

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022060422

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 9, 2022.

Claimant was represented by his mother (Mother). Claimant and his family members are identified by titles to protect their privacy.

Monica Munguia, Fair Hearing Representative, represented North Los Angeles County Regional Center (Service Agency or NLACRC).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on August 9, 2022.

ISSUE

Should Service Agency be required to fund for diapers, wipes, and an electronic pee pad for claimant?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1 through 29, and claimant's exhibits 1.1 through 7.2.

Testimonial: Saloni Lamba, NLACRC service coordinator; Cristina Preuss, NLARC Consumer Services Director (Early Start and School-Age Unit); and Mother.

Jurisdictional Matters

1. Claimant is a seven-year-old boy who is eligible for regional center services based on a diagnosis of autism.
2. On April 28, 2022, Service Agency sent Mother a letter and a Notice of Proposed Action notifying her of the denial of her funding request for diapers and an electronic pee pad for claimant. (Exh. 1, pp. A19-A20.) Service Agency denied the request because claimant had medical insurance (a generic resource) that was available to pay for the requested items.
3. Mother filed a fair hearing request dated May 27, 2022, on claimant's behalf, to appeal Service Agency's denial of her funding request for diapers and an electronic pee pad. (Exh. 1, pp. A16-A18.) By letter dated June 3, 2022, Service Agency acknowledged receiving the fair hearing request on May 31, 2022. (Exh. 1, p. A15.)

4. At hearing, Service Agency requested that claimant's fair hearing request should be construed as including a funding request for wipes, in addition to diapers and a pee pad. Mother agreed. Therefore, funding for wipes is considered part of the issue presented for decision.

Claimant's Individual Program Plan (IPP)

5. Claimant was diagnosed with autism spectrum disorder following a psychological evaluation by Myah Gittelsohn, Psy. D., completed in June 2019. Claimant was three years, 11 months old at the time of the evaluation. Dr. Gittelsohn recommended that "further behavior assessment is warranted at this time to determine the recommended need and level of behavior intervention (ABA and other evidence-based interventions)." (Exh. 2, p. A36.)

6. Claimant's initial IPP is dated August 5, 2019. Claimant's service coordinator at the time was Suzanne Pinto Edens. The IPP noted claimant lived at home with Mother. Claimant's parents were separated, and both were unemployed. Claimant's medical insurance was through Medi-Cal with L.A. Care/Anthem. He did not receive SSI benefits or In-Home Supportive Services (IHSS). Claimant was attending preschool and was reportedly found not eligible for special education services by his school district.

7. The IPP noted claimant was ambulatory. He could grasp objects with his fingers and could feed himself with utensils, with some spillage. He required assistance with brushing his teeth, bathing, and putting on his clothes. Claimant was verbal, able to speak in full sentences, and able to initiate contact with peers, but not always appropriately. Claimant engaged in disruptive social behaviors and required constant supervision both at home and in the community. He was easily angered, aggressive

towards others, had tantrums, and threw objects when upset. He had trouble transitioning to non-preferred activities, and was sensitive to loud noises, such as from a vacuum or blender. The IPP noted: "[Claimant] is toilet trained, but needs help with wiping. He has wetting accidents during the day and night and wears diapers at night." (Exh. 3, p. A40.)

8. Claimant's initial IPP contained three goals (Outcomes). Pursuant to the IPP, Service Agency agreed to fund up to 30 hours of respite to support the family in meeting the first goal (Outcome #1) of providing Mother relief from the constant care and supervision claimant required.

9. The second goal (Outcome #2) in the IPP was that claimant would "express his needs and wants without engaging in negative behaviors (i.e., tantrums, aggression, non-compliance) 80% of the time." (Exh. 3, p. A44.) Service Agency agreed claimant would benefit from applied behavior analysis (ABA) services, which could be funded through claimant's Medi-Cal insurance plan. Therefore, the plan for achieving Outcome #2 was for Mother to pursue ABA services through claimant's Medi-Cal insurance plan, and Service Agency would assist her if needed.

10. The third goal (Outcome #3) in claimant's IPP was that claimant would continue to make progress in his academic setting. The plan for achieving Outcome #3 was for Mother to advocate for claimant's education needs and supports from the school district, with Service Agency assisting Mother as needed.

IPP Addendums and Annual Reviews

JULY 6, 2020 ADDENDUM

11. Pursuant to an IPP addendum dated July 6, 2020, a fourth goal (Outcome #4) was added to claimant's IPP that he would "increase his ability to exercise Covid safety practices through the use of PPE [personal protective equipment]." (Exh. 4.) Service Agency provided PPE to claimant to support him in meeting Outcome #4.

JULY 10, 2020 ANNUAL REVIEW

12. On July 10, 2020, Service Agency conducted an annual review of claimant's IPP (2020 annual review). The 2020 annual review is summarized in an IPP Progress Report dated July 27, 2020. (Exh. 5.) Claimant's service coordinator was Julie Ahleson. Claimant's health and well-being were discussed. Regarding toileting, it was noted claimant "toilets independently, but needs assistance with wiping. Wetting or soiling occur no more than once a month during waking hours." (Exh. 5, p. A50.) Claimant continued to require constant supervision due to his behavioral issues.

13. The 2020 annual review reviewed the status of claimant's progress on the goals (Outcomes #1 through #4) stated in his IPP. No progress was made on Outcome #1 (respite) because Mother had not yet chosen a respite provider. Additionally, Mother requested an increase in respite hours. Service Agency agreed to fund up to 40 hours per month of respite services. No progress was made on Outcome #2 (behaviors) because Mother "has not yet looked in to [sic] ABA services as she was not sure how to obtain the services." (Exh. 5, p. A52.) During the 2020 annual review meeting, claimant's service coordinator, Ms. Ahleson, informed Mother how to request ABA services from Medi-Cal, and also sent her directions by email. The 2020 annual review noted reasonable progress on Outcome #3 (academics). Mother reported she

had no academic concerns but did have some concerns regarding claimant's difficulty sitting still. Claimant would be entering kindergarten in the fall. The 2020 annual review noted claimant met Outcome #4 (Covid-PPE).

JULY 28, 2021 ANNUAL REVIEW

14. On July 28, 2021, Service Agency conducted an annual review of claimant's IPP (2021 annual review). The 2021 annual review is summarized in an IPP Progress Report dated July 28, 2021. (Exh. 6.) Claimant's service coordinator at the time of the 2021 annual review was Saloni Lamba.

15. During the 2021 annual review, claimant's health and well-being were discussed. Regarding toileting, it was noted claimant "is toilet trained, and does not have accidents during the daytime. He does wear diapers at night." (Exh. 6, p. A53.) It was also noted "[claimant] needs assistance with all of his personal hygiene and self-care needs." (*Ibid.*) Claimant continued to require constant supervision due to his behavioral issues. The 2021 annual review noted that claimant's school district would be conducting a behavior assessment regarding claimant's ongoing behavioral issues at school. Claimant was starting first grade in the fall. Ms. Lamba and Mother discussed "accessing ABA services through the generic resource of [M]edi-[C]al to help [claimant] with any behaviors that could be occurring when he is at home or in community environments, including any rigidity or resistive behaviors." (Exh. 6, p. A54.) The three goals from claimant's IPP (Outcomes #1 through #3) would continue.

2022 IPP ADDENDUMS

16. Pursuant to an IPP addendum dated April 19, 2022, the first goal of claimant's IPP (Outcome #1) was changed to reflect Mother's selection of California Care 4 U as the family's respite provider. (Exh. 7.)

17. Pursuant to an IPP addendum dated June 7, 2022, Mother reported she was not in agreement with the 2021 annual review, summarized in the IPP Progress Report dated July 28, 2021. Mother disagreed with the report regarding communicating, toileting, and self-help skills. As noted in the June 7, 2022 IPP addendum, Mother reported that claimant "is verbal but does not express his wants and needs which often leads to him having an outburst or tantrum," and he "will scream, cry or pull his hair." (Exh. 8, p. A59.) Mother reported claimant "will need constant reminders or prompts to complete a task or to stay focus." (*Ibid.*) Mother reported claimant "does not wear diapers during the day but continues to have toileting accidents," and "he will run to the bathroom but will urinate on the floor." (*Ibid.*)

Mother's Funding Request

18. Ms. Lamba has been employed with NLARC in the School-Age Unit for 15 years. Ms. Lamba was claimant's service coordinator from approximately August 2020 until March 21, 2022. Ms. Lamba was claimant's service coordinator at the time of Mother's funding request that is the subject of this hearing. Ms. Lamba testified credibly at the hearing.

19. As claimant's service coordinator, Ms. Lamba provided ongoing assistance to Mother regarding claimant's school-related issues. In August 2021, after claimant was beaten by another student and sustained a serious eye injury, Ms. Lamba attended a meeting with Mother and the school safety team to discuss the plan creating a safe environment for claimant's return to school. Ms. Lamba also assisted Mother with claimant's individualized education program (IEP) with his school district. Ms. Lamba attended IEP meetings with Mother in December 2021 and January 2022, advised Mother generally about the IEP process, and reviewed claimant's IEP at

Mother's request, when Mother expressed that she did not understand the IEP document.

20. Ms. Lamba also communicated with Mother regarding the importance for her to access ABA services through claimant's insurance. Mother had been advised since claimant's initial IPP in 2019 to seek ABA services through insurance. It was against this backdrop that Mother requested regional center funding for diapers, wipes, and a pee pad.

21. On February 24, 2022, Mother sent an email to Ms. Lamba asking if Service Agency could purchase diapers and wipes for claimant. Mother heard another parent comment that they received wipes from NLACRC. Mother's email stated, in part:

I have been buying diapers and wipes myself, but everything is getting more expensive and my income is only about \$700 per month. I can hardly afford the storage unit where our stuff is, and gas to get my son to school. I have asked the pediatrician several times for diapers but he says that he will not prescribe them because they will make my son dependent. He told me to buy an alarm pee pad that goes off when it gets wet. I don't think it's a good idea because of my son's sensitivity to loud noises. In addition, it's pretty expensive. Are there services or organizations that would help with the purchase of diapers or the pee pad?

(Exh. 13, pp. A188-A189.)

22. The next day, on February 25, 2022, Ms. Lamba and Mother exchanged multiple emails regarding the request for diapers and wipes. After reading Mother's

February 24 email, Ms. Lamba was unclear if Mother was also requesting funding for a pee pad, given that her email stated she did not think a pee pad was a good idea due to claimant's sensitivity to loud noises.

23. On February 25, 2022, at 12:32 p.m., Ms. Lamba emailed Mother, requesting that she provide an updated status on claimant's toileting. Mother previously reported in 2020 and 2021 that claimant was fully toilet trained during the day, but wears pull ups at night. Ms. Lamba also suggested adaptive skills training and in-home parent training to help teach claimant toilet training. Ms. Lamba, in her email, also explained that a denial letter from claimant's insurance company was needed in order for NLACRC to consider the request for diapers and wipes. Ms. Lamba's email stated in part:

So we would need to report on the disability related need and also include that his generic resource is denying to pay for it. You can make a request for the supplies [diapers and wipes] but you will need to provide us with a denial letter from your insurance company to submit with the request. There is an age range for which RC doesn't fund diapers but I believe it is under 6 years old. So just send me over the denials and then I will put together the requests for you if you like and they will let us know about the age range.

(Exh. 13, p. A188; Exh. 9, p. A66.)

24. Mother responded to Ms. Lamba by two emails sent on February 25, 2022. The first email, sent at 1:05 p.m., pertained to claimant's toileting status and stated: "He is [day] trained but not night trained." (Exh. 13, p. A188.) The second email,

sent at 1:06 p.m., stated: "I don't have a denial letter from Medi-Cal. I thought I explained it but the pediatrician will not prescribe the diapers. How else can I get diapers please? He will not write a letter of denial and nor will the insurance company." (Exh. 14, p. A 191.)

25. Ms. Lamba responded to Mother's emails at 1:35 p.m. Ms. Lamba explained that a letter from the insurance company denying to pay for diapers and wipes for claimant was one of the requirements for Service Agency to purchase the requested items. Ms. Lamba's email stated in pertinent part:

Whenever there is a request we need the denial letters or we are not allowed to fund. We have laws that dictate what and how we are allowed to fund for services. It will be from the insurance company[,] not from the doctor. If they [the insurance company] are denying the supplies, they have to give you a formal written reason. Why would they not give you the written denial?

The Regional Centers are the payor of last resort and we are required to access all generic (including insurance) resources prior to being legally able to purchase services. Once we get the denial letters and have determined that there is a need that fits the consumer[']s age related needs we can then access services that are available to us via our vendors.

Look into this too: [A link to the LA Food Bank diaper program is given.]

(Exh. 14, p. A190; Exh. 9, p. A66.)

26. Mother replied at 2:32 p.m. to Ms. Lamba's email, in part as follows: "I don't have a denial letter for the diapers because the doctor refuses to prescribe them because he says they cause dependency. Would the denial letter for the electronic pee pad be sufficient to get diapers and wipes as well? Or do I need denial letters for the electronic pee pad, and also for diapers and wipes? I have no way of getting a denial letter for diapers and wipes if the doctor will not prescribe them." (Exh. 14, p. A190.)

27. In her 2:32 p.m. email to Ms. Lamba, Mother also expressed frustration with the process to obtain regional center funding for the items she was requesting:

I'm amazed at the amount of work parents of special-needs children need to do. When I ask them how they do it, they say "oh, just just [*sic*] ask at regional center." I'm too dumb to figure this out. Is there a diagram of the steps I need to take? I cannot follow multiple steps. I get lost & confused. I just made an appointment but it is in a month. So I guess step number two is asking for the doctor to send over the prescription for the electronic [pee pad] to the insurance? Will that be enough for the supposed help from Regional [Center]? I'm asking because I can't make so many appointments and keep track. Should I ask him for the diapers and wipes prescription as well? What if he says he refuses diapers because they cause dependency? What if he refuses to write that letter?

(Exh. 14, p. A190.)

Case Management Activity in March 2022

28. Cristina Preuss is the currently the Consumer Services Director for NLACRC's Early Start and School-Age Units. She has been employed at NLACRC for 10 years. Director Preuss testified credibly at hearing regarding her involvement with Mother's funding request.

29. On March 4, 2022, Director Preuss spoke by telephone with Mother to discuss Mother's concerns regarding NLACRC's lack of follow up and assistance related to claimant's school services. Dr. Preuss recommended, and Mother agreed, to schedule a face-to-face meeting via Zoom to discuss Mother's concerns. The Zoom meeting was scheduled for March 9, 2022.

30. On March 7, 2022, Ms. Lamba spoke with Director Preuss to discuss claimant's case and update her regarding Mother's concerns about the IEP process with claimant's school district. Ms. Lamba had previously attended two IEP meetings via Zoom with Mother and claimant's school district. Mother and the school district disagreed on how claimant's behavior services should be provided. Mother requested a one-to-one aide for claimant while at school. Ms. Lamba understood the school district agreed to provide the aide, but Mother felt it was not correctly written in claimant's IEP.

31. On March 9, 2022, Service Agency held a Zoom meeting with Mother to discuss her concerns. Present for the Service Agency was Director Preuss; Ms. Lamba; Ms. Lamba's supervisor Liz Campos; and Educational Advocate Monica Munguia. During the meeting, Mother's requests for social skills, social recreational activities, and assistance with locating psychological services were discussed. Near the end of the meeting, Mother was informed that Service Agency would provide her with a six-

month authorization for diapers. Ms. Lamba would follow up with Mother regarding the details. Mother was informed that Service Agency authorized the purchase of diapers for six months in order to give her time to obtain denial letters from her insurance.

32. Following the March 9, 2022 meeting, Ms. Lamba took steps to initiate the six-month authorization for diapers. Shield is a NLACRC vendor that provides durable medical equipment, including incontinence supplies such as diapers, wipes, and pads. Ms. Lamba put Mother and Shield in contact with each other so that Shield would send Mother sample sizes for claimant to try on, and Mother would advise Ms. Lamba of claimant's diaper size. Ms. Lamba also asked Shield to assist Mother in accessing her insurance.

33. On March 10, 2022, Ms. Lamba and Mother exchanged communications regarding Shield's contact with Mother. In an email, Mother stated that Shield had contacted her and told her they do not work with her insurance and cannot provide her a denial letter. Ms. Lamba contacted Mother to clarify that Shield was not her insurance company and could not give an insurance denial letter. Ms. Lamba informed Mother that Shield was only supposed to send her sample sizes so she could determine, and notify NLACRC of, claimant's diaper size. Ms. Lamba reminded Mother that NLACRC agreed to fund for diapers for six months while she accessed her insurance. Mother still needed to submit a denial letter from her insurance.

34. On March 14, 2022, Ms. Lamba contacted Shield and Mother, and confirmed that Shield would contact Mother again about sending her sample diaper sizes. Ms. Lamba also reminded Mother that NLACRC's six-month authorization for diapers was to give her time to access her insurance.

35. On March 15, 2022, Ms. Lamba contacted Director Preuss to inquire if NLACRC was also funding for wipes and a pee pad that Mother requested. Ms. Lamba understood that diapers would be funded for six months while Mother accessed her insurance. In response, Director Preuss inquired of Ms. Lamba if there was the same justification of financial burden for the wipes and pad as for the diapers, and if there was a large amount wipes that was needed more than the ordinary use. Regarding the pee pad, Dr. Preuss asked if there was a reason for using a pad if NLACRC was also funding diapers. Ms. Lamba advised Dr. Preuss she would discuss her questions with Mother.

36. On March 16, 2022, Ms. Lamba received an email from Mother stating that Shield had contacted her to verify her eligibility and told her she was not eligible, so Mother told Shield to contact Ms. Lamba instead. Ms. Lamba replied to Mother that she needed to speak with Shield directly because they were calling about sending her sample sizes. Ms. Lamba contacted Shield and Mother "to ensure that they coordinate to discuss mailing the sample sizes to parent." (Exh. 9, p. A73.)

37. On March 16, 2022, Ms. Lamba spoke by telephone with Mother. During this phone call, Ms. Lamba asked Mother about Director Preuss's questions regarding the request for wipes and a pad. According to Ms. Lamba, Director Preuss's questions about financial burden, the number of wipes needed, medical need, and anything outside of ordinary usage, are typical questions and part of the process to assess a consumer's need for incontinence supplies. In her documentation of the telephone call, Ms. Lamba noted Mother was upset when asked if the reason for requesting wipes and a pad was due to financial need. Mother said it was "obvious that it's a financial need since she is unemployed and homeless," and she "didn't know it depended on

financial need.” (Exh. 9, p. A73.) Ms. Lamba replied it was not necessarily dependent on financial need, and she was merely asking the questions posed by Director Preuss.

38. On March 21, 2022, claimant’s case was transferred to a new service coordinator, Claudia Juarez. According to Ms. Lamba, when claimant’s case was transferred to Ms. Juarez, NLACRC was still in the assessment phase and gathering information regarding Mother’s request for diapers, and Shield still needed to provide Mother with sample sizes.

Denial of Funding Request

39. On April 8, 2022, Consumer Services Supervisor Amy Gandin spoke by telephone with Mother regarding her funding request for diapers and a pee pad. The telephone call is summarized in Service Agency’s denial letter dated April 28, 2022, signed by Ms. Gandin. The letter stated, in pertinent part:

In our telephone conversation on April 8th, 2022, you requested funding for diapers and a pee pad for [claimant] for nighttime bed wetting. You stated that [claimant] continues to experience urinary incontinence both during the day and night. We discussed if you had sought the input of [claimant’s] pediatrician regarding whether there is a medical condition associated with [claimant’s] urinary incontinence, or whether it was related to his developmental disability. You indicated that your pediatrician advised you that [claimant] should no longer wear diapers so that he could experience the discomfort of feeling wet which in turn would help facilitate the process

of motivating him to use the toilet. However, you stated that you would still like to use diapers for him along with a nighttime pee pad. You stated that a provider funded through Medi-Cal, Western Medical Drug Supply [Western Medical], offered to supply the funding for the items but that you do not want to work with this provider because you feel this provider had violated HIPPA. I advised you that you could report a HIPPA violation to the governing agency of this provider. You were also advised of the statute that requires families to pursue/utilize their insurance funding source first. In this case there is an available provider to fund the items and it is also recommended that you consider addressing [claimant's] urinary incontinence through an Applied Behavior Program that can be requested through [claimant's] Medi-Cal insurance.

(Exh. 1, p. A20.)

40. On May 27, 2022, Mother filed a fair hearing request to appeal Service Agency's denial and requesting funding for diapers and an electronic pee pad. Mother included an attachment to the fair hearing request in which she claimed some of the statements attributed to her in Ms. Gandin's April 28, 2022 letter were "completely false," and that she was not surprised "as I have experienced over phone and email conversations with Ms. Gandin, in which her interpretation and skewing of conversation is to favor herself and the Regional Center, never the client." (Exh. 1, p. A18.) In the attachment, Mother also wrote, in part:

I did say that we had tried enuresis training for many months, as per recommended by the pediatrician, with no success. I also stated that I needed some support whether it be diapers, a pee pad, either or both.

The most disappointing part of the appeal was the complete omission of the facts and honesty regarding the diaper/pee pad request. I have phone conversations and emails dating back to Feb 24, 2022 AT LEAST, in which I am requesting these services. I also have emails from March, 2022 in which the diapers were approved temporarily by the Regional Center. It is appalling that this information was not noted or discussed.

(Exh. 1, p. A18.)

41. On June 17, 2022, Service Agency sent an email to Mother explaining, in detail, the procedure for making a request to her insurance company to change the supplier of diapers and a pee pad, including telephone numbers to call. (Exh. 19.) The email generally explained the insurance company's process for approving or denying a request for supplies, as follows:

Your son currently has Blue Shield Promise of CA as his health plan, and AltaMed as the medical group. When you make a request for diapers with a medical provider, they refer to them as "Durable Medical Equipment (DME) for the incontinent supplies". [¶] The procedure is as follows:

1. Your son's Primary Care Physician's (PCP) office sends the Authorization Request to AltaMed. Which they did, and therefore you got assigned a supplier: "Western Medical Supplier";
2. Then, AltaMed reviews the request and they either: [¶] a. Approves, and sends a letter with the name of the provider/vendor that will send out the incontinent supplies or [¶] b. Denies and sends a denial letter.

(Exh. 19.)

42. The June 17, 2022 email next explained the steps for Mother to change the supplier assigned by her insurance company:

Based on the information you orally provided to NLACRC, the DME/incontinent supplies were approved but you no longer want that provider/vendor. Then what you need to do is the following:

1. Call AltaMed directly at: 855-848-5252 and request that they MODIFY the authorization to another provider/vendor. We do not have lists of providers/vendors, that would be AltaMed since they are the ones approving the services.
2. If after calling AltaMed, you do not feel assisted, you can always call Blue Shield Promise of CA directly at 1-800-605-2556 and they can assist with the whole process, as your second alternative.

You can start with Blue Shield Promise if you do not want to call AltaMed. But what they will need to do is call AltaMed too and have the current Authorization Request, Modified to another provider.

(Exh. 19, bold in original.)

43. To date, Service Agency has not received any denial letter(s) from claimant's insurance related to Mother's funding request for diapers, wipes, and a pee pad.

Mother's Evidence and Contentions

44. Mother testified regarding her family situation in 2020 and 2021. Mother was laid off in March 2020 and used her unemployment benefits to pay the rent. When her unemployment benefits ended in 2021, Mother could not pay the rent. When claimant's school year started in August 2021, Mother's plan was to look for work during day while claimant was in school. In September 2021, Mother and claimant had to move from their home and place their belongings in storage. In November 2021, Service Agency was notified that Jewish Family Services was assisting Mother with "some job, housing and service needs." (Exh. 9, p. A61.)

45. Mother testified claimant suffered trauma at school in August 2021, when he was beaten by another student and sustained a serious eye injury. (Exh. 9, p. A60.) During a telephone call on March 9, 2022, Mother informed Ms. Lamba claimant was injured in an incident at school that day. (*Id.*, p. A70.) Mother was told by the teachers that claimant reported another student threw an eraser at him, which cause his eye to become blurry. Mother was upset and indicated she would not be sending claimant to

school the next day. Mother felt the school downplayed these incidents. She requested the school provide a one-to-one aide for claimant at school.

46. Mother testified she never received diapers offered by Service Agency. Mother claims she was never given six months to obtain and provide insurance denial letters. She asserted there was no follow up on her request after claimant's case was transferred from Ms. Lamba to a new service coordinator. Mother feels Service Agency never gave her clear instructions; she was told to get a denial letter but not told how to do that.

47. Mother testified regarding the difficulties she faced in trying to obtain ABA services. Due to Covid restrictions and difficult life circumstances, Mother was unable to get ABA services and was placed on waiting lists when she tried to schedule the service. Because of Covid, Mother wanted center-based ABA therapy, not in-home therapy. Mother testified she notified Service Agency of the obstacles she faced; however, Mother felt Service Agency just "brushed them under the rug."

48. Mother felt confused after the April 8, 2022 telephone call with Ms. Grandin. Mother asserted that "diapers were offered but never given, and wipes and a pad were never discussed, just denied." Mother feels her request for diapers was pending but never worked on after Ms. Lamba was transferred from claimant's case. Mother testified she declined the offer of mediation from Ms. Munguia because she felt the offer was not welcoming or inviting, and the mediation was simply another meeting with the same people she had already been dealing with regarding her funding request.

49. Mother testified Western Medical contacted her and said they had a prescription for diapers. Mother did not know if that meant Western Medical was

approved to supply diapers for claimant. She also did not know how Western Medical obtained the prescription. Mother told Western Medical she did not feel comfortable working with them. At hearing, Mother testified she did not want to work with Western Medical because of a past incident with the company, where they contacted her ex-husband regarding the delivery of her medicine and disclosed detailed medical information about her. Mother testified she contacted her medical group, AltaMed, to request a different supplier. Mother testified she was informed by AltaMed that Western Medical was the only supplier they worked with, and AltaMed would not give her anything in writing.

50. Mother acknowledged there was a change in circumstances since the time she first requested funding for diapers from NLARC, in that she did not have a prescription in February 2022, but in April 2022, there was now a doctor's prescription for diapers that was covered by insurance. Mother also acknowledged that she has no written denials for wipes or an electronic pee pad because she never received any.

NLARC Service Standards

51. When purchasing services and supports for a consumer, Service Agency is required to comply with NLACRC's Service Standards. (Legal Conclusion 4.) Service Agency considered Mother's funding request under the NLACRC Service Standards for "other family support services" and "health care services."

52. Diapers are included in the NLACRC Service Standards definition of "other family support services." (Exh. 10, p. 43 [p. A131].) Under the Service Standards, "NLACRC will provide 'other family support services' as determined through the individual program planning process." (*Ibid.*) The process must include consideration of: (1) typical parental responsibility to provide a similar service to a child without a

disability, (2) the availability of generic sources that have a legal responsibility to provide services (such as private health insurance, local education agencies, California Children's Services, and Medi-Cal), and (3) the cost-effectiveness of services and service providers of comparable quality.

53. Also pertinent in this case is NLACRC's Service Standards for purchasing "health care services," which is defined as including "durable medical equipment that are prescribed and/or provided by qualified professionals." (Exh. 10, p. 70 [p. A158].) Service Agency considers incontinence supplies (e.g., diapers, wipes, and pee pads) as durable medical equipment. Under the Service Standards, NLARC may purchase "health care services," including durable medical equipment, when: (1) the service is medically necessary, (2) the service is not available through generic resources, private insurance or private sources of funding, and (3) the service is agreed upon through the IPP process.

54. The NLACRC Service Standards for "health care services," including durable medical equipment, requires: "Consumers, or where appropriate parents, must pursue an administrative appeal of medical . . . services denied by a generic resource or private insurance, unless the denial does not merit an appeal." (Exh. 10, p. A158.)

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act), set forth at Welfare and Institutions Code section 4500 et. seq., governs this case. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant,

through Mother, timely requested a fair hearing and, therefore, jurisdiction for this case was established. (Factual Findings 1 through 4.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) In this case, claimant requests regional center funding for diapers, wipes, and an electronic pee pad. Therefore, claimant has the burden of proving by a preponderance of the evidence he is entitled to the funding he is requesting. (Evid. Code, § 500.)

3. A regional center is required to secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 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).)

4. Pursuant to section 4646.4, subdivision (a), when purchasing services and supports for a consumer, a regional center shall ensure 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.

(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.

5. 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." (§ 4648, subd. (a)(8).)

6. Regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include "[g]overnmental or other entities or programs required to provide or pay for the cost of providing services, including Medi-Cal, Medicare, . . . school districts, and federal supplemental security income and the state supplementary program," and

"[p]rivate entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer." (§ 4659, subd. (a)(1), (2).)

7. Pursuant to section 4659, subdivision (c), "regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, . . . 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."

8. Pursuant to section 4659, subdivision (d)(1), "a regional center shall not purchase medical . . . services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit." Subdivision (d)(1) further provides that regional centers may pay for medical services only 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."

Analysis

DIAPERS

9. Service Agency acted in accordance with its obligations under the Lanterman Act regarding Mother's funding request for diapers.

10. Service Agency denied the request for diapers after being notified by Mother that claimant's insurance agreed to purchase diapers through its supplier

Western Medical. Service Agency was prohibited from purchasing diapers for claimant due to the availability of this insurance coverage. (§§ 4648, subd. (a)(8), 4659, subd. (c).) When Mother notified Service Agency of the insurance coverage in April 2022, Service Agency had not yet completed processing the six-month authorization for diapers. Thus, no diapers were provided to claimant pursuant to the six-month authorization.

11. Service Agency may not purchase medical services for a consumer over age three unless it is provided with documentation of an insurance denial. (§ 4659, subd. (d)(1).) Here, Service Agency properly requested that Mother provide documentation from her insurance company denying coverage for diapers. Service Agency also properly considered the request for diapers in accordance with NLACRC's Service Standards. (§ 4646.4.)

12. Mother has chosen not pursue claimant's available insurance coverage for diapers. Mother is not comfortable working with the supplier assigned by her insurance, Western Medical, due to a prior incident involving disclosure of her medical information. Mother has contacted her medical group, AltaMed, to request a change in supplier. Mother claims she was told AltaMed does not work with any other supplier, but it will not confirm that in writing. Although it may be difficult and frustrating at times, it is Mother's responsibility to handle matters with claimant's insurance. Service Agency may assist Mother by providing "information and referral services" and "advocacy assistance" as necessary to ensure the delivery of services to claimant. (See § 4512, subd. (b).) Ms. Lamba provided such assistance during the time she was claimant's service coordinator. Service Agency also provided detailed instructions to Mother on the steps for requesting her insurance company to change to a different diaper supplier.

13. If Mother wants to work with a supplier other than Western Medical, she must make that arrangement with her medical group, AltaMed, or her insurance company, Blue Shield. If Mother wants Service Agency to fund for diapers, she must provide Service Agency with documentation from her insurance company of any refusal or denial to provide coverage for diapers, or that the coverage is limited only to Western Medical as the supplier. Medical insurance is a document intensive business. Mother's claims that her insurance will not give her anything in writing appears to reflect a misunderstanding on her part.

14. Notwithstanding the foregoing, the circumstances of this case support ordering Service Agency to complete and implement the six-month authorization for diapers it had agreed to in March 2022. For the past two years, Mother has been dealing with difficult life circumstances, including unemployment and homelessness, and has been doing her best to ensure her son's needs are met at home and at school. Mother's apparent inexperience in handling insurance and regional center matters for her son has led to some of the difficulties, frustration, and misunderstandings reflected in the documentary evidence. Having gone through this appeal, Mother is now more familiar with regional center procedures and what she is required to do to pursue services through claimant's insurance. Providing funding for diapers for a limited six-month period will give Mother the opportunity to make arrangements with her insurance about changing from Western Medical to another diaper supplier and, for the reasons explained below, obtaining insurance denial letters for wipes or an electronic pee pad if she still wants either those items for claimant.

15. Accordingly, claimant's appeal of Service Agency's denial of funding for diapers shall be granted in part, as set forth in the Order below.

WIPES AND ELECTRONIC PEE PAD

16. The record in this case is insufficient to establish that Service Agency should be required to fund for wipes and an electronic pee pad as requested by Mother.

17. In March 2022, Service Agency was still in the process of gathering information and assessing claimant's need for wipes and a pee pad. As required by NLACRC's Service Standards, Service Agency was required to determine if the wipes and pee pad were medically necessary, whether generic resources of funding (e.g., insurance) were available, and whether the wipes and pee pad were agreed upon through the IPP process. To that end, on March 16, 2022, Ms. Lamba requested information from Mother regarding her request for wipes and a pee pad. Service Agency has not received the information needed to complete an assessment as required under NLACRC's Service Standards. Mother has not provided a doctor's prescription for the wipes or pee pad she is requesting, which would be pertinent to establishing medical necessity for the items under NLACRC's Service Standards.

18. Service Agency also has not received an insurance denial letter for wipes or a pee pad. Service Agency is prohibited from purchasing medical services for a consumer unless it is provided with documentation of denial of insurance coverage. (§ 4659, subd. (d)(1).) Service Agency's requests to Mother for documentation and information were in accordance with its obligations under the Lanterman Act.

19. Accordingly, claimant's appeal shall be denied as to Mother's request for wipes and an electronic pee pad. Service Agency shall not be required to fund for the requested items at this time. However, as noted in Legal Conclusion 14, Mother must

provide Service Agency with an insurance denial letter for wipes and/or an electronic pee pad if she wants Service Agency funding for either of those items.

ORDER

Claimant's appeal is granted in part, and denied in part, as follows:

1. Service Agency shall authorize funding for diapers for claimant for a period of six months under the following conditions: (A) Mother provides Service Agency with all information and documents it requests that are necessary to complete the authorization, including but not limited to, claimant's diaper size; (B) Mother shall respond to any such request for information and documents from Service Agency within five (5) business days of the date of the request; and (C) Service Agency's obligation to fund diapers for claimant pursuant to this Order shall expire at the end of the six-month period.

2. Service Agency is not required to fund for wipes or an electronic pee pad for claimant at this time.

DATE:

ERLINDA G. SHRENGER
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.