

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021050359

DECISION

Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 9, 2020, by video and telephonic conference.

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

Claimant's Mother and Sister, authorized representatives, represented Claimant.¹

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision at the conclusion of the hearing.

On July 26, 2021, the ALJ reopened the record to obtain Claimant's most recent individual education program (IEP). Claimant timely submitted an additional Exhibit, Claimant's draft IEP dated May 19, 2021, and it was marked and admitted without objection as Claimant's Exhibit O.

The record was reclosed and resubmitted on August 31, 2021.²

¹ The names of the Claimant and family members are withheld to protect their privacy.

² Claimant moved for a Protective Order to seal Exhibits as a precaution against a Public Records Act request. (Gov. Code §§ 6250-6270.7.) Although a fair hearing is public, generally medical records and other records of a client of any regional center are confidential and are disclosed only to the Service Agency and as part of a fair hearing. The Service Agency stipulated to sealing the Exhibits, and as an assurance to the Claimant, the ALJ granted the motion, and issued a Protective Order sealing all Exhibits excepting Exhibits 6, 7, G, H, I, L, and M, which contained government information pamphlets, publicly available research and statutes.

SUMMARY

Claimant requested monthly funding for three hygiene-related supplies: three boxes of medium gloves for Claimant's mother (Mother) or caretakers, two boxes of extra small gloves for Claimant, and one box of large size gloves for Claimant's father (Father)³; biodegradable wet wipes, a urine collection cup, also referred to as a urinary hat; and incontinence pads. Claimant, a young adult, represented by her family, presents with a variety of disabilities, including Autism and intellectual disability (ID), made more challenging by weak gross and fine motor skills, and a speech delay. The Covid-19 Pandemic, along with other challenges presented by her school services, necessitated her education and community services be provided in her home. Caretakers, which include her family, a teacher and personal support aides, work with Claimant full-time in her home. Claimant suffers from incontinence, cannot independently wipe herself, and as such, her family, teacher and aides are required to assist her with all toileting needs. At the time of the request and through the time prior to the close of the hearing record, Claimant has been receiving all services from the school district and regional center in the family home. As such, her family and aides have been fully responsible for her hygiene and toileting. Claimant contends that the supplies are not only just medically necessary, but essential to maintain the health and safety of Claimant and her caregivers.

Service Agency denied Claimant's requests on the grounds generic and medical resources had not been exhausted, the requested supplies are not medically necessary

³ Mother and Father shall collectively be referred to as Parents.

and the requested services are part of the responsibility shouldered by parents of children without disabilities.

Claimant provided persuasive and convincing evidence the supplies were not typical for adult children without disabilities, and access to all third-party and medical resources for these supplies had been exhausted at this time. As such, Claimant is entitled to funding for the requested supplies, minus supplies obtained from third party sources, for an interim 15-month period, either through a Service Agency vendor or by reimbursement, subject to proof of expenditures according to the protocols of the Service Agency. Should the parties elect to fund the supplies through reimbursement, the parties shall cooperate to determine the start and ending date of the 15-month period, but the start date shall be no earlier than January 2021. Claimant's family shall continue to pursue third-party sources and work with the Service Agency to identify and secure alternative sources of funding.

ISSUES⁴

Is the Service Agency required to fund the following supplies for Claimant monthly: (1) 400 non-sterile medium gloves for Claimant's mother or caretakers (Mother), 200 non-sterile extra small gloves for Claimant, and one hundred non-sterile large size gloves for Claimant's father (Father); (2) biodegradable wet wipes; (3) a urine collection hat; and (4) incontinence pads.

⁴ The parties stipulated to the issues at the outset of the fair hearing.

EVIDENCE

The Service Agency submitted Exhibits 1-7, and witness testimony, Giselle Salas, Manager of transition services. Claimant submitted Exhibits A-P, with Exhibits H, I, L and M, initially marked but not admitted, but after further review admitted as administrative hearsay, and witnesses, Mother, Veronica Cardenas, Claimant's teacher, Emily Evans, Claimant's Aide.

FACTUAL FINDINGS

Jurisdictional Matters and Background

1. Claimant is an 18-year-old conserved adult, eligible for regional center services as an individual with Autism and Moderate to Severe ID. She has been diagnosed with Atrial Septal Defect Chromosome Deletion. Claimant resides at home with her biological parents. She has three older siblings. Her family is close, and her adult siblings participate in her care.

2. Claimant has a range of challenges that limit her ability to participate independently in activities of daily living (ADL). Claimant has limited verbal communication skills. She can use words and simple sentences, but her articulation deficits make it difficult for her to be understood. She can use a fork and spoon with some spillage. She needs prompts and constant supervision for toileting, including assistance with wiping and full assistance after bowel movements. She must be monitored to avoid toileting accidents, which happen frequently. She must be monitored and prompted to maintain her hygiene, e.g., to ensure she washes hands thoroughly and brushes her teeth. She does not yet shower independently. She

requires assistance with dressing, e.g., she cannot choose socially or weather-appropriate clothing. Claimant's self-care deficits are further compromised by her negative behaviors which include hitting herself, throwing herself on the ground or banging herself against the wall, temper tantrums and crying. Claimant does not have any personal friends. The Covid-19 pandemic has further limited her interaction with peers and the community. She requires close supervision to avoid elopement and cannot exercise judgment with people or when navigating the community. (Ex. 3 and Mother's testimony.)

3. Mother contacted the Service Agency in October 2020 to request funding for monthly supplies of biodegradable wipes, gloves and a urinary hat in the following amounts: gloves (3 boxes of medium gloves for Claimant's mother (Mother), two boxes of extra small gloves for Claimant, and one box of large size gloves for Father; biodegradable wet wipes; and a urinary hat.

4. The Service Agency presented Mother's request to the Exceptional Service Review Committee (ESRC) for consideration to further her self-care and adaptive skills and for the following reasons: Claimant is not fully potty trained; has frequent accidents; needs to be adequately cleaned to prevent harm to her skin; and is home all day which requires more wipes and gloves. (Ex. 4.) The ESRC reviews requests which the Service Agency considers outside its policy and typical responsibility. (Salas Testimony.)

5. On October 29, 2020 the ESRC approved funding for one extra box of gloves for Claimant, for three months, pending Mother's appeal for insurance coverage, but the full request for Claimant, as well as the gloves for the parents, the wipes and a urinary hat was denied. The ESRC determined the gloves and wipes were not medically necessary and were the responsibility of Parents. The ESRC also

determined the collection cup was provided with lab orders and testing. (Ex. 4.)

Mother objected to the ESRC's reasoning and clarified during the hearing the supplies were necessary for the health and safety of Claimant and her caregivers. (Ex. N.)

6. As a result of the ESR approval of the gloves for Claimant, Mother initially withdrew the family's request for Claimant's gloves. (Exs. 1 and 2.)

7. Following a phone conversation with Mother on November 4, 2020 where the Service Agency's decision to decline funding was discussed, the Service Agency issued a Notice of Proposed Action (NOPA) on November 11, 2020 confirming its denial of funding for gloves for Parents, wipes for Claimant and a urinary hat for Claimant. The Service Agency relied upon Welfare and Institutions Code (Code) sections 4646.4, subdivision (a) (utilization of generic services and family responsibility) and 4659, subdivision (a) (other sources of funding) and the Service Agency's Purchase of Service Guidelines (POS Guidelines) for medically necessary supplies. (Ex. 1.) The POS Guidelines provide that medical supplies may be purchased to improve or maintain an individual's health status and provide for Service Agency funding when: 1) the needed equipment is associated with, or has resulted from a developmental disability, developmental delay or an established risk condition; (2) the treatment or equipment is deemed medically necessary; the regional center consultants approved the need for such equipment; and the individual is not eligible for Medi-Cal, California Children Services, private insurance or another third party payer coverage, or these funding resources have denied the equipment in writing and the regional center has determined the appeal is not warranted. (Ex. 7, pp. 21-22)

8. In a fair hearing request executed November 18, 2020, with confirmation of delivery to the Service Agency on November 23, 2020, Mother timely appealed the Service Agency's NOPA. (Ex. 2.) However, the Service Agency failed to timely process

and file the appeal within the applicable deadlines. Mother filed a complaint with the Department of Developmental Services (DDS) (Exhibit B) which on May 12, 2021, ordered the Service Agency to investigate and respond to the fair hearing request within 20 days (Ex. F).

9. On June 10, 2021 the Service Agency held an Informal Meeting to resolve Claimant's fair hearing request. (Code section 4710.7.) The Informal Meeting included Claimant, Mother, Claimant's teacher and caregiver and a personal assistant. Mother's reasons for requesting the supplies were accurately memorialized in the Service Agency's letter dated June 16, 2021, which summarized the Informal Meeting, (Exhibit A) and are consistent with Mother's written statement (Exhibit N) and testimony, more fully discussed in the below findings.

10. The Service Agency did not change its position and affirmed its previous NOPA denying Claimant's request for gloves, wipes, and urinary hat. (citing Code sections 4646.4 subdivision (a), 4659, subdivision (a) and the Purchase of Service Guidelines.) (Ex. A.)

11. Claimant's appeal of the Service Agency's denial was dated May 12, 2021 and marked received by OAH on May 13, 2021. All jurisdictional requirements have been met for this matter to proceed to fair hearing.

Claimant's Supplies Address Her Disability

12. Parents and the Service Agency participated in the Individual Program Plan (IPP) process. Prior to the hearing, Claimant's most recent completed IPP was held on June 26, 2020 at the time Claimant turned 18. The IPP confirmed Claimant's deficits with toileting, her need for prompts and supervision and frequent toileting accidents.

It confirmed family's responsibility to "explore generic funding through Medi-Cal and private insurance for her physical, dental and mental health services." (Ex. 3.)

13. At the time of the 2020 IPP, Claimant had been receiving all her school services at home. Parents found problems with the school district program and reached an agreement with the school district on a "hybrid" program which involved two days at school for community-integration activities, and three days at home with instruction. As part of the school district's contract with Parents, it provides home instruction but not supplies, including gloves. The Covid-19 Pandemic made it necessary for Claimant to receive services exclusively at home. Claimant's exclusively home-based services commenced after November 2019. Claimant has been assisted at home by personal aides and an education tutor. Claimant's circumstances have remained unchanged over the year since the last IPP and at the time of the fair hearing, the 2021 IPP had not been developed. Claimant does receive services from the Service Agency which are not disputed in this fair hearing. (Ex. 3 and Mother's testimony.)

14. Claimant's most recent draft IEP dated May 19, 2021 and June 22, 2021, (Exhibit O), which was not finalized at the time of submission on August 21, 2021, confirms Claimant's deficits, including her severe communication challenges, lack of range of motion and body control and her inability to independently maintain her hygiene and keep herself safe. Claimant demonstrates severe behaviors including "hitting teacher, backhanding the wall, knocking things over, and screaming," which were characterized as not "extreme" to the point of harming herself or others" in a classroom environment. (Ex. P, p. 6 of 50.) However, in a later part of the report her behavior was characterized as requiring "exceptional behavior support" (Ex. O., p. 7 of 50.)

15. Claimant requires support in all home living activities, which are part of ADL. As part of her school assessment, it was determined "she needs full physical assistance" with the "exception of eating food and using the toilet," to "bathe and take care of personal hygiene and grooming needs." (Ex. O., p. 7 of 50.)

16. The school assessment is consistent with the testimony of Mother, Veronica Cardenas, Claimant's teacher, and Emily Evans, Claimant's Aide. Witnesses described Claimant's need for substantial assistance with her toileting hygiene, and in being aware of when she needs to toilet. According to Mother's daily observations, Claimant "suffers from incontinence issues," "must be reminded to use the bathroom at least every 2 hours and is unable to wipe herself after using the restroom. For this reason, her aides are fully responsible for ensuring that she does not have accidents and that she is thoroughly cleaned after using the toilet." (Ex. N.)

17. Ms. Cardenas, an experienced educator, has worked with Claimant about a year and assists her with learning and improving her ADL, in addition to basic academic education. Ms. Cardenas's work shift is between 2.5 and 5 hours on multiple weekdays and during that time she assists Claimant a minimum of five times a day with her toileting and hygiene, including how to wipe herself correctly. Claimant has a limited range of motion and must be prompted to use toilet paper and to wipe herself in the correct direction until she is clean. She has observed Claimant requires reminders to toilet, her many weekly accidents, and the mess and resulting disruption in services related to Claimant's hygiene deficits. Often a double layer of gloves is required to clean-up Claimant's accidents in addition to assist her with wiping.

18. Ms. Evans has worked with Claimant as her aide for over a year and works 20-40 hours a week, mainly Tuesday through Saturday. She assists her with all her hygiene and personal care and also accompanies her on outings. She was notified

before starting as Claimant's aide that it would involve toileting and hygiene assistance and she accepted the position on the assurance that gloves would be provided. Claimant's many accidents can be "messy" and involve removing her clothes and cleaning up where Claimant stepped in her own accidents.

19. Ms. Cardenas also confirmed the need for incontinence pads, for outings outside the home, particularly on longer walks, and trips, including to Disneyland, one of Claimant's preferred venues. Claimant can have accidents and Ms. Cardenas confirmed incontinence pads would help.

20. Claimant is closely monitored in all her ADL and requires constant care. Mother keeps a consistent routine for her and either directly works with Claimant or manages her education and activities, beginning with morning hygiene and exercise, which is followed by education. Mother is frequently by herself with Claimant and on a less frequent basis Father is directly involved in Claimant's toileting. Often the clean-up requires two people. Regardless of the vigilance of her aides and Parents, Claimant does have frequent accidents which can be especially messy because she is an adult. As such, Claimant may be physically capable of sitting on the toilet, as suggested by the school district in her IEP, but cannot be relied upon to know when she requires toileting or to participate in her own toilet-related hygiene without assistance. (Ex. O, p. 8-9 of 50.; Testimony of Mother, Evans and Cardenas.) Notably, according to the school assessment, Claimant's overall hygiene skills are not yet basic. (Ex. O., p. 9.)

21. Claimant suffers from frequent urinary track infections as a result of her hygiene challenges. Due to her deficits in motor coordination, she is unable to use a specimen cup to retrieve urine samples. The hat is required to catch the urine for her caretakers to collect it for testing.

22. At the time of the fair hearing, Claimant was still being educated in the home. The placement proposed by the school district included attendance at a public-school Adult Transition Program (ATP), two days per week for 5.5 hours per day and continued home instruction for three days per week (six hours per day) with a variety of services. Another status meeting was proposed for October 8, 2021. (Ex. O, p. 46 of 50.)

The Amount and Type of Supplies Requested

23. Mother explained in detail Claimant's specific need for the supplies, which varied slightly from the request in the Informal Meeting. Excepting the more recent request for incontinence pads, the foundation for the supplies was established by Mother through her written statement and hearing testimony. Mother provided straightforward and unhesitating testimony which included detailed descriptions of Claimant's ADL challenges and her long, steady and exhaustive process attempting to obtain the supplies from other sources. Mother lives with Claimant, has had an opportunity to closely observe Claimant, who requires 24-hour supervision, and her observations, supported by the Exhibits and the testimony of other witnesses, and communicated without hyperbole, were credible and persuasive. Mother supported and explained her testimony objecting to the Service Agency's characterization of the gloves as the parental responsibility, or not medically necessary with the guidelines from the World Health Organization and the Center for Disease Control to use gloves whenever contact with bodily fluids, excrement and infectious materials is expected. (Ex. N, referencing Exs. L and M.)

24. Claimant's request for non-sterile gloves includes the following size and amounts: Size medium, quantity: 400 per month); Size extra small, quantity 200 per month, and size large, quantity 100 per month.

25. Claimant's request was based on Mother's careful calculations of the number of times Claimant uses the bathroom and requires assistance by care providers, including Parents and aides, over a 24-hour period. Claimant uses the restroom eight times in the 16-hour period she is awake and between two to three times each night. Using the average of ten bathroom trips a day, and two gloves per trip, Claimant's care providers require 620 gloves, exclusive of the extra gloves required to clean-up Claimant's frequent accidents. Mother's request for 400 medium size gloves fell below her total estimate. (Ex. N; Mother's testimony.)

26. Claimant must also improve her ability to exercise proper toileting-related hygiene. For this purpose, Claimant requires 200 extra small gloves per month for her own use. Claimant's request for extra small-sized gloves in this amount is consistent with the number of times she uses the bathroom and the goal of having her further her skills.

27. Claimant's request for 100 large gloves per month was based on Mother's estimate of Father's use and the need to accommodate other care providers and is reasonable.

28. Claimant's request for biodegradable wet wipes is consistent with Claimant's need for hygiene, and the environment. Claimant's deficiencies in hygiene require wet wipes, especially due to her frequent accidents. Biodegradable wipes are required because the non-biodegradable wipes do not degrade if flushed down the toilet. In addition to the general well-known and undisputable fact of the environmental impacts related to disposable wipes in landfills, Claimant's home has a septic tank which will be destroyed by flushing non-biodegradable wipes down the toilet. Claimant was denied insurance coverage for the wipes. (Ex. C.)

29. Claimant's request for a urinary hat is related to her hygiene deficits which result in frequent urinary tract infections. Although caregivers assist in wiping Claimant after toileting, she still gets infections. When infections are suspected, a urinary hat is required to collect the urine sample because Claimant cannot hold a urine sample cup. The number of urine hats required to collect a sample is not clear.

30. Claimant's mother also requested incontinence pads because these are "helpful when she goes to school or on day trips" and prevents embarrassments. However, these were not requested as part of the fair hearing, discussed at the Informal Meeting and the amount required was not clearly established by the record. Mother requested these pads on an interim basis based upon Code section 4659, section (d)(1)(B), pending a final administrative decision on an administrative appeal. At the time of the hearing Mother had not obtained an official statement from Health Net approving or rejecting the incontinence supplies. (Exhibit N).

Availability of Generic and Medical Resources

31. Mother provided credible, convincing and persuasive testimony supported by documentation of her efforts to access medical and other resources to obtain the requested supplies. (Exs. C, E, K and N.) After Claimant stopped going to the school in November 2019 all her hygiene and toileting supplies need to be used at home.

32. Mother was diligent in her efforts to secure the wipes and biodegradable gloves from Claimant's medical insurance. Mother has been in a "battle" with Claimant's Medi-Cal providers for years to obtain gloves and wipes. (Ex. C.) Claimant has access to Medi-Cal through Health Net Medical. Health Net referred Mother to its

service provider Supercare for supplies, but Supercare was unreliable and inconsistent with the supply of products.

33. Claimant's doctor prescribed gloves and wipes. Claimant's insurer had approved one box per month of gloves, but only when she called to request the gloves. (Ex. N.) Mother confirmed there were about 100 gloves in a box. On September 3, 2020, Claimant's insurance provider approved non-sterile gloves in the amount of 200 per month for a three-month period. (Ex. F.)

34. The Medi-Cal insurance provider terminated Claimant's account on August 28, 2020. (Ex. C.) It is unclear what Claimant has been receiving from the insurance company at the time given the controversy with the insurance company.

35. Mother filed an official complaint with the State of California Department of Managed Health Care on September 29, 2020. (Ex. C.) In that letter she confirmed she had been approved for a portion of the supplies through an out-of-network provider, J&B Supply, due to the problems with Supercare, but was informed her account was closed in August because J&B Supply was no longer being compensated by the Medi-Cal insurance company, Health Net. (*Ibid.*)

36. The total amount of gloves obtained through insurance prior to the hearing is not clear. In her complaint to the Department of Managed Care, Mother also stated she had been supplied with 200 gloves per month, which was not adequate because Claimant is at home full time. (Ex. C.) In her complaint to the Department of Managed Health Care below, Mother confirmed she was approved for one box of gloves. During the hearing, it appeared from Mother's testimony Claimant may have been receiving one box of gloves monthly. (Ex. K.)

37. In the decision of the Administrative Law Judge, (Hearing No. 104692701), dated December 17, 2020, (Decision), which was adopted by the Director of the Department of Social Services, the Medi-Cal provider's denial of non-sterile gloves and biodegradable wipes under Medi-Cal medical necessity criteria was affirmed. (Ex. E.)

38. However, in the Decision the Administrative Law Judge determined the Medi-Cal provider failed in its obligation to determine whether the requested supplies met other Medi-Cal medically necessary criteria and remanded the matter to the provider to make that determination. (Ex. K.) The Decision confirmed Claimant exhausted the administrative appeals process. (*Ibid*, p. 10.)

39. There is no evidence the Medi-Cal insurer addressed the remand. However, it appears from Mother's report that at least one box of 100 gloves were supplied through at least August 2020.

40. Mother also diligently applied for social security benefits under the Social Security Income (SSI) program for Claimant. Mother applied in May 2020, before Claimant turned 18 years of age. After attempting contact with the Social Security Administration on many occasions, she was told a different "story" each time: Claimant's application was not received, the file was lost and it was incomplete. Every time Mother called the Social Security Administration, she was told there was a two-and-a-half hour wait. (Mother's testimony.)

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. Code § 4500 et seq.)⁵ An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (Code §§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s NOPA. (Factual Findings 1-11.)

2. Because Claimant seeks benefits or services, Claimant bears the burden of proving she is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimants must prove their cases by a preponderance of the evidence. (Evid. Code, § 115.) Claimant met her burden of proof. (Factual Findings 1-40.)

The Lanterman Act

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (Code § 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (Code § 4520.)

⁵ Further statutory references are to the Welfare and Institutions Code.

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (Code §§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Code section 4646.4, subdivision (a) provides: Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's IPP 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; (3) Utilization of other services and sources of funding as contained in Section 4659.

6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (Code §§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Code § 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or "generic resource." Code section

4659 subdivision (a) states "Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. Also, Code 4648 subdivision (a) (8) states: "Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

7. If a service specified in a client's IPP is not provided by a generic agency, the regional center must fund the service to meet the goals set forth in the IPP. (Code § 4648, subd. (a)(1); see also, e.g., § 4659.)

8. Regional Centers are also required to rely on their Purchase of Service Guidelines, as approved by the department pursuant to Code Section 4434, subdivision (d). (Code §4646.4, subd. (a) (1).)

Disposition

9. The Service Agency denied Claimant's request based upon its conclusion that Claimant's request did not constitute an extraordinary service to justify an exemption to its purchase of service guidelines and the prohibition for purchasing medical and generic supplies under Code Sections 4646.4 (a) and 4648.5, subdivision (a). (Factual Finding 1 through 11 and Ex. 1.)

10. Mother contends Code section 4659, subdivision (d)(1) should apply, at least to the extent it requires the Service Agency to fund resources on an interim basis pending the availability of other resources. This section provides that the Service Agency "may pay for medical or dental services during the following periods:

(A) While coverage is being pursued, but before a denial is made.

(B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued.

(C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan.

Service Agency insists this section only applies to services not supplies. This interpretation is disingenuous in view of the Service Agency's position that they are restricted from providing supplies under the governing statute and Purchase of Service Guidelines because they are not medically-necessary services.

11. This fair hearing presents unique and extraordinary circumstances. The evidence persuasively established Claimant's deficits in ADL required constant supervision and direct intervention in toileting, including wiping, clean-up inside the home and outside the home and presented clear health and safety risks to Claimant's caretakers. With the Covid-19 Pandemic these health and safety risks are increased to the extent extra precautions are needed to prevent the spread of contaminated material to Claimant and her caretakers. Notably, even without a strict interpretation of what is medically necessary, Claimant established the supplies were warranted based upon her developmental disabilities; specifically, her severely limited ability for self-care. Claimant is still at the basic level of learning how to recognize she needs to go to the bathroom, waiting until she reaches the toilet before urinating or defecating, and cleaning herself in a manner appropriate for her age and hygiene. Claimant also does

not have the motor skills to manipulate a classic urinary specimen cup and given her frequent urinary tract infections requires a urinary hat to collect the urine.

12. Claimant's doctor determined the gloves and wipes were medically necessary. No such statement was made for the pads and the hats; however, a similar health and safety rationale applies to them.

13. Claimant established she exhausted her access to other resources, medical insurance, SSI and, given her education has been restricted to the home, access to school-based resources. Even the Decision left incomplete the insurer's obligation to pay for certain supplies. At a minimum, Claimant is entitled to some interim assistance pending her school-based placement, and the resolution of Claimant's unanswered request to SSI and a conclusion to the remand ordered by the Decision.

14. Claimant did not establish with certainty the amount of supplies the Service Agency is obligated to fund. Claimant appeared to be receiving 100 gloves a month for the caretakers. Claimant has not been funded for biodegradable wipes from any source, but an amount was determined based upon the evidence of Claimant's daily toileting practices. As for the urinary hat, it is unclear whether these hats are reusable.

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ORDER

1. Claimant's appeal is granted.

2. Service Agency shall provide monthly funding for the supplies described below for 15-months. Funding shall be provided either through a Service Agency vendor or by reimbursement. If funding is provided through reimbursement, the parties shall cooperate in determining the commencement date of the reimbursement. In no event shall the reimbursement period begin prior to January 2021. The parties will cooperate and develop a funding plan no later than 30 days from this Decision.

3. The parties shall cooperate in developing an accounting and payment system, (e.g., monthly, bi-monthly, quarterly) that is consistent with the Claimant's authorized representatives' ability to obtain cost-effective supplies in bulk which may exceed the monthly allotment, and the Service Agency's accounting protocols.

4. Service Agency shall fund the following monthly supplies: 1) no more than 400 non-sterile medium gloves for Mother or caretakers; no more than 200 non-sterile extra small gloves for Claimant, and no more than one hundred non-sterile large size gloves for Father; (2) no more than 300 biodegradable wet wipes; (3) one urinary hat; and (4) no more than 100 incontinence pads. The Service Agency's funding obligation shall be reduced by the number of supplies obtained from other sources.

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5. Claimant shall continue to pursue other sources of funding for the supplies as a condition of funding.

6. Service Agency shall make payment to Claimant's family monthly or no later than 30 days from the provision of receipts if the supplies are funded by reimbursement.

DATE:

EILEEN COHN

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.