistance to Mother.

¹ Titles are used to protect the family's privacy.

Fair Hearing Specialist Daniel Ibarra appeared by videoconference and represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Testimonial and documentary evidence was received. The record was held open until June 30, 2021, for the parties to submit additional documentation of Claimant's request to Medi-Cal for authorization to fund a van conversion. The parties did not submit additional evidence. The record was closed and the matter was submitted for decision on June 30, 2021.

ISSUE

Whether Service Agency must fund a van conversion for Claimant.

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1 through 16.

Testimony: Daniel Ibarra, Fair Hearing Specialist; and Mother.

SUMMARY

In 2017 and 2019, Claimant requested funding for a van conversion based on Claimant's use of a wheelchair, multifaceted medical challenges, and Mother's physical struggles lifting Claimant and the wheelchair onto her truck. After hearings, Claimant's requests were denied.

In 2020, Claimant renewed her request. Since the previous decisions, essential facts have changed. Most notably, Claimant's height, weight, and age have changed,

as she is now 12 years old. In addition, Mother, as well as Service Agency and medical providers, have made multiple attempts to submit a Treatment Authorization Request (TAR) to Medi-Cal in order to receive either an approval or denial, without success.

Claimant established by a preponderance of the evidence that the requested van conversion is necessary, and that Claimant has exhausted all potential generic funding sources. Service Agency's funding of the van conversion is warranted under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) and is consistent with its Purchase of Service (POS) policy.²

It was not established that Mother has completed purchase of a van. Claimant's appeal is granted and Service Agency is ordered to fund a van conversion for Claimant within six months of Claimant providing proof of purchase of a van by Mother to Service Agency. If Claimant fails to provide proof of purchase, the order will automatically expire, and Service Agency will not be required to fund a van conversion for Claimant.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a 12-year-old girl who resides with her mother and father, in Pomona, California. Claimant is eligible for services under the Lanterman Act based on

² Statutory references are to the Welfare and Institutions Code, unless otherwise specified.

her diagnosis of Cerebral Palsy, Seizure Disorder, and Severe Intellectual Disability. (§ 4512, subd. (a).)

2. In December 2019, Claimant requested Service Agency fund for a van conversion. On January 22, 2020, Service Agency issued a Notice of Proposed Action (NOPA) and denied Claimant's request.

3. Service Agency cited, among others, sections 4646.4, subdivision (a), 4648, subdivision (a)(8), and 4659, subdivisions (a)(1) and (d)(1) of the Lanterman Act as cause to deny the request for the following reasons: a) it determined that the request did not conform with the Service Agency's POS policy; b) Regional Center funds must not be used to supplant the budget of an agency which has a legal responsibility to serve all members of the general public and is receiving funds for providing such services; and c) because Regional Center must pursue all sources of funding and may not purchase any service that would otherwise be available from private insurance or a health care service plan when a client meets the criteria of this coverage but chooses not to pursue that coverage.

4. On February 5, 2020, Claimant requested a fair hearing. Due to a series of continuances granted for reasons related to Covid-19 restrictions and Claimant securing necessary computer equipment to participate in a videoconference hearing, the hearing in this matter did not begin until March 22, 2021.

Claimant's Service Needs

5. Claimant is non-ambulatory and is unable to support her upper body. Claimant uses a wheelchair for mobility in her home and in the community. She is strapped in her wheelchair to prevent her head from slipping and injuring herself. Claimant is mostly non-verbal: she understands some words when spoken to but

struggles to verbally communicate her needs, using one-word utterances, but inconsistently. Claimant requires full support with all personal tasks, including eating, bathing, brushing teeth, and toileting. Claimant is fed via G-tube and consumes food orally with assistance and supervision. She requires constant adult supervision to prevent complications related to her intestinal health and epilepsy.

6. Claimant has additional health concerns. On May 2, 2019, Claimant underwent bilateral abductor tenotomy, percutaneous left hip arthrogram, bilateral VDRO pate and varus derotational osteotomy of the proximal femur. As a result, Claimant experiences pain in her hips when she is lifted and moved. In addition, Claimant stools diarrhea, a side effect from medications, and needs to be changed immediately and requires privacy during the changing process.

7. Claimant attends La Verne Science and Technology Charter School where she attends a special day class. Claimant recently completed sixth grade. Through her Individualized Education Plan (IEP), Pomona Unified School District (PUSD) provides claimant speech therapy, occupational therapy, and transportation to and from school.

8. Claimant depends on her parents for her non-educational transportation needs. At the time of hearing, she weighed approximately 80 pounds and was 50 inches long. Her wheelchair weighs approximately 79 pounds. To transport Claimant, Mother uses their current vehicle, a truck, and must physically remove Claimant from her wheelchair, carry her into her car seat in the truck, and then lift and secure the wheelchair in the truck. Mother is five-feet, four-inches tall and completes the task without assistance. Though Claimant has continuous LVN assistance, it is not in the LVN's job duties to lift Claimant into Mother's vehicle.

9. Mother transports Claimant to medical appointments approximately twice per month and often for medical emergencies, and transports Claimant to activities in the community. Due to Claimant's constant diarrhea, Mother must pull her vehicle over and change Claimant's diaper frequently and immediately to prevent Claimant from developing a rash.

10. Mother has contacted ACCESS, a publicly funded curb-to-curb transportation services for which Claimant is eligible, to inquire about services and was informed ACCESS would not be able to serve Claimant because it would not interrupt its transportation service for Mother to change Claimant's diapers. Moreover, if ACCESS did allow Mother to change Claimant during transportation, this would occur in the presence of the vehicle driver and other vehicle occupants.

11. Mother is no longer able to lift Claimant into the van. Mother experiences pain on both wrists due to arthritis and backpain. Father is ill and experiencing backpain. The parents' conditions have occurred since Claimant's first request but are exacerbated by Claimant's increased weight. Mother intends to fund the purchase of the van and seeks funding for the van conversion from Service Agency.

Claimant's Individual Program Plan

12. Claimant is eligible for Social Security Insurance (SSI) and Medi-Cal. Claimant's October 14, 2020 Individual Program Plan (IPP) provides for the following services and supports:

- 40 hours per week or 160 hours per month of Licensed Vocational Nursing (LVN) nursing.

- 283 hours of In-Home Supportive Services (IHSS), payee Mother.

13. Claimant's requests and transportation challenges are notably absent from Claimant's most recent October 2020 IPP despite Mother's prior 2016 and 2019 requests for Service Agency to fund a van conversion based on Claimant's transportation challenges.

14. The IPP fails to identify Claimant's transportation challenges as a unique need, does not identify van conversion as an outcome goal (even if Service Agency refuses to provide funding), and does not include information about Claimant's requests and transportation challenges in the "Getting Around Town, Managing Money, and Having Fun" section of the IPP. (Ex. 5, p. 3.)

Previous Requests for Van Conversion Funding

15. On August 16, 2016 and June 5, 2019, Claimant requested Service Agency fund a van conversion. Service Agency denied these requests and the denials were affirmed in OAH Case numbers 2017080205 (2017 Decision) and 2019060902 (2019 Decision), respectively.

16. The following excerpted Factual Findings contained in Exhibit 4, the 2019 decision, summarize Claimant's 2017 request and the initial cause for denial. At the time of the 2017 request Claimant was nine years old.

5. Claimant is eligible for Medi-Cal services and receives occupational therapy services through California Children's

Services (CCS).³ On February 2, 2017, Claimant requested that CCS's Medical Therapy Program provide funding for a van conversion in order to make the van wheelchair accessible. On February 21, 2017, CCS denied Claimant's request on the grounds that Claimant had full-scope Medi-Cal benefits and that if the van conversion was medically necessary, Claimant's request could be submitted to Medi-Cal's Early and Periodic, Screening, Diagnostic, and Treatment (EPSDT) services program. [Citation.]⁴ On March 13, 2017, the Los Angeles County Department of Public Health denied Claimant's request for a van conversion on the grounds that Claimant's request involved modification of an automobile, which is not a CCS benefit.

6. To date, Claimant has not submitted a request to Medi-Cal for funding for a van conversion.

³ CCS is a state program that is administered as a partnership between county health departments and the California Department of Health Care Services (DHCS).

⁴ EPSDT benefits provide for comprehensive screening, diagnostic, treatment, and preventive health care services for individuals under the age of 21 who are enrolled in Medi-Cal so that they receive appropriate preventive, dental, mental health, developmental, and specialty services. (Cal. Code of Regs., tit. 22, § 51340, 51340.1, & 51184.)

7. In a September 26, 2017 Decision in Office of Administrative Hearings Case No. 2017080205, SGPRC's denial of Claimant's request for a van conversion was affirmed on the grounds that: 1) Claimant failed to establish that the van conversion was medically necessary; 2) Claimant failed to request that Medi-Cal fund the service; 3) generic resources such as Access Services was available to provide medical transportation services for Claimant; 4) Claimant's mother failed to demonstrate that she suffered from any disability that prevented her from moving Claimant; 5) Claimant's request was premature since Claimant's family did not own a van; and 6) SGPRC's funding of the van conversion would violate SGPRC's Purchase of Service Policy and applicable law. (Ex. 5.)

(Ex. 4, pp. 3 & 4.)

17. At the time of Claimant's 2019 request she had just turned 11 years old and weighed just over 70 pounds, and Mother had not yet requested Medi-Cal funding. The 2019 decision provided the following cause for denial:

Claimant has not met her burden of proving that SGPRC should fund the conversion of a van to make it wheelchair accessible. Notwithstanding the fact that Claimant's family does not currently own a van, SGPRC is a payer of last resort and, as provided by statute and set forth in SGPRC's General Standards policy, it is prohibited from purchasing medical equipment where, as here, the services are

available through a generic resource such as Medi-Cal. Claimant is eligible for Medi-Cal, however, Claimant's family has not requested that Medi-Cal fund a van conversion. A regional center, such as SGPRC, cannot comply with its duty pursuant to section 4659 to pursue all possible sources of funding for Claimant's requested van conversion when Medi-Cal coverage has not been pursued. Should Claimant's parents authorize SGPRC to communicate with, request information from, or give information to other agencies, institutions, or persons concerning Claimant to attempt to secure funding of a van conversion through the Medi-Cal program or any other generic resource, SGPRC should make best efforts to do so.

(Ex. 5, p. 11.)

Service Agency's Evidence in Support of Denial

18. At hearing in the present matter, Service Agency relied on many exhibits considered in the previous 2017 and 2019 matters in support of its denial. Specifically, Service Agency relied on the County of Los Angeles Department of Public Health's (LADPH) March 13, 2017 van conversion request denial letter and March 27, 2019 Medical Management Status Report, as well as the LADPH's California Children's Services Medical Therapy Program's January 4 and 8, 2019 assessments and February 13, 2019 Durable Medical Equipment (DME) Process Worksheet. These documents confirm, among other things, that Claimant requires total assistance with mobility, and that Mother requested van conversion funding from CCS, but funding was declined because van conversion is not a covered benefit. The DME Process Worksheet

informed Mother that she could submit a request to EPSDT based on Claimant's Medi-Cal coverage.

19. As provided in the 2019 decision, Factual Finding 9, Service Agency's POS Policy provides the following.

9. SGPRC's Purchase of Service Policy allows SGPRC to purchase equipment for consumers when: 1) the needed equipment is associated with a developmental disability; 2) the requested equipment is deemed medically necessary; 3) SGPRC's consultants or clinicians have approved the need for the equipment; and 4) the individual is not eligible for Medi-Cal or other coverage, or if eligible, the funding resource has denied the equipment in writing and SGPRC has determined that an appeal of the denial is not warranted.

(Ex. 4, pp. 4-5, citing Ex. 8, p. 21.)

20. Mr. Ibarra testified on behalf of Service Agency and explained Service Agency's position: Claimant must exhaust generic resources such as insurance and must utilize ACCESS for transportation assistance, which Service Agency deems sufficient. To date, Claimant has not obtained a denial letter from Medi-Cal. If Claimant has been successful in obtaining a denial letter from Medi-Cal, the request and denial would be submitted to Service Agency Directors who would have discretion to approve the funding request.

Medical Evidence in Support of Claimant's Request

21. Included in Service Agency's exhibits were the following exhibits which support Claimant's request.

A. October 8, 2019 prescription from Los Ninos Children's Medical Clinic, signed by Claimant's primary pediatrician Emil Dominguez, Jr., M.D., which states "To Regional Center, [Claimant] stools diarrhea constantly needs privacy to change her. ACCESS doesn't provide privacy." (Ex. 9.)

B. October 24, 2019 Certificate to Return to School/Work from Children's Hospital Orange County, signed by Jeffrey Ho, D.O., Claimant's pediatric gastroenterologist. Dr. Ho affirmed that Claimant has a developmental delay and is wheelchair bound, and that she is unable to wait for a transportation service to be changed, but rather needs to be changed immediately after stooling. Dr. Ho concluded Claimant would strongly benefit from a van conversion.

C. November 4, 2019, letter from Children's Hospital Los Angeles (CHLA), signed by Lindsay Andras, M.D., Claimant's orthopedist. In addition to noting Mother's difficulty in transferring Claimant to the truck, Dr. Andras emphasized that since Claimant's May 2019 hip surgery she expresses extreme discomfort when transferred from wheelchair to truck, causing Mother concern that she may injure Claimant during transfers.

D. November 6, 2019 van conversion quote from AeroMobility, estimating a cost of \$24,800, and a March 30, 2021 van conversion quote from Ability Center, estimating a cost of \$29,000.

E. April 23, 2021 letter from Dr. Andras reiterating Claimant's need for a vehicle conversion ramp.

Family has the appropriate vehicle to undergo this change. The ramp is a vital resource for [Claimant] as it will provide ease of [wheelchair] mobility, transfers, and transportation to her surrounding community.

A prescription supporting this was written and provided to the family. As it is our protocol family was instructed to submit this to her primary and secondary insurance to work on obtaining authorization and coverage for this. It has not been a custom on our end to do this for our families here at Children's as when [*sic*] do not render the services for equipment and/or therapy."

(Ex 14, p. 1.) Attached was an updated June 22, 2021 prescription for a ramp for wheelchair conversion to provide postural support, joint alignment, and maintain current flexibility during assisted daily living and home and community activities.

F. Pages from a May 13, 2021 TAR that Mother attempted to complete to submit to Medi-Cal. Among other questions, the TAR asks, "Please list current functional limitation/physical condition codes," and "Please summarize the therapeutic goal to be met with the requested service(s)." In addition, there is a section which requires the applicant to provide "ICD-CM Type," "ICD Code," and "Diagnosis Description." (Ex. 15.) Based on the requested information it is clear the TAR is to be completed by a medical professional and not a parent.

G. Finally, Claimant submitted an April 16, 2021 prescription from CHOC, signed by Daniel W. Shrey, M.D., Claimant's neurologist. The prescription was for a conversion van ramp.

Claimant's Efforts to Obtain Medi-Cal Funding

22. Since the November 2019 decision, Mother has contacted Medi-Cal over eight times to submit a request for funding for van conversion. She began by calling the Department of Public Services and was given a phone number for Medi-Cal. Every time she calls, she speaks with a different person. She has asked multiple times for a denial letter but has been told by different Medi-Cal employees that she needs to ask Regional Center for a denial letter. Medi-Cal employees have also asked her to send a bill for the conversion. She has obtained quotes from conversion companies, but the company representatives told Mother that they are required to submit their paperwork to Regional Centers, and that they do not know how to submit a quote to Medi-Cal. She has since followed up both with Medi-Cal and the companies but has not received any clarity about where or how to submit the quotes or a bill.

23. After hearing Mother's testimony on the first day of hearing, the ALJ called the Medi-Cal number used by Mother. Aline, Medi-Cal employee number 1288, spoke on the record, though she was not sworn in. The parties did not object to Aline's statements and were provided an opportunity to ask her questions. She looked up Claimant by date of birth and though she found Claimant as Medi-Cal eligible, she did not find anything in the Medi-Cal system regarding a van conversion request. She further stated that a medical provider, such as CHLA or CHOC, must submit a TAR through the Medi-Cal portal, available only to medical providers, to request funding for van conversion. Once submitted, Medi-Cal would determine if the conversion was medically necessary and would decide whether to fund the request. Aline's statements

were the first time Mother had heard of a TAR or that one was required to complete her request.

24. On the second day of hearing, Mr. Ibarra confirmed Mother's testimony about her efforts to obtain Medi-Cal funding or a denial letter. He had assisted Mother in some of those efforts before the hearing commenced. Since the first day of hearing, he and Mother continued their efforts. These efforts included contacting Dr. Dominguez's office and requesting the office submit a TAR on behalf of Claimant requesting funding for a van conversion. Specifically, they spoke with Angelica who informed them she did not know how to submit a TAR, stating the medical office is not equipped to process that request. Mr. Ibarra followed up by calling the office on May 20, 2021 and Angelica informed him that she had not submitted any paperwork to Medi-Cal because she was missing vehicle information.

25. After Mr. Ibarra's testimony, the ALJ called Dr. Dominguez's office and spoke with Angelica on the record, though she was not sworn in. The parties did not object to Angelica's statements and were provided an opportunity to ask her questions. Angelica confirmed Mother's and Mr. Ibarra's accounts of her communication with them. She added that she called Medi-Cal twice to inquire how to complete the TAR but she still does not understand how to complete it. She added that she has only been successful in the past when the vehicle to be converted has already been purchased, which, as she understood, was not the case in Claimant's matter. In addition, she could not get past the part of the TAR that required her to enter Claimant's height and weight.

26. As their statements were not sworn, Aline and Angelica's testimony is considered only under Government Code section 11513, subdivisions (c) and (d), as

evidence on which responsible persons are accustomed to rely in the conduct of serious affairs and evidence supplemental to Mother's and Mr. Ibarra's testimony.

27. The record was left open until June 30, 2021 for the parties to work with Dr. Dominguez's office to finalize and submit a TAR and to receive a response from Medi-Cal, either approving or denying the funding. On July 1, 2021, OAH staff contacted Mr. Ibarra and was informed there was no new information to report and Mother was still not able to obtain any documents from Medi-Cal.

Evidence as Applied to the Issue Presented

28. In contrast to Service Agency's previous causes for denial, in this matter Service Agency denied Claimant's request based on its determination that Claimant's request did not conform with Service Agency's POS policy and its conclusion that Claimant had failed to exhaust generic resources, specifically funding by Medi-Cal or the use of ACCESS. Service Agency did not raise previous causes for denial, such as a failure to establish medical necessity or that, as was concluded in the 2017 decision, Claimant's request was premature because Claimant did not yet own a van to be converted.

29. Based on the evidence presented relating to Claimant's efforts to obtain Medi-Cal approval or denial of funding for a van conversion, Claimant established that she has exhausted all funding possibilities. Neither Mother, nor Service Agency or medical providers, after multiple phone calls with Medi-Cal and attempts, could successfully submit a TAR or receive approval or denial of funding from Medi-Cal. For reasons not established, Medi-Cal is not accessible to Claimant as a funding source for van conversion and has, through its inaccessibility, constructively denied Claimant's request.

30. Claimant also established that there are not generic resources available to her that can provide transportation in accordance with the Lanterman Act. Claimant has matured and, accordingly, gained weight, and continues to experience pain when transferred into Mother's truck. In addition, Claimant will be 13-year-old young woman in just over two months. Requiring Claimant to use ACCESS, which would expose her to having her diaper changed publicly, or, in the alternative, would result in a diaper change delay, would expose Claimant to physical harm and violations of her dignity. Further, based on the weight of Claimant and the wheelchair, it is no longer physically possible for Mother to continue lifting and transferring Claimant and wheelchair into Mother's truck.

31. Despite it being raised as an obstacle in statements provided by Angelica, and despite statements made in passing in the 2017 decision that Claimant's request is premature until Claimant purchases a van (Ex. 3, p. 7), it was not established at hearing that Claimant was required to complete purchase of a van before funding could be ordered. Such a rule is not provided in Service Agency's exhibits generally, or in its POS requirements, and Service Agency did not make such arguments at hearing.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative fair hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal Service Agency's denial of her request to have Service Agency fund a van conversion. Jurisdiction was established. (Factual Findings 1-5.)

Burden and Standard of Proof

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161–162) In this matter, Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant requires the requested service. (Evid. Code, §§ 115, 500.)

Regional Center Responsibilities

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’ and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must provide the consumer with needed services and supports which assist the

consumer in achieving the greatest self-sufficiency possible and exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

7. Though regional centers have wide discretion in how to implement the IPP, “they have no discretion in determining whether to implement: they must do so.” (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

Service Requirements

8. Persons with developmental disabilities shall have the right to dignity, privacy, and humane care, to prompt medical care and treatment, and to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect. (§ 4502, subd. (b)(2), (4), & (8).)

9. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer’s particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer’s participation in the community. (§ 4646.5, subd. (a)(2).)

10. Section 4512 provides the following:

A. Services and supports for persons with developmental disabilities means “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability” or toward the consumer’s achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).)

B. The IPP team determines a consumer's necessary services and supports based on the consumer's needs and preferences and must consider a range of service options proposed by IPP participants, the effectiveness of each option in meeting the IPP goals, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

C. Services and supports may include respite services. (§ 4512, subd. (b).)

11. At the time of development or modification of a consumer's IPP, regional centers must ensure that generic services and supports are utilized when appropriate and that the family's responsibility for providing similar services and supports for a minor child without disabilities is considered, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

Funding for Services

12. Regional Centers must conform to their respective POS policies. (§ 4646.4, subd. (a)(1).)

13. Regional Center funds must not be used to supplant the budget or any agency which has a legal responsibility to serve a member of the general public. (§ 4648, subd. (a)(8).)

14. Regional Centers must pursue all possible sources of funding for services, including insurance. (§ 4659, subd. (a)(1).)

15. Regional Center must not purchase any service that would otherwise be available from private insurance or a health care service plan when a client meets the criteria of this coverage but chooses not to pursue the coverage. (§ 4659, subd. (d)(1).)

Consideration of Costs

16. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

17. When selecting a provider of consumer services or supports, the regional center and the consumer, or conservator, must, pursuant to the IPP, consider the following: a provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's IPP; and a provider's success in achieving the objectives set forth in the individual program plan. "The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, . . . who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected." (§ 4648, subd. (a)(6).)

18. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC*, supra, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort. (*ARC*, *ibid.*)

Analysis

19. The following was established by a preponderance of the evidence.

A. In previous denials, Service Agency challenged whether Claimant's request for van conversion funding was medically necessary, but Service Agency did not raise a medical necessity challenge to Claimant's current request. Nonetheless, the evidence established that the van conversion is medically necessary for the following reasons: Claimant's medical conditions cause frequent stooling and require Claimant to be immediately changed; transferring Claimant to Mother's truck causes her physical pain which has not alleviated since her May 2019 surgery; due to Claimant's increased weight, Mother can no longer physically transfer Claimant and the wheelchair without causing herself physical harm.

B. Claimant's use of ACCESS would impinge her rights provided under section 4502, subdivision (b)(2), (4), and (8). Claimant, a soon to be 13-year-old young woman with a developmental disability, has the right to receive services that preserve her dignity, which do not impede her receipt of prompt medical care, and that are provided without causing her harm. The use of ACCESS for her transportation needs would negatively impact her dignity, requiring her to be changed in a public setting, or, in the alternative would delay her receipt of prompt medical care, leaving her in a soiled diaper until ACCESS delivered her to her destination. Restricting Claimant to being transported by Mother without a van conversion subjects Claimant to potential harm, based on the hip pain she expresses when being transferred. The evidence established that since the 2019 decision, this hip pain has continued, alarming Mother that she might injure Claimant during a transfer. (Factual Findings 5, 6, 8-11, 21, & 30.)

C. Claimant met her burden to establish that she has exhausted all possible funding for her request for van conversion, to no avail. Neither Claimant, nor Service Agency or medical providers could successfully submit the TAR, let alone

receive a response from Medi-Cal. Having met her burden to establish she had exhausted funding sources, the burden shift to Service Agency to establish that Medi-Cal was a viable funding source. No evidence was presented that Claimant met the eligibility for Medi-Cal to fund the van conversion, or that Medi-Cal has a legal responsibility to fund Claimant's request for van conversion which Claimant chose not to pursue. Accordingly, Service Agency's funding of Claimant's van conversion would not result Service Agency's funds supplanting the budget of another responsible agency. (Factual Findings 21, 22-29.)

D. Claimant's request meets Service Agency's POS policy: it is associated with her developmental disability; it is medically necessary; Service Agency is not challenging the need for Claimant's van conversion, but only challenged Regional Center's responsibility to pay for the conversion; the evidence established the Medi-Cal is not accessible to Claimant as a possible funder of the van conversion and is deemed to have constructively denied Claimant's eligibility for van conversion. (Factual Findings 5-30.)

20. Claimant's request for Service Agency to fund her van conversion is not prohibited by sections 4946.4, subdivision (a), 4648, subdivision (a)(8), or section 4649, subdivisions (a)(1) or (d)(1). As the payor of last resort, Service Agency must fund Claimant's van conversion. (Factual Findings 5-30; Legal Conclusions 3-19.) Claimant's appeal is granted.

ORDER

1. Claimant's appeal is granted. Service Agency is ordered to fund a van conversion for Claimant within six months of Claimant providing proof of purchase of a van by Mother to Service Agency.

2. If Claimant fails to provide proof of purchase of a van by Mother to Service Agency within nine months of the date of this Decision, the order will automatically expire and Service Agency will not be required to fund a van conversion for Claimant.

DATE:

CHANTAL M. SAMPOGNA
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.