

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

**In the Matter of the Fair Hearing Request of:**

**Claimant,**

**vs.**

**Westside Regional Center,**

**Service Agency.**

**OAH No. 2022080693**

**DECISION**

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 24, 2022.

Claimant was present by his mother (Mother) and was represented by Amida Ochoa. Titles are used instead of names to protect confidentiality. Westside Regional Center (Service Agency) was represented by Ron Lopez.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on October 24, 2022. After submission, on October 24, 2022, Mother filed a motion to allow her written statement to become an exhibit,

marked as exhibit L, and her written statement, marked as exhibit M. Exhibits L and M were forwarded by OAH to the Service Agency. On October 28, 2022, Mr. Lopez informed OAH there would be no reply from the Service Agency. The record closed again, and the matter was resubmitted for decision, on October 28, 2022.

## **ISSUES**

The parties agreed the following issues are to be determined:

1. Should the Service Agency pay gas reimbursement for Personal Assistance providers of \$200 per month?
2. Should the Service Agency pay retroactive gas reimbursement of \$1,000 for the months of March to July 2022?
3. Should the Service Agency pay for Pediasure in the amount of \$205.76 per month?

## **EVIDENCE RELIED UPON**

Service Agency exhibits 1-11; Claimant's exhibits A1-A4, B1-B4, C1-C2, D1-D4, E1-E3, F1-F2, G1-G4, H-M; testimony of Mother.

### **Note About Exhibit Labels**

Claimant submitted exhibits labelled with letters and, within the letters, often there were several numbered documents. Therefore, during the hearing, these exhibits were referred to by both the letter and number; for example, exhibit A2, exhibit D3. When the Claimant's exhibits were loaded into the Case Center document platform,

they were automatically assigned page numbers beginning with the letter B. Unfortunately, Claimant's exhibits in Case Center were out of order. For the official Exhibit List, the ALJ took the evidence list prepared by Claimant and, to each description of an exhibit, added the page numbers assigned in Case Center. For example, exhibit D3, pp. B149-B156.

## **SUMMARY**

Claimant's requests for payment of gasoline expenses, \$1,000 for five past months and \$200 per month thereafter, were denied by the Service Agency because transportation was considered a regular family responsibility. Claimant contends there are unique circumstances supporting the request. Claimant's request for payment for Pediasure was denied because the Service Agency requested Claimant pursue a grievance for his medical insurer's denial, and the Service Agency requested medical documentation the Pediasure was needed to alleviate Claimant's developmental disabilities. Claimant contends the Service Agency did not assist with a grievance and requested the medical documentation only after Claimant was asked to, and did, request coverage from the insurer and obtain a doctor's prescription for the Pediasure.

Claimant did not submit sufficient evidence to support the requests, and they are denied. The Service Agency shall determine within 30 days whether an exception should be made regarding past and future gas reimbursement.

## **FACTUAL FINDINGS**

### **Jurisdiction and General Background Evidence**

1. Claimant is a 12-year-old male who lives in the family home with Mother, a sister, and a female cousin. Claimant receives services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq.), referred to as the Lanterman Act, based on his diagnoses of autism spectrum disorder and Intellectual Disability. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) Claimant receives the following services from the Service Agency, all provided by vendor 24HR Homecare: respite, 35 hours per month; an additional seven hours per month of COVID respite until October 31, 2022, as aid paid pending; specialized supervision, 27 hours per month, as aid paid pending; and remote learning, 84 hours for the month of October 2022, as aid paid pending. There are other Fair Hearings pending.

2. As set forth in Claimant's Individualized Program Plan (IPP) developed at a meeting in May 2022, other services were discussed, and many services were assessed or to be assessed. (Exhibit 8.) The IPP includes information about schooling received from Mother in September 2022 and the IPP was approved by the service coordinator, Iris Yniquez, on September 26, 2022. The IPP refers to two written parent reports that were attached, which are found at exhibits E1 and E2. The parent reports are discussed in more detail below. Mother signed the IPP on October 19, 2022, indicating she was partly in agreement and partly in disagreement with the IPP, and was attaching the two parent reports. (Exhibits B3, B4.)

3. Claimant has other medical conditions and diagnoses, including but not limited to Spastic Diplegic Cerebral Palsy, Attention Deficit/Hyperactivity Disorder,

executive function deficits, vision dysfunctions, audio deficits, chronic constipation, a chronic gastrointestinal condition, chronic lung disease, and a history of seizures and prematurity. His symptoms include pragmatic speech delays, inappropriate repetitive behaviors, inattention, medical vulnerability with dietary needs, being underweight, adaptive delays, and pulmonary disease, causing coughing and requiring breathing treatment. Claimant requires assistance with many activities of daily living.

4. Claimant was one of triplets. One sibling has died. Claimant's sister has developmental disabilities and is a consumer of the Service Agency. In 2016 Mother's brother died and Mother became the guardian of his daughter, who is also disabled. There was no evidence the niece receives services under the Lanterman Act. Claimant's father (Father) is a firefighter who was often unavailable to assist Mother with caring for the three children due to his work schedule when he worked in Santa Monica, and due to his travel for work, sleep schedule, and on-call requirements. As of October 16, 2022, Father accepted a new job with the Novato Fire District and has moved to Northern California. Mother and the family intend to move at the end of the school year.

5. Claimant is eligible for special education services from the Los Angeles Unified School District (LAUSD), which previously funded his attendance at the Village Glen School. After virtual learning ended, Claimant attended the Village Glen School in person from March through June 2022. He was not provided with transportation. Mother disagreed with the school placement by LAUSD and, as of August 22, 2022, Claimant has attended The Center for Learning Unlimited (CLU) with the family paying the tuition. CLU does not provide transportation for Claimant. Although Mother testified she disagreed with the placement at Village Glen School, there was no evidence whether Mother is appealing that placement or the lack of transportation for

school. Mother testified CLU better meets Claimant's needs for a smaller ratio of students to staff and more 1:1 assistance. Mother first testified the request for future gas reimbursement is not to pay for transportation of Claimant to CLU, but later testified it was for transportation to the community, school, and for vision therapy.

6. Claimant receives assistance from In-Home Supportive Services (IHSS). The number of hours and types of assistance were not specified, other than Mother is an IHSS provider. Mother informed the Service Agency more IHSS hours are needed.

7. Claimant had three caregivers for services funded by the Service Agency but one caregiver left at the end of 2021. 24Hour Homecare informed Mother there was a staff shortage. To retain the remaining two providers Mother supplements their pay. Mother stated it is hard to retain caregivers in part due their low wages and the rising cost for gas to transport Claimant to attend therapy sessions, community activities, and school. Mother requested support from the Service Agency for transportation. Mother also requested information on other providers to determine if more staff could be located.

8. Mother made verbal and written requests for reimbursement for gas payments she paid in the past, and for future gas payments.

9. The IPP refers to Mother supplementing Claimant's diet with Pediasure Sidekick high protein nutrition shakes to provide calories and promote weight gain. The IPP does not refer to any request for the Service Agency to fund purchases of Pediasure. The two parent reports do not refer to any request for the Service Agency to fund purchases of Pediasure. Mother testified she made verbal requests for payment for Pediasure to address Claimant's dietary needs. The Service Agency

responded by requesting additional documents and, ultimately, by denying the request.

10. On June 22, 2022, the Service Agency prepared two Notices of Proposed Action (NOPA). One NOPA is for denial of the request for past and future gas reimbursement because the Service Agency does not reimburse parents for transporting their minor children, citing Code section 4646.4. The denial was effective July 28, 2022. (Exhibit 3, p. A20.) Ms. Yniquez wrote a letter indicating the Purchase of Services Committee met on July 28, 2022, and denied the request. (*Id.* at p. A21.) The second NOPA is also dated June 22, 2022, and denies the request for a monthly stipend of \$205.76 for Pediasure because it is not a support that is specialized or specially adapted to alleviate Claimant's developmental disability, citing Code section 4512. (*Id.* at p. A22.) Ms. Yniquez wrote a letter indicating the Purchase of Services Committee met on July 28, 2022, and denied the request. (*Id.* at p. A23.) It is unknown why the dates of the NOPAs were in June yet the meetings were in July.

11. Mother submitted a Fair Hearing Request dated August 9, 2022, to appeal these denials. Mother wrote the gas payments were needed for staff to transport Claimant to community integration and therapies, and the Pediasure was per medical recommendation. (Exhibit 3, p. A19.)

12. Informal meetings to discuss the requests took place on August 12 and September 2, 2022, and are memorialized in a letter from the Service Agency (exhibit 4) and from Mother (exhibit B2). The Service Agency letter notes: Mother hired a person to transport Claimant to the Plaza de la Raza community integration program and to his therapies; transportation is considered a family responsibility; a medical note was requested indicating medical necessity for Pediasure related to Claimant's developmental disability; the request to pay for Pediasure was denied because there

was insufficient detail to determine if there was such a relationship and because there was no grievance filed regarding denial of coverage by Claimant's medical insurer.

13. Mother's letter covers numerous subjects and service requests. With respect to Peditasure reimbursement, Mother noted she had complied with requests for a denial letter from the medical insurer and a doctor's note stating the specific formula. Regarding gas reimbursement, Mother repeated the amounts requested. Mother noted she had provided Service Agency personnel with "an overabundance of proof," however Service Agency personnel "resorts to asking for new information . . . ." (Exhibit B2, p. B178.)

14. The hearing was then scheduled.

15. All jurisdictional requirements have been met.

## **Gas reimbursement**

16. Mother provided additional information to support the request for gas reimbursement. Mileage receipts and a compilation of payments in exhibit I indicate provider Carmen Mezquita lives in La Puente and travels 115 miles roundtrip to get to Claimant's home and take him to community integration and therapies, at a cost of approximately \$25 for gas. Mother testified another provider lives in Long Beach. Mother's request is to cover costs for two days per week, or \$50, for March through July 2022, for a total of \$1,000 for past payments made, and future costs of \$200 per month thereafter.

17. In testimony and in her parent reports and the IPP, Mother explained some of the challenges due to the unique family circumstances. Among those challenges, Father had limited availability to assist and, as of October 16, he moved to



Northern California for a new job. The three children are disabled, have different school locations and schedules, and Mother has requested assistance in numerous ways and by means of various services and supports. Claimant has challenging, complex medical and disability presentations, symptoms, and behaviors. Combined with the need for Mother to attend to all three children, she is overwhelmed.

18. The IPP includes that, in his school placement at Village Glen School, Claimant received speech therapy, occupational therapy, physical therapy, and vision therapy. These services are not provided for Claimant at CLU. Mother requests transportation to allow Claimant to receive therapies but did not explain how the therapies would be provided since Claimant no longer attends the school placement made by LAUSD. Mother testified Claimant was approved for some therapies by CCS, which stands for California Children's Services, however an adult was required to be present and because she could not transport Claimant and be present, the therapies were terminated. Claimant's medical insurance has approved a therapy related to his sensory deficits, but Mother cannot transport him.

19. Because Mother did not agree with services prior to and after the May IPP meeting, she wrote a parent report dated April 6, 2022 (exhibit E1). At the request of the Executive Director of the Service Agency, Jane Borochoff, Mother revised and summarized the information in a second parent report, dated June 14, 2022 (exhibit E2.) In general, these reports include, among other things, that additional services are needed because the IPP does not adequately address Claimant's needs due to the family's unique circumstances and preferences.

## **Pediasure**

20. The IPP includes that Claimant is a picky eater and is underweight. Mother supplements his diet with high protein Pediasure shakes to meet Claimant's calorie goals and makes smoothies to assist with his constipation. Claimant needs to be supervised when he eats. The IPP notes Mother's report of Claimant's medical conditions but also that no doctor's verification was provided. A nursing assessment referral was made to assess Claimant's medical needs. There was no evidence whether that assessment had occurred.

21. When Mother first requested the Service Agency pay for Pediasure, the service coordinator required Mother to request medical insurance coverage for Pediasure. Mother made the request and received a written denial from the insurer dated July 1, 2022, which included information on filing a grievance if there was disagreement with the denial. (Exhibit 5.)

22. After Mother provided the insurer's denial, the service coordinator requested she obtain a prescription for Pediasure. Mother obtained a note on a prescription page from Elaine Guttierrez, M.D. dated September 8, 2022. (Exhibit 6.) According to the note, Claimant takes Quillivant which suppresses his appetite. "Please allow him to drink Pediasure Sidekick w/ [with] high protein 8 oz. shake three times daily." (*Ibid.*)

23. As noted above, after Mother presented the doctor's note to the Service Agency, she was requested to file a grievance of the insurer's denial of coverage and to provide medical documentation whether Pediasure was related to alleviating Claimant's developmental disabilities.

## LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s denial of funding for gas reimbursement and purchase of Pediasure. Jurisdiction in this case was thus established. (Factual Findings 1 through 15.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.) A consumer seeking to obtain funding for a new service or support has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his request for gas reimbursement and purchase of Pediasure. (Factual Findings 1 through 23.)

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Code, § 4501.) These services and supports are provided by the state’s regional centers. (Code, § 4620, subd. (a).)

4. The services and supports to be provided for a consumer are determined by a team, including parents and regional center representatives, under the guidance of various sections of the Lanterman Act, some of which are discussed below.

5. Code section 4646, subdivision (a), states:

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.

6. Code section 4512, subdivision (b), states in part:

The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in

the individual program plan, and the cost-effectiveness of each option.

## **Pediasure**

### **SERVICES DESIGNED FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**

7. Code section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" as meaning "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability . . . ."

8. Pediasure is a commercially available supplement available to the public at large, and not specialized or adapted to alleviate a developmental disability. There is no medical documentation Pediasure addresses alleviation of Claimant's developmental disabilities. It is not obvious Pediasure addresses Claimant's autism spectrum disorder or Intellectual Disability. Claimant has diagnoses and symptoms of chronic constipation, a chronic gastrointestinal condition, and being underweight. These diagnoses and symptoms might be related to his use of Pediasure. On the evidence presented, Pediasure does not qualify as a service or support under the definition of services and supports provided by regional centers in Code section 4512, subdivision (b).

### **COST-EFFECTIVE USE OF SERVICE AGENCY RESOURCES; GENERIC SOURCES**

9. Cost-effectiveness is referenced in several portions of the Lanterman Act. As relevant to this matter, Code section 4646.4, subdivision (a)(2), requires the Service Agency to ensure a consumer's IPP adheres to laws and regulations that generic services and supports are utilized when appropriate. Cost-effectiveness is also

mentioned in Code section 4640.7, subdivision (b), as a goal of the Service Agency's service coordination model.

10. Under Code section 4659, subdivision (c), regional centers shall not purchase a service that is otherwise available from various sources, including private insurance.

11. As applied here, all procedures to seek medical insurance coverage for Peditasure have not been exhausted.

## **Gas Reimbursement**

12. Also considered in the design and provision of services are the usual responsibilities of a family towards their minor children. Code section 4646.4, subdivision (a), requires regional centers to use a process to ensure adherence with laws and regulations. Under subdivision (a)(4), when purchasing services and supports, regional centers shall ensure:

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.

13. Also instructive is California Code of Regulations, title 17, section 54326, subdivision (d)(1): Regional centers shall not "[u]se purchase of service funds to

purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship."

14. There were numerous times Mother informed the Service Agency of various circumstances concerning Claimant's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. This includes the request for gas reimbursement, past and future. There was no evidence the Service Agency considered this information to determine whether an exception should be made so that gas reimbursement should be funded.

## **Reimbursement**

15. Reimbursement of an expense paid by a consumer is specifically authorized under the Lanterman Act only under limited circumstances. Code section 4648, subdivision (a)(3)(B), allows reimbursement if the supplier has a rate of payment with the Department of Developmental Services and is providing the service under an emergency or other special circumstances. Further requirements are found in California Code of Regulations, title 17, section 50612, subdivision (a), describing the nature of an emergency that can support a retroactive reimbursement for an expense. There was no evidence any of these conditions existed concerning Claimant's request for reimbursement of past gas expenses.

16. Retroactive payments were also discussed in *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293 (*Harbor Regional Center*), where the court upheld multiple administrative rulings ordering the regional center to fund services for the care of a client requiring intensive physical therapy, including

retroactive payments for money paid directly by that client's mother to secure the ongoing employment of skilled assistants. Those rulings were based on the flexibility and innovation required under the Lanterman Act to "take all steps possible to keep disabled children at home." (*Id.* at p. 301.)

## **Determination**

17. Several factors support the denial of reimbursements sought by Claimant. First, Pediture is available to and used by the general public and is not a specialized service or support or special adaptation of a generic service and support directed toward the alleviation of Claimant's developmental disabilities. Second, purchase of Pediture could be considered a support if it is necessary to ensure delivery of services under the IPP. However, Pediture was not identified as an agreed support by the Service Agency in Claimant's IPP. The IPP forms the contract of services to be provided, and the needs to be addressed by those services. Third, the Pediture purchases were not of an emergency nature that would permit the Service Agency to reimburse the expense retroactively. Finally, unlike in *Harbor Regional Center*, there was no evidence Pediture is a support needed to maintain Claimant in the family home. (Factual Findings 1 through 23.)

18. Gas reimbursement, past and future, is also not supported by the evidence and the law. Transportation is a family responsibility for parents of all children. (Factual Findings 1 through 23.)

19. It must be noted, however, the Service Agency has not acted in the spirit of the Lanterman Act in the manner it processed Mother's requests for these supports. Regarding Pediture, the Service Agency strung out the various steps it required Mother to pursue so as to consider the request. The need to pursue a grievance, and



the process to submit that grievance to the medical insurer as noted in the insurer's letter, should have been immediately conveyed to Mother when she submitted the insurer's denial. Further, the need for medical documentation whether Pediasure would alleviate Claimant's developmental disabilities also should have been communicated earlier to Mother. Instead, the Service Agency provided piecemeal, seriatim requirements for Mother to meet. However, there is no appropriate remedy on this evidence to this delayed and fractured approach.

20. Regarding the past and future gas reimbursement, Mother provided information that might address the statutory requirement for the Service Agency to "take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care" (Code, § 4646.4, subd. (a)(4)), and the requirement in the regulation to "provide for exceptions, based on family need or hardship" (CCR, t. 17, § 54326, subd. (d)(1)). There was no evidence the Service Agency undertook any determination relating to those needs as they relate to the request for transportation assistance in the form of gas reimbursement.

21. The Service Agency should make that determination within a reasonable time and will be ordered to do so and communicate that determination to Mother in writing, either as an amendment to the IPP if it agrees, or in the form of a NOPA if the support is denied. With respect to Pediasure, Mother may seek further medical documentation and a grievance, if she chooses, and submit further information to the Service Agency.

## **ORDER**

Claimant's appeal of the Service Agency's decisions to deny reimbursement for the cost of purchasing Peditasure and for gas reimbursements past and future is denied.

The Service Agency shall, within 30 days, make a determination as referenced in Welfare and Institutions Code section 4646.4, subdivision (a)(4), and communicate that determination to Claimant in writing, either as an amendment to the IPP if it agrees to provide gas reimbursement, or in the form of a NOPA if the support is denied.

DATE:

DAVID B. ROSENMAN

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.