

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016120861

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 30, 2017.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's father represented claimant, who was present at the hearing.

The matter was submitted on January 30, 2017.

ISSUES

Should IRC fund claimant's request for engine repairs to one of the vehicles claimant's father uses to transport claimant throughout the community?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 27-year-old man who is eligible for regional center services based on a diagnosis of severe intellectual disability, cerebral palsy, and epilepsy. Claimant had been receiving services for many years, but went inactive in January 2016, meaning he remained eligible for services but did not elect to utilize any services at that time. Claimant's mother died in April 2016, leaving claimant's father as his sole-care provider.

2. Claimant's father owns two vans. Both vans accommodate claimant's specialized wheelchair. One van has a motorized lift; the other does not. Prior to April 2016, claimant's mother utilized the van that did not have the lift to transport claimant throughout the community. Claimant's father would help lift claimant into the van. As of the date of this hearing, claimant's father still owns that van and it is in good working order.

3. In July 2016, the van with the motorized lift fell into disrepair. Claimant's father took the van to a repair shop and they provided an estimate for \$6,084.41 worth of repair work for the complete removal and rebuilding of the engine. The estimate broke down various parts that would be required, as well as the labor associated with the work. All of the listed repairs concerned the engine, thermostat, gaskets, wheel bearings, transmission, power steering, and other components located in the engine compartment. None of the listed repairs concern the motorized lift or door leading to the lift, which is in good working order. Claimant's father has already made a \$2,000 payment towards the cost of repairs, on August 4, 2016.

4. In September 2016, following the engagement of the repair shop for services, claimant reactivated his IRC services, and requested IRC fund the cost of repair

work to the van. Claimant also requested respite services, which IRC is exploring, and which is not the subject of this fair hearing request.

5. On November 3, 2016, IRC served claimant with a notice of proposed action denying claimant's request for IRC to fund the repairs to the van, noting the following:

Your request has been denied because the repairs indicated on the estimate provided . . . was solely for the rebuilding of the engine and not specific to the lift of the vehicle or door to the lift. [A]dditionally, your request has been denied because the funding of auto repairs to the engine of a vehicle is not related to the provision of services and supports for [claimant].

6. On December 2016, claimant's father filed a fair hearing request objecting to IRC's decision not to fund the engine repairs to the van. This hearing ensued.

EVIDENCE PRESENTED AT HEARING

7. IRC Program Manager Alexander Rubio and Consumer Services Coordinator Lorena Roque testified at the hearing. According to both witnesses, IRC does not fund the type of repair requested by claimant because the repair of the engine does not relate to claimant's disability. Moreover, there are generic resources available to help claimant access medical care free of charge (through Medi-Cal, Inland Empire Health Plan, and Molina) and to access the community (Dial-a-Ride). All of these transportations services can accommodate claimant's specialized wheelchair, and would permit claimant's father to travel with him free of charge.

8. Claimant's father testified at the hearing. Claimant's father said he went shopping for a new van prior to authorizing repairs, however, purchasing a new van was

cost-prohibitive. Thus, he elected to have the old van repaired. He said claimant used to travel around with his mother in the van that did not have a lift and, although that is the van they are currently using while the van with the lift is in the repair shop, it is a hardship to lift claimant. Claimant's father said that claimant enjoys being out in the community and taking trips to Mexico and out of the county to see relatives.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

[S]pecialized services and supports or special adaptations of generic services and supports 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, normal lives. 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or

support for any consumer unless that service or support is contained in his or her individual program plan.

6. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

9. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources.

EVALUATION

12. A preponderance of the evidence did not establish that IRC should pay for repairs to claimant's father's van.

Repairs to a personal vehicle is typically the responsibility of the vehicle owner. In claimant's case, the van at issue is equipped with a motorized lift to assist claimant into the van. However, none of the repairs listed on the repair estimate relate to motorized lift or door to access the motorized lift. Rather, the repairs all relate to an engine rebuild, which does not ameliorate the effects of claimant's disability.

Moreover, there are several generic resources available to claimant for transportation. He can obtain free transportation to and from medical appointments, and have his father ride with him. To access the community, claimant can utilize Dial-a-Ride. Further, claimant's family has another van in good working order that accommodates claimant's specialized wheelchair. This van, which is not equipped with a lift, is the same van claimant had been using prior to his mother's death in April 2016, and the van claimant has been using since the other van went to the repair shop. Thus, claimant has multiple generic resources and other resources available to him to assist with accessing medical appointments, accessing the community, and traveling to any location of his choice, until the engine repairs are complete.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund the repairs to claimant's van is denied.

DATED: February 1, 2017

KIMBERLY J. BELVEDERE

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 ninety days.