

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2019060902

DECISION

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 8, 2019, in Pomona, California.

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (Service Agency or SGPRC). Claimant, who was present for a portion of the hearing, was represented by her mother.¹

Daniela Rodriguez, an interpreter, was present at the request of Claimant's mother and provided Spanish-language interpretation services.

¹ Family titles are used to protect the privacy of Claimant and her family.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 8, 2019.

ISSUE

Shall the Service Agency be responsible for funding a van conversion to make the van wheelchair accessible for Claimant?

EVIDENCE RELIED UPON

In making this Decision, the ALJ relied upon exhibits 1 through 14 submitted by the Service Agency, exhibits A through F submitted by Claimant's mother, and the testimony of Claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an 11-year old consumer of SGPRC based on her qualifying diagnoses of cerebral palsy, seizure disorder, and severe intellectual disability.
2. By no later than June 5, 2019, Claimant requested that SGPRC provide funding for a van conversion.
3. On June 5, 2019, the Service Agency sent a letter to Claimant's mother indicating that it denied Claimant's mother's request.

4. On June 18, 2019, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, which appealed the denial of the funding request.

Claimant's Prior Funding Request

5. Claimant is eligible for Medi-Cal services and receives occupational therapy services through California Children's Services (CCS).² On February 2, 2017, Claimant requested that CCS's Medical Therapy Program provide funding for a van conversion in order to make the van wheelchair accessible. On February 21, 2017, CCS denied Claimant's request on the grounds that Claimant had full-scope Medi-Cal benefits and that if the van conversion was medically necessary, Claimant's request could be submitted to Medi-Cal's Early and Periodic, Screening, Diagnostic, and Treatment (EPSDT) services program. (Ex. 11.)³ On March 13, 2017, the Los Angeles County Department of Public Health denied Claimant's request for a van conversion on the grounds that Claimant's request involved modification of an automobile, which is not a CCS benefit.

² CCS is a state program that is administered as a partnership between county health departments and the California Department of Health Care Services (DHCS).

³ EPSDT benefits provide for comprehensive screening, diagnostic, treatment, and preventive health care services for individuals under the age of 21 who are enrolled in Medi-Cal so that they receive appropriate preventive, dental, mental health, developmental, and specialty services. (Cal. Code of Regs., tit. 22, § 51340, 51340.1, & 51184.)

6. To date, Claimant has not submitted a request to Medi-Cal for funding for a van conversion.

7. In a September 26, 2017 Decision in Office of Administrative Hearings Case No. 2017080205, SGPRC's denial of Claimant's request for a van conversion was affirmed on the grounds that: 1) Claimant failed to establish that the van conversion was medically necessary; 2) Claimant failed to request that Medi-Cal fund the service; 3) generic resources such as Access Services was available to provide medical transportation services for Claimant; 4) Claimant's mother failed to demonstrate that she suffered from any disability that prevented her from moving Claimant; 5) Claimant's request was premature since Claimant's family did not own a van; and 6) SGPRC's funding of the van conversion would violate SGPRC's Purchase of Service Policy and applicable law. (Ex. 5.)

Current Funding Request

8. Claimant is non-ambulatory and unable to support her upper body. She requires that others transport her using a manual wheelchair. Claimant is dependent upon her parents for all of her transportation needs. She is also unable to use the restroom independently. Claimant is fed via G-tube, and requires constant supervision to prevent complications related to her intestinal health, epilepsy, possible silent aspiration, and other injuries resulting from potential seizure activity. SGPRC funds Licensed Vocational Nurse (LVN) services for Claimant through Advance Specialty Care.

9. SGPRC's Purchase of Service Policy allows SGPRC to purchase equipment for consumers when: 1) the needed equipment is associated with a developmental disability; 2) the requested equipment is deemed medically necessary; 3) SGPRC's consultants or clinicians have approved the need for the equipment; and 4) the

individual is not eligible for Medi-Cal or other coverage, or if eligible, the funding resource has denied the equipment in writing and SGPRC has determined that an appeal of the denial is not warranted.

10. According to Claimant's September 20, 2018, Individual Program Plan (IPP),⁴ under the category "Getting Around Town, Managing Money, and Having Fun," Claimant enjoys outdoor activities and going to the mall. There is no mention of a request for funding for a van conversion. Further, there is no stated plan or outcome for that IPP category. In addition, there was no evidence that SGPRC consultants or clinicians determined that a van conversion is needed.

11. Claimant's mother contended that a van conversion is required for Claimant's benefit. She asserted that although Claimant's family does not currently own a van, they intend to purchase one. Claimant's mother submitted estimates from Aero Mobility and Ability Center that indicate that the cost to convert a 2018 or 2019 Toyota Sienna van would be 24,800 and \$29,000, respectively.

12. Claimant's mother explained that in order to transport Claimant into the community, she has to lift and carry Claimant from her bed to the wheelchair and from the wheelchair into the family's vehicle, a Ford F150 truck. Claimant's mother then has to lift the wheelchair, which weighs 79 pounds, into the back of the truck. She stated that the wheelchair will at times be hot or wet, depending on the weather, such that it is uncomfortable for Claimant to sit in the wheelchair when they reach their destination.

⁴ Mr. Ibarra stated that he was unaware whether an IPP meeting has taken place in 2019 or whether there is a more recent IPP.

13. Claimant's mother asserted that Claimant weighs over 70 pounds. She contended that due to arthritis and wrist pain and Claimant's father's unspecified health conditions, they experience difficulty lifting Claimant and her wheelchair. Claimant's mother asserted that LVN service providers have informed her they are not required to lift Claimant or her wheelchair, and therefore she cannot ask for their assistance with transporting Claimant. On May 2, 2019, Claimant underwent bilateral adductor tenotomy, percutaneous left hip arthrogram, bilateral VDRO plate, and varus derotational osteotomy of the proximal femur. Claimant's mother stated that as a result of these procedures, Claimant experiences pain in her hips when she is lifted and moved. Claimant's mother noted that if Claimant's family had a converted van, Claimant could remain in the wheelchair and traverse a ramp to enter the van, avoiding pain due to being carried or lifted, and the need to load and unload the wheelchair in and out of the bed of the pickup truck would be obviated. Claimant's mother expressed concern that she will continue to experience difficulty transporting Claimant because she is scheduled to get a new wheelchair in December that weighs more than her current wheelchair.

14. Claimant's mother contended that a van will afford Claimant privacy. Claimant wears diapers because she does not have control of her bladder or bowels and she experiences frequent bouts of diarrhea. Claimant's mother stated that Claimant must be changed immediately after losing control of her bowels. If Claimant needs to be changed during transport, Claimant's mother has to lift her into the front seat of the truck to change her, potentially exposing Claimant to passersby during the changing process. Claimant's mother indicated that it is becoming increasingly difficult to change Claimant in the truck because of Claimant's height and length.

15. In support of her funding request, Claimant's mother submitted letters from Claimant's health care providers. Emil Dominguez, Jr., M.D. of Los Ninos Childrens Medical Clinic wrote that Claimant stools diarrhea constantly and needs privacy during the changing process. Dr. Dominguez further stated that Access, a medical transportation service, does not provide privacy. Claimant's gastroenterologist, Jeffrey Ho, D.O., concurred with Dr. Dominguez's opinion that Claimant needs to be changed immediately after stooling, and stated that Claimant would "strongly" benefit from a van ramp for wheelchair access. Denise Skeen, an LVN, wrote that there is a high risk associated with lifting Claimant in and out of her wheelchair, specifically a risk to Claimant of falling and a risk to Claimant's nurses and family of shoulder and back strain. Ms. Skeen indicated that a wheelchair accessible van is medically necessary, and asserted that in considering Claimant's funding request, SGPRC should consider Claimant's weight and size as well as the strain caused by lifting Claimant's wheelchair in and out of Claimant's family's truck several times per day. Claimant's orthopedist, Lindsay Andras, M.D., wrote:

Currently [Claimant's] family is finding difficulty with transfers in an out of their family vehicle and is in need of a ramp and/or van conversion to make it wheelchair accessible. [Claimant] is a little over 70 pounds making it difficult for parents to carry [her]. Moreover, [Claimant] will consistently express extreme discomfort during transfers which has startled the family and now [makes] them feel unsafe to do them for fear of causing injury. Therefore, we support the need for [a] wheelchair modified van and for it to occur in a timely fashion.

(Ex. C.)

16. Claimant's mother expressed concern for potential delays in transporting Claimant in the event of a medical emergency if Claimant's mother or other family member had to carry Claimant and transfer her into a vehicle instead of being able to push Claimant's wheelchair into a van. Claimant's mother's concerns, however, can be addressed by calling 9-1-1 for emergency medical services.

17. Upon questioning, Claimant's mother acknowledged that Claimant qualifies for medical transportation through Access. Claimant's mother asserted that an Access representative informed her its service providers are not required to change Claimant's diaper or to stop so that Claimant's mother can perform the task. Claimant's mother expressed concern that other Access customers would be uncomfortable with the odor if Claimant's diaper was not changed immediately after stooling. She stated that Access refused to confirm in writing the information they provided to her. Claimant's mother also stated that she did not request Medi-Cal funding for the van conversion because she was advised to request SGPRC funding.

Assessment

18. Claimant established that it is difficult for her family to transfer her to and from, and in and out, of the family vehicle while taking Claimant into the community, and that the need for a wheelchair accessible van is related to Claimant's developmental disability. In addition, her healthcare providers support a van conversion. However, the SGPRC is prohibited by its General Standards policy from purchasing medical equipment unless its consultants or clinicians have determined that a van conversion is needed and Medi-Cal or another funding resource has denied the necessary equipment in writing. SGPRC had not determined that a van conversion

is needed and Claimant failed to establish that Medi-Cal or other generic resource denied funding for the van conversion.

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act Lanterman Act).⁵ Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's proposed denial of funding for services for Claimant. Jurisdiction in this case was thus established.

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. (Evid. Code, § 115.) Claimant is requesting that the Service Agency fund a previously unfunded service. Under these circumstances, Claimant bears the burden of proof.

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." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

⁵ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

4. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. Regional centers must develop and implement IPPs, which shall identify services and supports "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option . . ." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

6. Regional centers have a duty to ensure that its purchase of services and supports conforms to its purchase of service policies and that a consumer utilizes generic services and supports. Regional centers also have a duty to consider the family's responsibility for providing similar supports and services for a minor child without disabilities, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(1), (a)(2) & (a)(4).) Regional centers are also mandated to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental or other entities or programs required to provide or pay the cost of providing services. (§ 4659, subd. (a).) SGPRC's General Standards policy is consistent with the foregoing statutes in that SGPRC is prohibited from purchasing medical equipment where the consumer is eligible for Medi-Cal or is

covered by another health care service plan, and the funding resource has not denied necessary medical equipment in writing. (Exs. 13 and 14.) Moreover, SGPRC is prohibited from purchasing services unless all public resources and well as other resources of funding available to the client have been used to the fullest extent possible.

7. Claimant has not met her burden of proving that SGPRC should fund the conversion of a van to make it wheelchair accessible. Notwithstanding the fact that Claimant's family does not currently own a van, SGPRC is a payor of last resort and, as provided by statute and set forth in SGPRC's General Standards policy, it is prohibited from purchasing medical equipment where, as here, the services are available through a generic resource such as Medi-Cal. Claimant is eligible for Medi-Cal, however, Claimant's family has not requested that Medi-Cal fund a van conversion. A regional center, such as SGPRC, cannot comply with its duty pursuant to section 4659 to pursue all possible sources of funding for Claimant's requested van conversion when Medi-Cal coverage has not been pursued. Should Claimant's parents authorize SGPRC to communicate with, request information from, or give information to other agencies, institutions, or persons concerning Claimant to attempt to secure funding of a van conversion through the Medi-Cal program or any other generic resource, SGPRC should make best efforts to do so.

8. For the foregoing reasons, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied. The Service Agency's denial of Claimant's request for the Service Agency to fund a van conversion is affirmed.

DATE:

CARMEN D. SNUGGS

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.