

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020110428**

**DECISION**

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 17, 2021.

Claimant was represented by Britt Van Giesen, special needs advocate, and her mother (Mother).<sup>1</sup>

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

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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 on May 17, 2021.

## **ISSUE**

Whether Service Agency must provide funding for a "wheelchair conversion of vehicle [and] electric ramp." (Exh. 1, 008.)

## **EVIDENCE RELIED UPON**

Documents: Exhibits 1-12, and A-B

Testimony: Mr. Van Giesen and Mother.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a nine-year-old consumer who is eligible for Lanterman Developmental Disabilities Services Act services (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> based upon a qualifying diagnosis of cerebral palsy and severe intellectual disability. (Exh. 3, 010.)

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

2. In a Notice of Proposed Decision (NOPA) dated November 2, 2020, the Service Agency notified Parents that they were proposing to “[d]eny funding for a van conversion.” (Exh. 1, 005.)

3. Mother submitted a Fair Hearing Request dated November 14, 2020, to appeal the Service Agency’s decision.

4. All jurisdictional requirements have been met.

## **Background**

5. Claimant lives with her parents (Parents) in the family home. Claimant is nonambulatory and requires total care assistance to complete her self-care needs. Though Claimant uses a wheelchair, she is unable to move it independently.

6. On November 7, 2019, an Individual Program Plan (IPP) meeting was held with Claimant, Parents and SGPRC Service Coordinator Arturo Ramirez.

7. During the IPP meeting, it was noted that Parents provide for all of Claimant’s transportation needs. (Exh. 3, 012.) Parents, however, relayed to SC Ramirez that in order to transport Claimant, they needed to carry Claimant on and off the family van. They noted that this has become harder for Parents as Claimant has grown older. In order to facilitate Claimant’s transportation, Parents inquired about a van conversion and a disabled person car seat.

8. SC Ramirez noted in the IPP that he encouraged Parents to request these supports through California Children’s Services (CCS).<sup>3</sup> Parents’ request for these

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<sup>3</sup> CCS is a California state program managed by the Department of Health Care Services that treats children with certain physical limitations and chronic health

supports, however, were not included as either an objective or goal in Claimant's 2019 IPP report.

9. There were five desired outcomes (outcomes) listed in Claimant's IPP.

A. Outcome 4 was "Parents would like [Claimant] to maintain her seizures under control and remain in good health." (Exh. 3, 018.) Parents were to monitor Claimant's medical and dental exams and tests and provide Claimant transportation

B. Outcome 5 was "Parents would like [Claimant] to remain in the appropriate education setting." (Exh. 3, 018.) Parents reported during the IPP that Claimant had been attending special day classes at a school within the El Monte City School District with a one-to-one licensed vocational nurse (LVN) with her at all times. Parents reported that the current school was a good fit for Claimant.

## **SGPRC Purchase of Service**

10. The SGPRC's Purchase of Service policy (POS) does not expressly cover wheelchair conversions or ramps. In the November 2, 2020 NOPA, however, the Service Agency cited to its POS regarding medical, dental, equipment, and supplies, which states, in part,

The regional center may purchase medical, dental, equipment, and supplies for either children or adults if the following criteria are met:

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conditions or diseases. Included among the covered conditions are diseases of the nervous system, such as cerebral palsy and uncontrolled epilepsy/seizures.

1. The needed treatment or equipment is associated with, or has resulted from a developmental disability, developmental delay or established risk condition; AND
2. The requested treatment and equipment is deemed to be medically necessary; AND
3. The regional center consultants or clinician have reviewed and approved the need for such treatment or equipment; AND
4. The individual is not eligible for Medi-Cal, California Children's Service, private insurance or another third-party payer coverage or these funding resources have denied the necessary equipment in services in writing and the regional center has determined that an appeal of the denial is not warranted.

(Ex. 11, 055.) (Capitalized text in original.)

### **Necessity for Vehicle Conversion**

11. Claimant has a medical diagnosis of cerebral palsy, Rett Syndrome, and Lennox Gasaut Syndrome, a severe form of epilepsy. Claimant is prone to severe recurrent seizures which are resistant to medical management (intractable seizures). In order to decrease the frequency of her seizures, Claimant has had a vagus nerve stimulator (VNS) inserted into the left side of her chest. Since the beginning of the year, Claimant has had more than 80 seizures. (Exh. B.)

12. Claimant receives health benefits through Medi-Cal/HealthNet. Her primary care physician is Joseph Cuento, M.D. Claimant also sees a neurologist, Deborah Holder, M.D., at the Children's Hospital in Los Angeles for her epilepsy.

13. In a letter dated September 1, 2020, Dr. Cuento noted that Mother has been transporting Claimant by private car rather than a medical transport service such as Access due to the ongoing COVID19 pandemic and a desire to minimize Claimant's exposures as she has a history of extended hospitalizations. He further noted that due to Claimant's cerebral palsy, Claimant would stiffen and lock her joints which made it "extremely difficult to transfer her" from her wheelchair to her care seat. (Exh. 6.) Dr. Cuento noted that as Claimant was continuing to grow that it was "becoming much more difficult and even dangerous for her mother to place her in the car" and requested the Service Agency "facilitate the installation of a wheelchair car conversion and ramp to accommodate [Claimant's] and her family's needs." (*Ibid.*)

14. Dr. Cuento expanded on his rationale for the necessity of the wheelchair car conversion and ramp in a second letter dated February 1, 2021. Specifically, he noted that if Claimant has a prolonged seizure on the road, Mother would have to pull over and administer Claimant's emergency medication, which cannot be expected to be performed "on public transportation, a school bus or even via medical transport services such as Access." (Exh. 7, 031.)

## **Access**

15. Access is a form of public transportation that offers "a shared-ride service for persons with disabilities who, because of their disability, are unable to use regular bus and rail services." (Exh. 12, 089.) With the exception of "standing order rides" which allow individuals to schedule a series of rides for an extended period of time if

the order meets several prerequisites, Access requires that trips be reserved a day in advance and each trip has a one-hour reservation window. (Exh. 12.)

16. Mother asserts that Access is not appropriate for Claimant in that Mother gets called on a regular basis by Claimant's school to pick her up if she is having an epileptic episode. A medical transportation service like Access would not allow her to reach Claimant quickly. In addition, Access is a shared ride service. As Claimant's emergency medicine is administered rectally, Mother does not want to expose her daughter in that way to strangers in order to administer the medication.

17. After discussing Claimant's various medical needs, personnel at Access confirmed with Mother that it would not be a good option for Claimant. In a letter dated March 18, 2021, Access states that it would be unable to accommodate a request to pull over during the trips to permit Mother or another caregiver to administer medication to Claimant as it would "fundamentally alter" the services offered by Access Services. (Exh. A, 003.)

## **Denial of Funding**

18. On September 16, 2020, Dr. Holder submitted a service authorization request (SAR) to CCS requesting a wheelchair conversion kit and ramp for her car. The request was denied on September 18, 2020. (Exh. 5.) The basis of the denial was somewhat unclear as the letter both states that: (1) Claimant is not eligible for the services and (2) a vendor was not identified on the SAR and one needed to be identified in order for CCC to address the special equipment. There is no evidence that this denial was appealed or that the Service Agency required Claimant to appeal the denial.

19. On September 18, 2020, Dr. Cuento requested approval for the car conversion. The request was denied “because it is not a covered service and is excluded from coverage under HEALTHNET MEDI-CAL.” (Exh. 7, 031.)

## **Notice of Proposed Action**

20. On November 6, 2020, the Service Agency informed Claimant that it was proposing to “[d]eny funding for a van conversion.” (Exh. 1, 005.) Enclosed with the letter with a written NOPA dated November 2, 2020. Both the letter and NOPA cited to Welfare and Institutions Code sections 4646.4, subdivision (a), 4648, subdivision (a)(8), and 4659, subdivision (a)(1) and its Purchase of Service policy regarding the purchase of medical, dental, equipment, and supplies, but provided no information to Claimant as to how the cited statutes and policy justified the denial of the van conversion.

## **LEGAL CONCLUSIONS**

### **Standard and Burden of Proof**

1. 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.) The burden of proof is on the person whose request for government benefits or services has been denied. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) As the party seeking funding for a previously unfunded service, the burden of proof in this matter is on the Claimant.

### **Applicable Law**

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman 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.” (§ 4501.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

3. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports that: meet the individual needs and preferences of consumers (§§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (§§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (§ 4502, subd. (a).); and “maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4640.7, subd. (a).)

4. The “services and supports” which may be provided to a consumer include “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability” and may include “adaptive equipment and supplies . . . .” (§ 4512, subd. (n).)

5. Section 4710, subdivision (b), requires the regional center to send “adequate notice” to the consumer or authorized representative by certified mail no more than five working days after a decision to deny the initiation of a service or support. “Adequate notice” is defined by section 4701 as “a written notice” which must include, information regarding: (1) “The action the service agency proposes to take. . .” (subd. (a)); (2) “The reason or reasons for that action” (subd. (b)) (3) “The effective date of that action” (subd. (c)); (4) “The specific law, regulation, or policy supporting the action” (subd. (d)); and (5) information regarding the consumer’s appeal rights. (subd. (e)-(n).)

## Analysis

6. The Service Agency failed to provide Claimant with adequate notice of its decision to deny Claimant's request for a wheelchair conversion and electric ramp. As set forth in Legal Conclusion 5, the Service Agency must provide Claimant with the "reason or reasons" for its action. The NOPA that was issued to Claimant, however, did not explain the reason for its denial of Claimant's request. The mere recitation of statutes and SGPRC's POS and does not discharge the Service Agency's duties under section 4701.

7. The purpose of the Lanterman Act is "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." (*Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) The determination of which services and supports are necessary are made through the IPP process, based on the needs and preferences of claimant and claimant's family, when appropriate, and should include the consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The Lanterman Act contemplates that the services and supports provided to each consumer will be flexible and individually-tailored to meet the needs of the consumer and her family. (§ 4648, subd. (a)(2).)

8. Claimant's current IPP is not in compliance with the objectives of the Lanterman Act. Parents are currently charged with transporting Claimant to and from her medical appointments and to and from school. In order for Outcome 4 and 5 of

Claimant's IPP to be met, Parents must have a means of providing Claimant with transportation. Though Parents expressed their need for supports when transporting Claimant, the IPP failed to propose or evaluate the services and supports that were available to Parents.

9. In securing services and supports for its consumers, regional centers must ensure that its purchase of services and supports conforms to its purchase of service policies. (§ 4646.4, subd. (a)(1).) These policies are reviewed by the Department of Developmental Services "to ensure compliance with statute and regulation." (§ 4434, subd. (d).) Regional centers, however, cannot deny requested services and supports on the basis of a general policy not to provide such services and supports. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225.) Reliance on an inflexible policy is inconsistent with the Lanterman Act's stated purpose of providing services "'sufficiently complete to meet the needs of each person with developmental disabilities.'" (*Id.* at 232 citing § 4501.) The Lanterman Act clearly contemplates that services to be provided to each consumer will be selected "'on an individual basis.'" (*Id.* at 233 citing *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

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10. Regional centers also have a duty to consider the family's responsibility for providing similar supports and services for a minor child without disabilities, 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)(1), (a)(2) & (a)(4).) Regional centers are also mandated to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental or other entities or programs required to provide or pay the cost of providing services. (§

4659, subd. (a) & (b).) "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

11. SGPRC's POS Policy provides that SGPRC may purchase medical equipment for consumers if the equipment is associated with a developmental disability, is medically necessary, is approved by regional center clinicians, and if there is no generic funding source available. (Factual Finding 9.)

12. In this case, the evidence established that: (1) the wheelchair conversion and electric ramp were associated to Claimant's developmental disabilities; (2) Claimant's medical condition is such that these supports are necessary for her to achieve the goals that have been set out in her 2019 IPP; (3) the possibility of funding by another source has been exhausted in that Claimant requested funding for the supports from generic resources, the requests were denied and there was no evidence that the Service Agency determined that an appeal of those denials would be appropriate; and (4) there was no evidence that there was a satisfactory alternative means of transportation available. Given the foregoing, the Service Agency's denial of funding was not justified.

## **ORDER**

Claimant's appeal is granted. The San Gabriel/Pomona Regional Center shall provide funding for an automated lift and conversion.

DATE:

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NANA CHIN

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.