

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

In the Matter of:

CLAIMANT

vs.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

OAH No. 2022030477

DECISION

Sarah Sandford-Smith, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 21, 2022, by videoconference.

Claimant was represented by her mother. Claimant was not present at the hearing.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay (RCEB), the service agency.

The record closed, and the matter was submitted for decision on April 21, 2022.

ISSUE

Is claimant entitled to RCEB funding for a Wonderfold stroller wagon?

FACTUAL FINDINGS

1. Claimant is a five-year-old with autism and Rett Syndrome.¹ Claimant is ambulatory, but her walking is limited. Claimant generally needs assistance to walk. Claimant is also at risk for seizures.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP) dated December 16, 2019. Stacy Maher is claimant's case manager and has been since December 16, 2019. The IPP notes that claimant exhibits delays in her expressive communication and that she has four words that she will use. The IPP further explains that claimant lacks street safety awareness and depends on her family to access the community. Claimant receives occupational and physical therapy provided by the school district, as well as additional occupational therapy provided by Kaiser, and in-home Applied Behavior Analysis (ABA) services.

3. Claimant has a Convoid adaptive stroller, with a weight limit of approximately 100 to 150 pounds. Claimant does not prefer the Convoid stroller, and often screams when she is confined therein. As a result of claimant's behavior, claimant's mother has not taken claimant out to restaurants or on other family outings in the community for approximately a year and a half. Claimant's mother conducted internet research regarding stroller options for children with special needs, so that she can take claimant on more family outings. Claimant's mother discovered the

¹ Claimant's Individual Program Plan specifies autism as claimant's sole diagnosis. However, at hearing, all parties agreed that claimant has also been diagnosed with Rett Syndrome.

Wonderfold stroller wagon during her research. The Wonderfold stroller wagon has a four-point harness for safety and more room to move around as compared to claimant's current adaptive stroller. One of claimant's physicians prescribed a stroller wagon for claimant, as a pediatric ambulatory device. However, claimant's health insurance provider denied coverage for the Wonderfold stroller wagon when claimant's mother inquired.

4. Claimant's parents contacted Maher on January 26, 2022, to request that RCEB fund the purchase of the Wonderfold stroller wagon for claimant. Per RCEB policy pertaining to requests for assistive technology, Maher referred the request to the occupational therapy department. Occupational Therapist Daniel Lin reviewed the request and determined that the Wonderfold stroller wagon is not a medical device, but rather a generic device available for the public, and thus the request for funding should be denied pursuant to RCEB policy regarding assistive technology. Lin communicated his determination to Maher, who spoke with her supervisor, Rebeca Sordo. Sordo agreed that RCEB should not fund the purchase of the Wonderfold stroller wagon.

5. On February 9, 2022, RCEB sent a Notice of Proposed Action notifying claimant that RCEB denied funding for the Wonderfold stroller wagon. Claimant's mother submitted a Fair Hearing Request on March 4, 2022.

6. RCEB Purchase of Service Policy #3402 governs the provision of assistive technology. The policy defines assistive technology as "items designed to facilitate mobility, communication, community access or environmental control to maintain or maximize function and independence."

7. Maher, Sordo and Lin testified at the hearing. They all agreed that RCEB policy precludes RCEB from funding the purchase of the Wonderfold stroller wagon for claimant, because the wagon is a generic device that can be used by children without developmental disabilities. Lin explained that regional centers use vendors who are authorized to sell equipment for the regional centers to purchase, and that there are no medical vendors that sell the Wonderfold stroller wagon. Lin also noted that all medical equipment has Medicare coding, which designates whether a particular piece of equipment is a medical device. The Wonderfold stroller wagon does not contain a Medicare code. Sordo and Lin agreed that the wagon could be a good tool for claimant to access the community, but that RCEB must follow its policies, and they would expect that the family would purchase the wagon for claimant. Lin and Sordo both noted that RCEB has a responsibility to "look ahead," and purchase equipment that will serve claimant on a long-term basis. Lin also stated that he believes claimant's mother desires the Wonderfold stroller wagon, in part, because she has another child on the way, and could fit claimant and claimant's future sibling in the stroller, which is not a basis for RCEB to fund the stroller wagon.

Maher, Sordo and Lin testified regarding their knowledge of claimant's disabilities and current mobility device. Prior to claimant, Maher had not previously worked with children with Rett Syndrome. Lin stated that he has worked with children with Rett Syndrome, and took claimant's diagnoses into consideration when he recommended that funding for the wagon be denied. However, Lin has not taken any classes specifically regarding Rett Syndrome and lacked appreciation regarding the debilitating nature of the disease. Lin, Maher and Sordo were unaware that claimant had been using an adaptive stroller. They also did not appear to know that the Wonderfold stroller wagon has a higher weight limit than the Convoid and Leggero adaptive strollers, allowing it to be used for a long-term basis.

8. Claimant's mother explained that claimant does not like to be confined in her current adaptive stroller and will scream or lay down on the ground and refuse to get up, when she is prompted to go in her stroller. Claimant's mother stated that she and claimant's father want to take claimant on more community excursions, but feel they cannot because of claimant's behavioral outbursts associated with her autism and Rett syndrome. Claimant's mother provided letters from five medical professionals, who have all worked with claimant for approximately two to three years. Each of these individuals described claimant's diagnosis and symptoms, and generally supported claimant's need for a stroller wagon.

Katie Hale is a nurse practitioner who works with claimant at Katie's Clinic for Rett Syndrome at UCSF Benioff Children's Hospital, in Oakland. Hale noted that Rett Syndrome is a serious pediatric neurologic condition that results in loss of speech and purposeful hand use, impaired ability to walk, and emotional outbursts that are difficult to manage. Hale recommended the Wonderfold stroller wagon as a better alternative to claimant's adaptive stroller, to allow claimant to be strapped in, but with more space and in a calmer environment. Atefeh Hosseini, M.D., claimant's pediatric neurologist, noted that claimant is at risk for seizures and has motor difficulties. Dr. Hosseini recommended a medical stroller, but was not specific regarding the type of stroller. Josephine Stark, claimant's pediatric physical therapist at Kaiser; Deanna Gayles, one of claimant's behavioral therapists; and Bryanna Adams, another one of claimant's behavioral therapists, all recommended the wagon stroller for claimant to better access the community. Adams noted that with claimant's diagnoses of Rett Syndrome and autism, it is unlikely that claimant will ever have the safety awareness to walk independently, and that it is likely that claimant's mobility will decline. Adams stated that the stroller wagon would allow claimant a sense of autonomy by not being

strapped into a traditional stroller, but would still provide the necessary safety protections.

LEGAL CONCLUSIONS

1. Claimant has the burden of proving, by a preponderance of the evidence, her eligibility for government funded services. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; *Greatoroex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 54; Evid. Code § 500.)

2. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.²) 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.) Regional centers have the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

² All statutory references are to the Welfare and Institutions Code.

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Regional centers must identify and pursue all possible sources of funding when determining whether to fund a requested service. (§§ 4659, subd. (a)(1) & 4646.4.) This includes taking into consideration the family's responsibility for providing similar services and supports for a minor child without disabilities. (§ 4646.4, subd. (a)(4).) The needs of any future sibling of claimant's, or claimant's parents in regard to any future sibling of claimant's, are not proper items for consideration, and have not been considered.

4. Pursuant to RCEB Purchase of Service Policy #3402, assistive technology items are generally prescribed by a physician or other health care professional. However, the policy does not limit assistive technology to only those items with a Medicare code. Instead, the policy provides examples that include, but are not limited to durable medical equipment. The policy states that "RCEB may purchase [assistive technology] when it is required for reasons related to the developmental disability and when the Planning Team believes either a) the equipment or device will prevent further disabilities, maintain or improve current functioning; b) such equipment is integral to the health care or function of an individual and/or makes specialized care in the home possible; c) the equipment allows the consumer to interact optimally with his/her environment and increases independence and family/community inclusion." The requested Wonderfold stroller wagon, for which claimant has a prescription, falls within this policy.

5. Claimant has a medical need for a stroller wagon, which is related to her eligible condition, autism, and her Rett Syndrome diagnosis. All parties agree that claimant needs ambulatory assistance. The behavioral aspects of claimant's disabilities

make it difficult to take claimant into the community in her current adaptive stroller. The Wonderfold stroller wagon would allow claimant increased autonomy and inclusion in her community and family. Claimant has a need for a stroller wagon that is different from the need of non-disabled children her age, as non-disabled five-year-old children do not rely on stroller wagons to participate in family outings or engage with their communities.

6. Claimant has met her burden. Cause exists for RCEB to fund the Wonderfold stroller wagon, to support claimant's integration into the community, as envisioned by the Lanterman Act. (§4501.)

ORDER

Claimant's appeal is granted. RCEB shall fund the purchase of the Wonderfold stroller wagon.

DATE:

SARAH SANDFORD-SMITH
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.