

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2020060597

DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference on July 20, 2020.

San Andreas Regional Center representative James Elliott represented San Andreas Regional Center (SARC), the service agency.

Claimant was represented by his mother. Claimant was not present.

The matter was submitted for decision on July 20, 2020.

ISSUE

Is claimant entitled to SARC funding for a vehicle lift conversion to ambulate by power wheelchair in and out of a vehicle without the assistance of someone to tie down the chair?

FACTUAL FINDINGS

1. Claimant is an 11-year-old boy who is eligible for and receives services from SARC based on his diagnosis of Autism Spectrum Disorder in 2012. As noted in his school district Section 504 eligibility determination plan on August 14, 2018, claimant's autism "creates anxiety," which affects his work production and task completion.

2. Claimant was additionally diagnosed in July 2018 with Bethlem myopathy, a rare and slowly progressive form of congenital muscular dystrophy that causes muscle weakness and fatigue. Claimant is not eligible for services from SARC based on this diagnosis. Claimant has limited ambulation endurance, caused by Bethlem myopathy.

3. Claimant contends that the two conditions "feed off each other." Each creates complications with the other. A likely example is increased anxiety in autism due to mobility limitations in Bethlem myopathy. Claimant refers to a 2018 article, *Autism, Joint Hypermobility-Related Disorders and Pain*, published in *Frontiers in Psychiatry*. Joint hypermobility refers to "an exaggerated increase in the range of a given joint's mobility."

4. The article concludes there is a link between Autism Spectrum Disorder and hypermobility-related disorders. Although the thrust of the article was to better identify patients with Autism Spectrum Disorder who may be susceptible to chronic pain, SARC provided no evidence to dispute the link or claimant's contention.

5. Claimant's mobility lasts only a short time and distance due to his pain, fatigue or shortness of breath. He has a manual wheelchair when needed. Claimant needs his wheelchair for distances over 150 feet. In May 2019, claimant began using a power wheelchair paid by his medical insurance.

6. Claimant usually rides his power chair to and from school on a school bus. Since using the chair, claimant is less sedentary and more sociable with other children. He wants to go other places, including group settings, that previously caused him anxiety.

7. Claimant lives with his mother, his primary caretaker who is raising claimant on her own. She has an 18-year-old son who occasionally visits them, but he lives out of state with his father. As confirmed by a note from her doctor dated May 23, 2019, claimant's mother has chronic neck and back pain, making it difficult for her to tie and untie claimant's power wheelchair in a vehicle.

8. Claimant's mother does not have a vehicle to transport claimant in his power wheelchair. When she goes to the grocery store, she has to leave claimant with another caretaker or leave him in the car because she cannot push a store cart and his manual wheelchair at the same time. She is not able to take claimant to the store, park, and beach, where he can use his power wheelchair for independent mobility.

9. Claimant's physician, Benjamin Reyes Mandac, M.D., confirmed claimant's limited ambulation endurance. In May 2019, he recommended energy conservation

and use of powered mobility. Dr. Mandac prescribed a manual wheelchair van conversion with manual tie downs and EZ lock.

10. Claimant's mother wants to purchase a Honda Pilot SUV instead of a van. She finds vans or minivans depressing, and wants claimant to use the SUV if he becomes an independent driver. Claimant requests SARC funding for a manual power chair conversion with power locks in this SUV.

11. SARC referred claimant's request to an occupational therapist for review. The occupational therapist for SARC concludes that claimant is not eligible for funding based on three reasons: medical necessity, cost effectiveness, and SARC eligible diagnosis.

12. The therapist refers to SARC health care policy to exclude medical needs not related to claimant's developmental disability, such as muscular dystrophy. She concludes that claimant is not eligible for SARC funding because Bethlem myopathy is not an eligible diagnosis for SARC service. This narrow interpretation does not take into account any link between the two conditions or the effect of the non-eligible diagnosis on claimant's anxiety caused by his eligible diagnosis of autism.

13. The therapist similarly concludes claimant is not eligible for SARC funding based on the lack of medical necessity for his autism. On November 22, 2019, she observed claimant was capable of independent ambulation to and transferring in and out of the family car. She testified that individuals with autism rarely need medical equipment. On December 3, 2019, claimant's physical therapist reports that claimant's autism and anxiety affect his tolerance to change.

14. The SARC occupational therapist also concludes claimant is not eligible for funding based on cost effectiveness. She notes claimant has access to community

integration with his lightweight foldable wheelchair that may be carried in the family car. Based on estimates, a manual minivan lift conversion with power lock downs costs \$19,000 to \$20,000. The estimated cost for conversion of a Honda Pilot SUV is \$25,734.

15. By its Notice of Proposed Action dated January 9, 2020, SARC denied funding for conversion of a Honda Pilot SUV for the same three reasons: it is not a medical necessity due to claimant's functional mobility skills, claimant's diagnosis of autism is not an eligible diagnosis for adaptive equipment, and the Honda Pilot conversion (versus a minivan conversion) is not a cost effective solution. Claimant submitted a Fair Hearing Request. Claimant contends that the conversion will alleviate the physical difficulties of his mother and primary caregiver in tying down the power wheelchair, making access to places in the community, other than school, more available to claimant.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (the Act), the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (*Id.*, §§ 4501, 4502, subd. (b)(3); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government-funded services. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161; Evidence Code, §§ 115, 500.)

3. The 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.” (Welf. & Inst. Code, § 4501.) Handicapping conditions that are solely physical in nature are not considered developmental disabilities. (*Id.*, § 4512; Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

4. Under the SARC Health Care Policy adopted June 19, 2017, medical conditions related to the developmental disability are “conditions which arise as a direct result of the developmental disability and the health status of the individual changes.” By reason of Finding 1, claimant’s anxiety is a direct result of his developmental disability. By reason of Finding 2, claimant’s health status changed with his diagnosis of Bethlem myopathy.

5. Claimant’s anxiety is decreased by his added mobility of a power wheelchair, but limited by where he can take the chair. By reason of Findings 6 and 8, a manual lift conversion will enable claimant’s mother to transport him to more places and interact optimally with his environment. It also will increase his independence and community inclusion.

6. Under a broad interpretation of the Act, and by reason of Findings 3 and 4, claimant has met his burden of proving a manual lift conversion is not solely related to his non-eligible diagnosis of Bethlem myopathy and not strictly limited to that diagnosis. Additionally, by reason of Findings 7 and 8, the ongoing health condition of

claimant's mother, who is his primary caregiver, interferes with claimant's ability to access the community and decrease his anxiety. Cause exists for SARC to fund a manual lift conversion with power locks. To hold otherwise would contravene the overarching policy of the Lanterman Act, which is to support consumers' "integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.)

7. Regional centers have the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) While regional centers have a duty to provide a wide array of services, they are also directed to provide services in a cost-effective manner. (*Id.*, §§ 4646, subd. (a), 4646.4, subd. (a)(1).)

8. Claimant has not met his burden of proving that the cost for a lift conversion for a Honda Pilot SUV is cost effective. However, the cost for a minivan conversion is significantly less. SARC has not provided evidence that the lesser cost exceeds the bounds of cost-effective service or equipment. By reason of Findings 9 and 14, cause exists for SARC to fund a manual van lift conversion with power locks.

ORDER

Claimant's appeal is granted in part and denied in part. Claimant is entitled to have San Andreas Regional Center fund a vehicle lift conversion with power locks. Claimant is not entitled to have San Andreas Regional Center fund a vehicle lift conversion with power locks for a Honda Pilot SUV. However, the regional center is required to pay up to \$20,000 for a van lift conversion with power locks.

DATE:

BARBARA O'HEARN

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.