

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020080246**

**DECISION**

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on September 9, 2020. Karmell Walker, Fair Hearing Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant's Mother (Mother) was present and represented Claimant. Mariana Rudy, Qualified Interpreter, was present and provided Spanish language interpretation for the proceedings.

Oral and documentary evidence was received. The record was kept open until September 18, 2020, to allow SCLARC to submit additional medical records and Mother to file any objections to those records. SCLARC timely submitted records of Claimant's June 6, 2018, April 17, 2019, and July 18, 2018 visits with Hezekiah Moore,

M.D. (Dr. Moore). The records were marked as Exhibits 6, 7, and 8, respectively. Mother filed no objections to the medical records but submitted a Physician Certificate, dated September 18, 2020, from Dr. Moore, which was marked as Exhibit M.

Exhibit M contained new information that had not been previously addressed at the hearing. Accordingly, the ALJ re-opened the record on September 23, 2020, to allow SCLARC until October 1, 2020, to respond to Exhibit M. SCLARC filed no response. As neither party objected to the exhibits submitted post-hearing, Exhibits 6, 7, 8, and M were admitted as evidence.

The record was closed and the matter was deemed submitted for decision on October 1, 2020.

## **ISSUE**

Should Service Agency fund Claimant's request for an adaptive stroller?

## **EVIDENCE RELIED UPON**

In reaching this Decision, the ALJ relied upon Exhibits 1 through 8 submitted by SCLARC and Exhibits A through M submitted by Claimant, as well as the testimony of Ms. Esther Suh and Mother.

## **FACTUAL FINDINGS**

### **Jurisdiction and Parties**

1. Claimant is a 16-year-old girl who is eligible for regional center services based on a diagnosis of profound intellectual disability and cerebral palsy. She also has been diagnosed with post-meningitis encephalopathy with spastic quadriplegia, seizure disorder, scoliosis, and neurological vision impairment/legally blind nystagmus. Claimant is currently 120 pounds. She lives with her parents and her brother.

2. On July 24, 2020, Service Agency received a Fair Hearing Request from Mother appealing Service Agency's denial of her request for a special stroller for Claimant. Service Agency had denied Mother's request in a Notice of Proposed Action (NOPA) letter, dated July 1, 2020. On August 6, 2020, the parties held a voluntary informal meeting regarding Mother's appeal, as provided for in Welfare and Institutions Code section 4710.7, after which Service Agency upheld its denial of Mother's request.

3. All jurisdictional requirements were satisfied to allow this hearing to proceed.

### **Factual Background**

4. Claimant attends school at Alfonzo Perez School five days a week and receives In-Home Supportive Services provided by Mother. Claimant receives a monthly cash social security benefit and is insured through Medi-Cal. She currently receives no services from SCLARC except for translating certain documents related to this hearing.

5. Claimant suffers from scoliosis and ataxia. She also has a history of seizures and takes anti-seizure medication daily. According to Claimant's medical records, Claimant suffered two seizures in June 2018, after which she was taken by paramedics to the emergency room (Exhibit 8), a seizure in June 2019, lasting about a minute (Exhibit I), and a seizure on February 5, 2020. (Exhibit L, p. 3.)

6. Claimant is non-ambulatory and needs assistance to walk. California Children's Services (CCS) has provided a manual wheelchair for Claimant's use. Claimant currently uses the wheelchair to go to and from school on school-provided transportation. Claimant can remain in her wheelchair while being transported to school. Claimant also uses the wheelchair when at home. The wheelchair weighs approximately 90 pounds and is unwieldy to use. The wheelchair and Claimant weigh approximately 200 pounds. Claimant cannot push the wheelchair on her own.

7. Mother does not use the CCS-provided wheelchair for Claimant's medical appointments or other community outings because it is too heavy and needs to be fully disassembled to fit into the family vehicle. To go to her medical appointments and other community outings, Claimant has used a stroller. Her medical appointments are frequent. Claimant visits an endocrinologist, a pediatrician, and a neurologist at least two to three times a year. She visits a dentist at least once a year. She also has regular visits to a hypertonicity clinic and works with a physical therapist and an occupational therapist. Claimant also uses a stroller when she goes to the park and eats out with her family.

8. Claimant has now outgrown her stroller. Mother requested a replacement stroller from CCS in 2019. However, on October 15, 2019, CCS denied her request on the ground that the stroller "duplicates or serves essentially the same purpose" as

Claimant's wheelchair. (Exhibit C.) CCS did not consider Mother's difficulty in transporting the wheelchair when it denied Mother's request.

### **Request for Adaptive Stroller**

9. After CCS denied her request, Mother requested SCLARC to provide funding for a new stroller. According to the information Mother provided, there are two strollers that she believes would meet Claimant's needs. One weighs 39 pounds, 50 pounds less than Claimant's wheelchair, and costs \$2,221.00; the other's weight is not known but costs \$2,519.95. Both can be folded with relative ease for transporting in the family vehicle. (Exhibit B.)

10. In support of her request to SCLARC, Mother submitted several documents from several of Claimant's medical providers. Of particular import was a prescription, dated February 5, 2020, from Claimant's neurologist, Dr. Thanh Le, for a large stroller for transport to medical visits. (Exhibit D.) The prescription noted that Claimant was non-ambulatory and "need [sp] easily transportable stroller for travel to medical appointments." (*Ibid.*) Nothing in the prescription addresses whether the stroller is medically necessary or safe for Claimant, given her seizures, ataxia, and scoliosis.

11. Also of import was a physician certificate, dated September 18, 2020, from Dr. Moore, Respondent's pediatrician. According to Dr. Moore, "it is absolutely not a problem for [Claimant] to be transported via stroller when needed." Dr. Moore had "no objection for [Claimant] to be allowed to utilize a stroller for transportation." (Exhibit M.)

12. Mother contends that a customized stroller would not jeopardize or aggravate Claimant's medical condition and would allow Claimant to continue

attending her medical appointments and participate in community outings without difficulty. At hearing, Mother reported that Claimant had never fallen out of the stroller and also noted the stroller had a strap for Claimant's waist as well as other straps to secure Claimant. She also testified that Claimant has had no seizures in the stroller and when Claimant rocks, the stroller does not move.

13. SCLARC opposes providing funding for Claimant's stroller. In its NOPA, SCLARC states that the rationale for denying Mother's request is that the requested stroller is "not recommended" for Claimant's "reported medical conditions." (Exhibit 2, p. 1.) According to the NOPA, SCLARC's Consulting Occupational Therapist found that Claimant needs a fully supported wheelchair with optimal positioning to accommodate emergencies such as when Claimant experiences a seizure as well as to provide stability for ataxic movements. Based on these needs, the Consulting Occupational Therapist recommended that Mother continue to use Claimant's wheelchair to ensure proper positioning and safety. She also indicated that a wheelchair would provide greater support than a stroller and would allow Claimant to increase her distal functioning. (*Id.* at p. 2.) As legal support for its denial, SCLARC cited Welfare and Institutions Code sections 4659, subdivision (a), and 4512, subdivision (b).

14. The Consulting Occupational Therapist referred to in the NOPA is Esther Suh, who also testified at the hearing. Ms. Suh has been an Occupational Therapist Consultant for SCLARC for five years. Her assessment was based entirely on Claimant's medical records; she did not observe or examine Claimant in person. Ms. Suh's testimony mirrored her findings and recommendations referenced in the NOPA. According to Ms. Suh, because of Claimant's diagnosis of seizures, scoliosis, and ataxic cerebral palsy, Claimant needed a structured seat designed to provide additional head, neck, and back support. Ms. Suh opined that these additional supports would prevent

Claimant's scoliosis from worsening and keep Claimant safe during her continuous rocking or in the event she suffered a seizure. Ms. Suh also noted that Claimant's continuous rocking puts additional wear and tear on a stroller, which is less sturdy than a wheelchair. Ms. Suh acknowledged that Claimant had safely used a stroller in the past, but contended that Claimant's orthopedic issues may have changed. Ms. Suh also acknowledged a stroller could be modified to accommodate Claimant's movements. However, she noted that adding modifications for additional head, neck, and back support would significantly increase the stroller's weight, thereby reducing its attractiveness to Mother as an alternative to a wheelchair.

15. Although Ms. Suh's testimony and recommendations were more detailed than the recommendations from Claimant's medical providers, they were given less weight in determining whether an adaptive stroller is safe for Claimant's use for several reasons. First, Ms. Suh's recommendations were based exclusively on her review of Claimant's medical records; she has never met with Claimant or personally observed Claimant, unlike Drs. Le and Moore, each of whom have observed and examined Claimant independent and regularly. Second, Ms. Suh did not offer any response to Dr. Moore's certification that an adaptive stroller would be safe for Claimant to use. Third, she did not address Mother's contention that the requested stroller had straps to secure Claimant. Fourth, Ms. Suh's contention that a stroller, while safe in the past, may no longer be because of Claimant's orthopedic issues is speculative. Further, Ms. Suh did not seem to consider that Claimant's use of a stroller would be limited to outside outings only and that Claimant uses her wheelchair while at school and home. Ms. Suh also did not address the obstacles Mother faces using a wheelchair and offered no recommendations on how to deal with its weight and unwieldiness, or whether a wheelchair lift, rack, or carrier could conceivably remove

the necessity to break down the wheelchair each time Claimant is transported in the family vehicle.

16. Thus, reviewing the evidence as a whole, an adaptive stroller is not medically objectionable to use to transport Claimant to her medical appointments and her community outings. Nor is an adaptive stroller duplicative of Claimant's wheelchair, given the wheelchair's unwieldiness and weight.

## **LEGAL CONCLUSIONS**

1. The party asserting a claim 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.) Claimant asserts that SCLARC improperly denied funding for a stroller, equipment SCLARC had not previously funded. Consequently, Claimant bears the burden of proving, by a preponderance of the evidence, that SCLARC's decision was incorrect. (See Evid. Code, § 115.)

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act), incorporated under Welfare and Institutions Code section 4500, et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. Services and supports provided under the Lanterman Act are those "directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent,

productive, and normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) The Lanterman Act provides that “[t]he 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.” (*Ibid.*) Such services include adaptive equipment and supplies, such as an adaptive stroller. (*Ibid.*)

4. The services provided by the regional center must be flexible and creative in meeting the unique and individual needs of families as they evolve. Provided services should focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community. (Welf. & Inst. Code, § 4685, subd. (b)(2) & (5).) The services must be cost-effective, and the Lanterman Act requires regional centers to control costs so much as possible and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, & 4697.)

5. Mother established by a preponderance of the evidence that an adaptive stroller would facilitate Claimant’s ability to attend to her medical needs and to participate in the community, consistent with the goals set forth in Welfare and Institutions Code sections 4512, subdivision (b), and 4685, subdivision (b). Using Claimant’s wheelchair to transport her to medical appointments and into the community is too unwieldy for Mother and will make it less likely for Mother to want to do so. In contrast, the requested stroller, which weighs approximately 50 pounds less than Claimant’s wheelchair, would not interfere with Claimant’s ability to alleviate

her medical conditions and engage in family and community activities. That Mother would also derive benefits from the stroller is not enough, by itself, to justify denial of her request. Further, no evidence was offered of any less expensive option of transporting Claimant with equivalent ease to her medical appointments and community outings.

6. Moreover, with the submission of Dr. Moore's report and Dr. Le's prescription, Mother demonstrated that Claimant's medical condition did not preclude, and would not be exacerbated by, use of a stroller. Although Ms. Suh concluded that an adaptive stroller would be contraindicated for Claimant, her opinion is given less weight because, unlike Drs. Moore and Le, she did not personally observe or examine Claimant; instead, she based her opinion exclusively on her review of Claimant's medical reports. In addition, Ms. Suh did not consider that Claimant's time in the stroller is limited to when Claimant is outside of the home and not in school.

7. SCLARC cited Welfare and Institutions Code sections 4512, discussed above, and 4659, subdivision (a), as legal support to deny Claimant's request. Claimant's request does not violate Welfare and Institutions Code section 4512, as set forth in Legal Conclusions 5 and 6. Section 4659, subdivision (a), provides that regional centers are to pursue generic and private sources of funding for consumers receiving regional center services. However, if those services are unavailable, the Legislature intends that the Department of Developmental Services (DDS) and the regional centers "shall continue to be the payers of last resort consistent with the requirements of this division [establishing the Lanterman Act] and the California Early Intervention Program." (Welf. & Inst. Code, § 4659.10.) The term "payer of last resort" has been interpreted to mean that when other providers or generic resources will not fund a service or support otherwise required by the Lanterman Act, DDS or a regional center

shall. As applied to this case, CCS's refusal to fund an adaptive stroller for Claimant means that the funding responsibility should fall to SCLARC through its role as the payer of last resort.

8. In conclusion, Claimant has established as a matter of fact and law that she is entitled to funding for the purchase of an adaptive stroller. (Factual Findings 1-16, Legal Conclusions 1-6.) The reasons specified by SCLARC do not prevent such funding.

### **ORDER**

Claimant's appeal is granted. South Central Los Angeles Regional Center shall provide funding for the purchase of an adaptive stroller for Claimant.

DATE:

CINDY F. FORMAN  
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.