

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2021010128

DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via telephone and videoconference on February 16, 2021, from Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's foster mother, E.F., represented claimant, who was not present at the hearing.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on February 16, 2021.

ISSUE

Whether claimant established ACRC should be required to fund her request for a specialized car seat to be fitted to E.F.'s van.

FACTUAL FINDINGS

Background

1. Claimant is a 19-year-old woman who is eligible for regional center services based on her severe intellectual disability, cerebral palsy, and autism spectrum disorder, each with an etiology of Rett Syndrome. She has a history of epilepsy, but has not had a seizure for over five years. Claimant is dependent on her care provider, who is primarily E.F., for all aspects of her life. E.F. became claimant's guardian when claimant was two and a half years old. Claimant is largely non-ambulatory, but was recently approved funding for a gait trainer through ACRC. With the gait trainer, in November 2020, she added a goal to "walk with appropriate supports" to her Individual Program Plan (IPP).

2. On February 6, 2017, Elizabeth Brushwyler, Physical Therapist, evaluated claimant, her vehicle, and her car seat. She assessed claimant's needs and recommended the following:

Valet Seat: To assist with the transfers, I would recommend a Valet Plus seat. This will allow for a stand pivot transfer next to the car, and then the seat would lift her back in. She will need the LATCH attachments as she uses her car seat in the van. She currently has a Columbia Model #2000 car

seat, but this should be replaced with a car seat with LATCH, which this does not have.

Car Seat: A possible solution would be the Convaaid Carrot. It serves clients 30 – 108 lbs. and height 37" – 60". They will need the tether strap to secure the car seat. But it comes with LATCH which is needed for the Valet seat and the Carrot has the ability to grow and will fit [claimant] for a significant time. She does not have the trunk control to sit in a regular seat without support and she is too tall for commercially available seats. Her [c]urrent car seat is at least 6 years old.

Lift: I would recommend adding a hitch to the van and then an Outsider lift for her manual wheelchair with a swing away mount to transport her manual tilt wheelchair.

3. On May 4, 2017, claimant's 2016 IPP was updated to reflect claimant's goal of being safely transported in her family vehicle. E.F. owned a 2004 Honda Odyssey (2004 Honda). The IPP addendum included the following:

Her legal guardian would like for [claimant] to be independent and escort herself into the van with a specific type of Valet Seat (Valet Plus Seat). The (Valet Seat) will automatically lift her up to a safe position in the van. She is also requesting a hitch to the van and then Outsider lift for her manual wheelchair with swing mount to transport her mannual [*sic*] tilt wheelchair.

4. E.F. received a prescription for the equipment and attempted to have it funded using generic resources, including MediCal and California Children's Services (CCS). The funding requests were denied and claimant's service coordinator, Brenna Levy, presented claimant's request to ACRC's Durable Medical Equipment (DME) committee. The service coordinator obtained approval to fund the Valet Seat, hitch, and outsider lift with a swing mount. As of the June 22, 2017 amended IPP, the car seat request had not been presented to the DME committee.

5. On May 4, 2017, ACRC agreed to fund the equipment through its vendor, Mobility Works, for a cost of \$9,657.81. Mobility Works installed the equipment. Once the van was modified to allow claimant to transport in the Valet Seat and her wheelchair to be mounted on the outside of the van with the wheelchair lift, ACRC determined the requested car seat was duplicative. In addition, claimant's current car seat or the requested car seat would not work with the new valet seat.

6. Claimant's mother drove the van for a few weeks and on June 22, 2017, at 10:00 a.m., she returned to Mobility Works to meet Ms. Levy, Ethan from Mobility Works, and Brenda Lee, Physical Therapist, for an physical/occupational therapy re-assessment. The IPP was amended again to reflect Ms. Lee had re-evaluated claimant and recommended claimant's car seat be replaced.

7. At the June 22, 2017 meeting, E.F. complained the hitch and wheelchair lift added too much weight to the back of the 2004 Honda and it was unsafe to drive. The van scraped the driveway when she was backing out and E.F. felt the weight was too much for the van, and especially unsafe on the highway. Mobility Works offered to teach E.F. a better method of backing out of her driveway, but E.F. was offended and declined.

Ms. Lee recommended E.F. have a demonstration of the new car seat at the vendor to determine whether it would fit in the Valet Seat before Ms. Levy agreed to request funding from the DME committee. The meeting at Mobility Works concluded. Ms. Levy and Ms. Lee had a telephone call that afternoon to discuss the options. Ms. Lee concluded the telephone call and then called Ethan at Mobility Works to see if he could be present at a car seat demonstration. Ethan informed her that the issue was moot as E.F. was still at Mobility Works and was signing paperwork to purchase a pre-modified Honda Odyssey (2015 Honda).

E.F.'s purchase included trading in the modified 2004 Honda. She used money from her retirement account to fund the \$60,000 van. Both Ethan and his manager attempted to talk E.F. out of buying the new van. Ms. Lee expressed shock that E.F. had purchased a modified van without having an assessment to determine claimant's wheelchair fit. E.F. took the phone from Ethan and told Ms. Lee she still needed a car seat because her current car seat was too old to be safe. Ms. Lee responded that she could not recommend ordering a car seat without a demonstration and fitting.

2017 Car Seat Request

8. E.F. continued to request ACRC fund a car seat for claimant in the event claimant is transported in a vehicle other than the 2015 Honda. In addition to being able to secure claimant's wheelchair, the 2015 Honda also had bench seating that could be used with a car seat. Ms. Levy's supervisor directed her to process the request to the DME committee. On July 20, 2017, E.F. was notified of the DME committee's denial and was informed of her appeal rights. The DME committee explained the request was denied because there was "no assessed need for a specialized car seat because [claimant's] needs are already being met by the family's specialized vehicle which is able to transport [claimant] in her wheelchair." The letter also explained

claimant's parents were responsible for purchasing a "back-up or convenience item" such as the specialized car seat. E.F. did not appeal the decision.

9. On August 30, 2018, during claimant's IPP meeting, E.F. renewed her request for a specialized car seat. She was reminded the request was denied in 2017 because she had purchased a modified van and ACRC cannot fund duplicate services. On March 5, 2019, following E.F.'s request, Ms. Levy informed E.F. the policy regarding duplicate services had not changed. ACRC was not allowed to fund the car seat if ACRC had already funded a van conversion. The request was denied.

10. In June 2019, prior to claimant's 18th birthday, Ms. Levy began the process to transfer claimant from ACRC's children's unit to adult unit. In April 2020, Debra Van Hulsteyn took over claimant's case as a "Covering Service Coordinator," until she could be assigned on a permanent basis. Ms. Van Hulsteyn testified at hearing.

2020 Car Seat Request

11. On July 30, 2020, Ms. Van Hulsteyn entered a note in claimant's file that E.F. had "inundated" her with requests for DME "such as a booster chair," which E.F. "needs" because she sometimes transports claimant in another vehicle. After E.F. made several requests for the car seat throughout the Fall of 2020, Ms. Van Hulsteyn eventually received the prescriptions and the insurance denial of funding for the DME, including the gait trainer, car seat, and an adequate diaper supply. At that point, Ms. VanHulsteyn referred E.F.'s requests to the DME committee.

12. On November 19, 2020, the DME committee reviewed claimant's request for a car seat. On November 20, 2020, Ms. Van Hulsteyn issued a Notice of Proposed

Action (NOPA) that informed claimant her request for a car seat was denied. The reason for denial was:

There is no assessed need for a specialized car seat because your needs are already being met by your family's specialized van which ACRC paid to adapt so that it could transport you and your wheelchair. It is your responsibility to purchase any back-up or convenience item such as the requested specialized care [sic] seat which is not needed but which you may desire.

13. On November 19, 2020, Ms. Van Hulsteyn entered a note in claimant's file that reads in part:

Car seat - denied. [E.F.] has a van where 10k in accommodations created so that her wheelchair could be accommodated. A car seat is a 'would like to have' not a 'must have' for when client goes in another vehicle.

E.F. questioned why this request is considered a "would like to have," when claimant needs the car seat for transport in other vehicles. Ms. Van Hulsteyn informed her that she could "purchase this item as many people do purchase car seats for children or people who need them and do not receive funding from another source for the car seat."

14. On November 24, 2020, E.F. informed Ms. Van Hulsteyn that she is requesting the car seat as a "need," because she cannot afford the car payments on the 2015 Honda, and "after January," she would have a regular van. On December 17, 2020, E.F. informed Ms. Van Hulsteyn she had purchased a "regular van" and needed a

car seat. Ms. Van Hulsteyn requested E.F. provide documentation of the sale and the details of the new van. E.F. responded that it was “private.”

On January 7, 2021, E.F. explained to Ms. Van Hulsteyn the sequence of events that concluded with her purchasing an unmodified van. Ms. Van Hulsteyn again requested documentation of the sale and purchase. E.F. did not respond. Ms. Van Hulsteyn informed E.F. several times following issuing the NOPA that once the NOPA issued, E.F. had the option to appeal within the 30-day period, and no new request would be entertained until that process completed. On December 28, 2020, ACRC received from E.F. a timely appeal of the NOPA.

15. At hearing, E.F. explained she currently drives what she described as a “2020 SUV” that is not modified. She could not remember the make. She purchased it through a “special deal” at Costco in “November or December 2020.” E.F. stated at hearing that she would provide the paperwork for the sale of the 2015 Honda and the purchase of the 2020 SUV if ACRC needs to see it. She feels it is an affront to her privacy to have to provide this information, however.

PRINCIPLES OF LAW

16. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, §§ 4700 through 4716.) E.F. requested a fair hearing to appeal ACRC’s denial of her request for funding of a specialized car seat. The burden is on claimant to establish entitlement to the funding. (*See Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

17. Pursuant to the Lanterman Act, regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as “a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability. . . .”

18. Through the Lanterman Act, the Legislature created a comprehensive scheme to provide “an array of services and supports . . . sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The purpose of the provisions of the Lanterman Act are: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750-4751; see *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

19. “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 social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care,

domiciliary care, . . . adaptive equipment and supplies” (Welf. & Inst. Code, § 4512, subd. (b).)

20. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. Welfare and Institutions Code section 4646, subdivision (a) specifies:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It 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.

21. A regional center is required to secure the services and supports needed to satisfy a client’s needs as determined in the IPP. (Welf. & Inst. Code, § 4648, subd. (a); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.) Welfare and Institutions Code section 4646.4 provides:

(a) 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, or of an individualized family service plan pursuant to Section 95020 of the Government Code , 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. The individualized family service planning team for infants and toddlers eligible under Section 95014 of the Government Code may determine that a medical service identified in the individualized family service plan is not available through the family's private health insurance policy or health care service plan and therefore, in compliance with the timely provision of service requirements contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations, will be funded by the regional center.

(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.

[¶] . . . [¶]

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

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.

23. ACRC Policy Manual General Standards for the Purchase of Services and Supports states:

Alta California Regional Center (ACRC) assists consumers and their families in the identification of needs associated with the developmental disability. ACRC assists consumers and their families in the development of an individualized plan for the use of community resources to meet the identified needs. Upon determining that no public or private resource is available to meet the identified need, ACRC shall provide payment for services and supports in keeping with the following:

[¶] . . . [¶]

The service meets a need related to the developmental disability of the consumer.

The service or support shall not duplicate one already being provided through natural supports, generic services or purchases by the regional center.

[¶] . . . [¶]

ANALYSIS

24. Since 2017, E.F. has had three vehicles: the 2004 Honda, the 2015 Honda, and the 2020 SUV she currently drives. The 2004 Honda was modified in 2017 with ACRC funding. At that time, E.F. believed she would be receiving the recommended

van modifications as well as a car seat. She was not pleased with the van modifications, and believed they made her vehicle dangerous for herself and claimant. She opted to purchase a modified van, the 2015 Honda, using her own funds. She drove the 2015 Honda from June 2017 through December 2020. She continued to request a car seat for occasions claimant was transported in a different vehicle. At some point between 2018 and 2020, ACRC's case notes conflated these two vans. The case notes referred to E.F.'s van as the van ACRC modified, even after June 2017, when ACRC was aware E.F. had traded in the 2004 Honda.

25. ACRC's denial was predicated on the belief that E.F. owned a modified van to transport claimant and a car seat would be a duplicate service. ACRC's denial letter reminded E.F. she could purchase the specialized car seat without ACRC funding. In November 2020, when Ms. Van Hulstyen presented the request to the DME committee and the NOPA issued, ACRC's belief was correct: E.F. owned a modified van, though not the van ACRC modified.

26. In December 2020, after the NOPA issued, E.F. traded the modified van for the unmodified 2020 SUV. She declined to provide evidence of the sale and purchase. Given there is no written documentation of the 2020 SUV and there has been no assessment to determine what car seat is appropriate for the 2020 SUV, ACRC's denial was appropriate. Should claimant produce the requested information and request a physical therapy and/or occupational therapy evaluation, her request may be reconsidered.

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LEGAL CONCLUSION

Claimant failed to establish by a preponderance of the evidence cause to grant her appeal that ACRC fund a car seat.

ORDER

Claimant's appeal of Alta California Regional Center's denial of funding for a specialized car seat is DENIED.

DATE: February 23, 2021

HEATHER M. ROWAN

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.