

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

In the Matter of:

CLAIMANT

VS

INLAND REGIONAL CENTER, Service Agency.

OAH No. 2020070008

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via telephonic conference, on August 11, 2020, pursuant to the July 17, 2020, Order converting the hearing from an in-person hearing to a telephonic hearing due to the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-63-20.

Stephanie, Zermeño, Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Brian Allen, Education Consultant/Advocate and authorized representative, represented claimant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on August 11, 2020.

ISSUE

Should IRC be required to fund diaper services for claimant?

FACTUAL FINDINGS

Background

1. Claimant is a three and one-half-year-old female eligible for regional center services based on a diagnosis of autism. On March 18, 2020, claimant's grandmother and foster mother (foster mother), requested diaper services for claimant. IRC provided foster mother with a \$150 voucher for diapers from March 1, 2020 through June 30, 2020. On June 10, 2020, foster mother requested diaper services for claimant because her cerebral palsy diagnosis resulted in her using eight to 10 diapers per day. IRC requested additional information to consider her request.

2. On June 23, 2020, IRC sent foster mother a Notice of Proposed Action (NOA) and attached a letter, dated June 18, 2020, denying claimant's request. The letter stated that IRC had authorized a one-time diaper reimbursement in the amount of \$150 and foster mother receives a supplemental rate of foster care benefits for claimant's necessities. Foster mother was asked to provide IRC with additional information as to a cerebral palsy diagnosis and she was encouraged to request funding for diapers from claimant's medical insurance.

The letter informed foster mother that if she disagreed with the decision, she could file a Fair Hearing Request within 30 days of receipt of the letter.

3. On June 25, 2020, Brian Allen, authorized representative, filed a Fair Hearing Request on behalf of claimant. The form stated the following reason for the request:

Inland Regional Center is failing to fund for Diaper Assistance.

In response to "[D]escribe what is needed to resolve your complaint," he wrote:

Inland Regional Center should be ordered to provide Diaper Vouchers or fund for Diaper Assistance.

IRC's Evidence

4. Jessica Gallegos has been a Consumer Services Coordinator (CSC) at IRC for more than two years. Her duties include connecting consumers to sources in the community and researching generic resources. She is claimant's CSC and testified at hearing.

Claimant's qualifying diagnosis is autism, but she has also been diagnosed with Fetal Alcohol Syndrome, and, according to her foster mother, cerebral palsy. Claimant is covered by private insurance and Medi-Cal. She lives with foster mother, two siblings and a cousin. Claimant is not toilet trained and has no control over her bodily functions. She wears a brace on her right foot, she resists personal care and needs one-on-one care. Claimant receives 80 hours per month of respite care from Cambrian Homecare. Other services she receives include 20 hours per month of In-Home-Supportive Services (IHSS) funded through the county of San Bernardino, and occupational, physical and speech therapies as part of her Individualized Education Plan (IEP). She was assessed for Applied Behavioral Analysis (ABA) services, sponsored

by Easter Seals, but she has not received these services due to the COVID-19 pandemic. The services are online, and foster mother states that claimant does not benefit from online services.

At an Individualized Program Plan (IPP) meeting on March 18, 2020, foster mother requested the following services for claimant: respite care, day care, occupational therapy, physical therapy, speech therapy, and diaper assistance. On April 7, 2020, Ms. Gallegos sent an email to foster mother, which read:

In regards to the diaper reimbursement, I will be placing POS for the months of 3/1/2020-6/30/2020. You can use the diaper receipts during this period in which you can receive up to \$150 for diaper reimbursement.

On June 1, 2020, foster mother contacted Ms. Gallegos, inquiring why she had only received one voucher for diapers. Ms. Gallegos referred to her April 7, 2020, email, which stated the \$150 voucher was "for the months of 3/1/2020-6/30/2020." Foster mother requested diaper service due to claimant's cerebral palsy, stating that the severity of her diagnosis makes claimant use eight to 10 diapers per day, and claimant's insurance will not cover the cost of diapers until claimant is five. Ms. Gallegos asked for documentation regarding the cerebral palsy diagnosis.

Kathleen DeCoud, Program Manager and Ms. Gallegos's supervisor, testified that on June 11, 2020, she notified Mr. Allen and foster mother that IRC would not fund diapers, and on June 23, 2020, she prepared the NOA, denying claimant's request. In the letter attached to the NOA she explained that IRC must confirm a diagnosis before they can fund anything based on that diagnosis and all generic sources of funding, such as Medi-Cal, private insurance, and social security, must be

exhausted. Per the Lanterman Act, a regional center is not permitted to fund services that the consumer may obtain from another source. Family resources must also be explored. For example, when a typical three-year-old, with no physical or behavioral challenges needs diapers, that child's parents or family are responsible for the cost.

In July 2020, Ms. Gallegos presented claimant's request to IRC's Clinical Review team, and the request was denied. The team reasoned that the \$3,600 foster mother receives monthly from the county for claimant's care should cover the cost of diapers; they advised obtaining medical records regarding a cerebral palsy diagnosis; and finally, the team suggested that foster mother address the toilet training with ABA. Adaptive Skills Training falls under the umbrella of ABA services, which claimant is already receiving through Inland Empire Health Plan (IEHP).

Foster mother told Ms. Gallegos that claimant had not been receiving ABA services since ABA went online in March 2020 in connection with the COVID-19 pandemic. She said claimant receives no benefit from online services and foster mother doesn't have time for one-on-one. Ms. Gallegos suggested checking with private insurance to see if they could provide an in-home service. Ms. Gallegos provided emails between herself and other IRC staff members, as well as San Bernardino County staff, to ensure that she had checked into all resources.

On August 5, 2020, foster mother received a payment of \$3,617 from San Bernardino Child and Family Services, for claimant's necessities. This is a monthly payment which includes a supplemental payment due to claimant's special needs. According to foster mother, claimant uses eight to 10 diapers per day; a three-year-old will typically use five to six diapers per day. Ms. DeCoud estimated the cost for claimant's diapers to be about \$140 per month.

Ms. DeCoud testified that IRC has tried to assist claimant. She was given a one-time voucher for \$150. IRC has twice requested information from Kaiser Permanente as to why claimant uses so many diapers and received no response. Foster mother was asked to obtain specific information about a cerebral palsy diagnosis. If claimant has a medical necessity, approved by her physician, she would qualify for diaper assistance through Medi-Cal. If Medi-Cal and her insurance company refuse to pay for these services, IRC would need letters confirming these denials.

Claimant's request was denied per the Lanterman Act. IRC is a payor of last resort and regional centers "shall not purchase" any service that is otherwise available to consumers through sources such as Medi-Cal, private insurance, and IHSS. (Welf. & Inst. Code, § 4659, subd. (c).) All generic resources must be exhausted before IRC would be able to provide further funding. This has not been done at this time.

Testimony of Foster Mother

5. Foster mother testified that she participated in the March 11, 2020, IPP meeting and requested respite care, day care, occupational, physical, and speech therapies, and diaper assistance for claimant. She was "under the impression that the diaper assistance was ongoing until the next IPP." At the meeting on June 11, 2020, they "discussed continuation of diaper services," and she is waiting for the start of respite care and diaper service. She has reached out to generic sources, such as Kaiser, with no response. She needs additional assistance in paying for the diapers and does not understand why this is "money related." IRC has not asked for her financial information.

Discussion

6. IRC stated that the Lanterman Act prohibits regional centers from purchasing a service that is available through generic sources such as private insurance or a health care service plan. Foster mother has not provided denials to her request for diaper services from Medi-Cal or private insurance or other generic sources. She has not pursued Adaptive Skills Training with ABA to assist with toilet training as recommended by the clinical division. Foster mother has not provided the medical documentation requested by IRC regarding a cerebral palsy diagnosis or determined if there may be another medical condition. Ms. DeCoud estimates the cost of eight to 10 diapers per day for claimant to be about \$140 per month; foster mother receives \$3,600 per month for claimant's care. She said, "there is a lack of financial need, there was no proof to the contrary."

7. Claimant argued that IRC staff advised that they would review the diaper services annually and that IRC agreed to provide an adaptive skills assessment for claimant. There was no documentation regarding an annual review for diaper services, and IRC staff denied making such a statement. IRC's clinical division suggested that claimant obtain an adaptive skills assessment provided through ABA, a service that claimant currently has through her insurance. IRC staff confirmed that they did not agree or offer to provide this service.

Claimant contends that foster mother had attempted to reach out to generic resources, but she received no responses. It is understandable that claimant would be frustrated, however, IRC's requirement for a written denial is in keeping with its responsibilities under the Lanterman Act to ensure that resources are not available elsewhere. Claimant pointed out that IRC purchases diapers for children aged three or older. (Welf. & Inst. Code, § 4685, subd. (c)(7).) IRC's denial was not based on

claimant's age, but rather that IRC is prohibited from providing services that are available to a consumer elsewhere.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Welfare and Institutions Code section 4501 outlines the State's responsibility for persons with developmental disabilities and the State's duty to establish services for those individuals.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The 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 . . .

Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

6. Welfare and Institutions Code section 4646.4, subdivision (a) states:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's Individual Program Plan . . . 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. . .

(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.

7. Welfare and Institutions Code section 4648, subdivision (a)(8), states:

Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

8. Welfare and Institutions Code section 4659, subdivision (a) requires that regional centers shall "identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

9. Welfare and Institutions Code section 4659, subdivision (c) provides:

. . . notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise

be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

10. Welfare and Institutions Code section 4684 provides in part:

(a) Notwithstanding any other provision of law, the cost of providing 24-hour out-of-home nonmedical care and supervision in community care facilities licensed or approved pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code shall be funded by the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program pursuant to Section 11464, for children who are both AFDC-FC recipients and regional center consumers.

(c)(1) For regional center consumers who are recipients of AFDC-FC benefits, regional centers shall purchase or secure the services that are contained in the child's Individualized Family Service Plan (IFSP) or Individual Program Plan (IPP), but which are not allowable under federal or state AFDC-FC provisions.

(d) (2) AFDC-FC and AAP benefits shall be for care and supervision, as defined in subdivision (b) of Section 11460,

and the regional centers shall separately purchase or secure other services contained in the child's IFSP or IPP pursuant to Section 4646 to 4648, inclusive, Section 4685, and Sections 95018 and 95020 of the Government Code. Notwithstanding any other provision of law or regulation, the receipt of AFDC-FC or AAP benefits shall not be cause to deny any other services that a child or family for which the child or family is otherwise eligible pursuant to this division.

11. Welfare and Institutions Code section 4647, subdivision (a) states:

Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an Individual Program Plan, including, but not limited to, participation in the Individual Program Plan process; assurance that the planning team considers all appropriate options for meeting each Individual Program Plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's Individual Program Plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

12. Welfare and Institutions Code section 4644, subdivision (a) states:

. . . In no case, shall regional center funds be used to supplant funds budgeted by any agency which has a responsibility to provide prevention services to the general public.

13. Welfare and Institutions Code section 4685, subdivision (c)(7) states:

A regional center may purchase or provide a voucher for diapers for children three years of age or older. A regional center may purchase or provide vouchers for diapers under three years of age when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

Evaluation

14. A preponderance of the evidence demonstrated that IRC is not required to fund diaper services for claimant. Claimant must exhaust all generic resources first, and this has not been done. The Lanterman Act prohibits IRC from providing these services if claimant is able to obtain them elsewhere. For the reasons stated above, claimant's appeal is denied.

//

//

//

//

//

ORDER

Claimant's appeal from IRC's denial of her request to fund diaper services is denied.

DATE: August 21, 2020

MARION J. VOMHOF

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.