BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and Valley Mountain Regional Center, Service Agency.	OAH No. 2015050931

DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings, State of California, heard this matter in San Andreas, California on August 31, and December 8 and 9, 2015; and on January 27, April 29, and August 11 and 22, 2016.[1]

Claimant was represented by her Mother and Father (referred to collectively as parents).[2] Claimant was present for part of the hearing on each hearing date.

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[1] No evidence was taken on August 31, 2015, when the parties engaged in settlement discussions or on April 29, 2016, when a continuance was granted. (*See*: September 2, 2015, Amended Order Regarding Case Status and Continuance, and May 20, 2016 Continuance and Case Status Order.)

[2] The names of claimant, her mother and father and family members are subject to the August 24, 2016 Protective Order and September 6, 2016 Amended Order Regarding Confidential Names and Confidential Names List.

Valley Mountain Regional Center (VMRC) was represented by Anthony Hill, Assistant Director of Case Management and Attorney at Law.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on August 22, 2016.

ISSUES

1. Did VMRC appropriately deny the request for claimant's parent to be her respite caregiver?
2. Does claimant require a nurse or caregiver so she can safely live at home and, if nursing services are required, what amount of nursing services should be provided?
3. Did VMRC appropriately deny claimant's request for a Bellavita bath chair?
4. Have the modifications to the family van used to transport claimant been completed in a timely manner?
5. Have claimant's home modifications been completed in a timely manner?

FACTUAL FINDINGS

PROCEDURAL SUMMARY

1. On May 21, 2015, VMRC denied claimant's request that Father be allowed to provide respite care services. On May 27, 2015, claimant requested a fair hearing and mediation, raising additional issues. Claimant filed the request because: "generic nursing resources exhausted. [Claimant] is in need of nursing services to be able to live at home. Due to extraordinary delays home & van modifications needed for [claimant] to live @ home safely are not compete. Van modifications will take away transportation for an unnecessary length of time. 1 month. Hardship to client need rental van." To resolve this complaint, complainant indicated that the following action was needed:

> Finish van modification in timely manner. Provide rental van for consumer. Finish home modifications in timely manner so [claimant] can be safely bathed and transferred. Provide nurse or caregiver so [claimant] can live at home.

On the first hearing date, the parties tried to resolve the issues and created a plan of action to do so. This proved unsuccessful. Evidentiary hearings commenced in December 2015.

2. VMRC called the follow witnesses: Program Manager David Vodden, Director of Clinical Services Mary Sheehan, senior service coordinator Dana Freeman, Occupational Therapist Mendel Uychutin, and Registered Nurse Donna Trinchera. Claimant called the following witnesses: Pastor Shawn McCamey; Delta Bay Construction and Roofing (Delta Bay) owner Jose Azevedo and construction worker Juan Nila; Calaveras County Office of Education Assistant Superintendent Janine Schumann and Calaveras School District Nurse Belinda Brager; Lift & Transfer Owner Craig Coogan; service coordinator Lynda Christian; and Mother and Father. The testimony of these witnesses is paraphrased as relevant below.

3. On April 29, 2016, the projected last day of hearing, a continuance was granted after parents disclosed that claimant had an attorney representing her in various matters. Time was given to allow the attorney to make an appearance. Subsequently, no appearance was made and parents advised that claimant did not have an attorney for this case. The hearing continued and concluded in August 2016.

4. *Excluded Issues*: Since the inception of this hearing, issues have arisen about the quality of construction performed by Delta Bay, the licensed contractor performing environmental modifications to claimant's home pursuant to a vendor agreement with VMRC and a separate contract with claimant's parents. Following the first hearing date, parents filed a complaint with the Contractors State License Board

(CSLB). The parties were advised that issues pertaining to the quality of the home modification construction were not within the jurisdiction of the hearing and should be addressed to the CSLB. In addition, whether VMRC appropriately monitored its vendor in the home modifications performed by Delta Bay (including by performing a walk-through before making payment on the contract) was not within the scope of the hearing.

Parents represented that a CSLB investigation had been conducted, that the matter was pending arbitration and that they had also filed a claim against Delta Bay's surety bond. The extent of VMRC's involvement in the CSLB investigation was not established. By the conclusion of this hearing, parents represented that, at the arbitration hearing, the CSLB was only able to address issues pertaining to their contract with Delta Bay, but not VMRC's contract with Delta Bay for claimant's home modifications.

CLAIMANT'S BACKGROUND [3]

5. Claimant is a 16-year-old girl who lives with her parents in rural Calaveras County. She has been a regional center consumer since early childhood. Omar Ahmed, M.D., Director of Pediatrics at Sutter Medical Group, has been claimant's primary care pediatrician for the past eight years. Dr. Ahmed described claimant's medical conditions as including spastic quadriplegia with severe spasticity, scoliosis status post spinal fusion that was complicated by a post-operative wound infection and multiple hospitalizations, eosinophilic gastroenteritis requiring gastrostomy feeds, functional asplenia (absence of a spleen) increasing her risk of infection, recurrent urinary tract infections (UTIs) and

[3] Claimant's conditions and needs are complex. This description is not intended to be comprehensive but focuses on the issues for decision.

urinary retention requiring intermittent catheterization, and a seizure disorder. He noted that "[d]espite all of these conditions, [claimant] has remained remarkably healthy in the care of her dedicated parents."

Claimant has scoliosis and a subluxed/dislocated hip. During her 2012 spinal fusion surgery, rods were placed in her back to correct scoliosis. The following year, claimant developed a deep set hardware infection that resulted in her being hospitalized on four occasions. Mother explained that claimant had become chronically septic and that she remains susceptible to this condition for at least five years and possibly longer. This risk was acknowledged by VMRC's Director of Clinical Services Mary Sheehan, who is a Registered Nurse (RN).[4]

6. Claimant is non-ambulatory and uses both a manual and a power wheelchair. She is completely dependent on others for all her activities of daily living (ADLs), including toileting, bathing, feeding, hydrating, suctioning and taking medications. Claimant receives In-Home Supportive Services (IHSS) under the category of "protective supervision," meaning she needs 24-hour daily supervision for health and safety. As such, she qualifies for the maximum of 283 hours each month, or an average of 9.4 hours each day. Mother is claimant's IHSS worker.

7. As an individual with an orthopedic impairment and multiple disabilities, claimant receives special education and related services through the Calaveras County Unified School District. For a period of approximately nine years (2005 through 2014), claimant's special education placement was out of state. Claimant and her mother lived in Philadelphia, Pennsylvania where she attended a school for children with cerebral palsy. During this time, claimant received medical services from the Children's Hospital

[4] Ms. Sheehan supervises and coordinates all aspects of clinical services, including nursing services, in VMRC's three offices in Stockton, Modesto and San Andreas.

of Philadelphia (CHOP), Dr. Ahmed and the University of California Medical School, Davis.

8. On October 1, 2014, claimant and her family returned to California to live in their Calaveras County home. In January 2015, claimant began attending school and is currently in 10th grade in a special education program with services under an Individual Education Program (IEP). Claimant has seizures at home and at school. Claimant is alert and uses facial expression, laughter and eye gaze to communicate. She has an Augmentative and Alternative Communication (AAC) device provided by the school district and is able to use a head array on her electric wheelchair to operate the ACC. She receives instruction at school to improve her use of additional communication devices (e.g., hand switches and mini buttons).

Assistant Superintendent Schumann described claimant as a very typical teenage girl, who likes being around peers, seems interested in boys and is more interested in social than in academic activities. School Nurse Brager characterized claimant as a "daddy's girl" who wants to interact with people all day long. Parents report that she enjoys extreme rides and motion, including via rollercoaster, paragliding, bungee jumping and skiing.

9. Anticipating their return to California, in 2013 the parents asked VMRC to provide modifications to their home and van to accommodate claimant's significantly changed height and weight. Claimant addressed this request to VMRC's San Andreas office through her service coordinator Lynda Christian.[5] In January 2013, occupational

[5] Service coordinator means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities. (Welf. & Inst. Code, § 4640.6, subd. (d).)

therapist (OT) Mendel Uychutin conducted an assessment and agreed that modifications were necessary. Because it was such a major remodel, VMRC decided to wait to begin this process until the family actually moved back to California.

10. *Individual Program Plan*: Claimant's most recent agreed-upon Individual Program Plan (IPP) with VMRC occurred on February 10, 2015. [6] The IPP has numerous goals, including for claimant: to "maintain a stable living environment at home" with her family; to have her respite needs met; and to be safely and comfortably transported in the family's van to all necessary appointments. One of the greatest concerns addressed by the IPP was that, on returning home, claimant and her mother were "unable to functionally access the family's bathroom, making it more difficult to provide [claimant's] care in the home." A goal was established to address this need. The IPP provides that:

> VMRC will be providing a vendored contractor to make the changes per the OT's recommendations. It is a complex process necessitating all parties (family, OT, contractor, VMRC) be in agreement prior to work being done. At the time of this writing, a meeting has been set up for May 5th [2015] to have the most current recommendations and bids reviewed with VMRC Clinical, the OT, and prospective contractor(s) to ensure that everyone has a unified understanding of the needs and plan for modifying the

[6] Claimant's new IPP was due in February 2016. The parties have begun discussions about this IPP, but it has not been completed. Disputes have arisen about the draft IPP. Those issues are not within the scope of this Decision.

family's residence. Once the bathroom is accessible for bathing, a new lift/tracking system may be needed.

11. On May 11, 2015, Delta Bay submitted a bid to perform the modifications recommended by Mr. Uychutin. The work entailed preparation, demolition, plumbing, electrical and construction work on the family's two back-to-back bathrooms, which were combined into one large bathroom. The total bid was $18,591. VMRC agreed to fund these home modifications. VMRC also agreed to pay for a ceiling track lift system installed by Craig Coogan of the vendor Lift and Transfer. The tracking modifications were designed to allow claimant to be moved from her bedroom via an overhead lift system and into the modified bathroom where she could be bathed in a deep tub. VMRC later agreed to expand the modifications for continuous ceiling tracking to include the master bedroom and living room.

12. On May 18, 2015, Delta Bay submitted an estimate to claimant's parents for additional upgrades the parents wanted as part of the home modification. These included a bedroom re-configuration, electrical work for a Jacuzzi tub and steam shower, and installation of a Jacuzzi tub, shower and tile. The total estimate was $5,358.49. On July 28, 2015, Mother gave Delta Bay a check for $4,000 to pay for materials for their contract.

13. Once the home modification construction began, claimant's service coordinator Rhonda Trout at VMRC's San Andreas office monitored its progress. Later that year, the parents asked for claimant's case to be transferred to VMRC's main office in Stockton after advocacy groups suggested there was greater decision-making capacity there which might benefit claimant. In October 2015, claimant's case was accepted by the Stockton VMRC office as a transfer from the San Andreas office. Dana

Freeman was assigned as, and remains, claimant's service coordinator. She is supervised by Program Manager David Vodden.[7]

14. On October 19, 2015, Ms. Freeman and Mr. Vodden accepted the parents' invitation to come to the home and see the condition of the modification project. Mr. Vodden characterized the living conditions from the project as "a mess" and as looking like a construction site with boxes everywhere. Ms. Freeman agreed that there were health and safety hazards at the home, not caused by the parents, and that the modification was "not up to par."

Following their home visit, Mr. Vodden and Ms. Freeman scheduled a meeting with Delta Bay to discuss timelines to expedite completion of the project. They did not invite the parents. Mr. Vodden indicated that he did not want conflict between the parents and Delta Bay at the meeting which might derail its completion. His overriding goal was to ensure that the project continue to move forward. Delta Bay was instructed to focus on completing VMRC's project.

15. Since their relocation back to California in October 2014, claimant's family has experienced a confluence of difficult circumstances. Respite care was provided only sporadically and nursing services were not available. Construction was delayed and the home was in chaotic conditions for an extended period of time. It was filled with boxes that could not be unpacked from their move and with items purchased and waiting to be installed by Delta Bay. After the bathroom modifications began, there was no way to

[7] Ms. Freeman has been a service coordinator with VMRC for eight years. She is in the transitions unit, serving consumers aged 16 to 22. Mr. Vodden has worked with consumers since 1992, originally as a direct provider in a behavioral management day program and in vocational rehabilitation and as a service coordinator from 2001 to 2015.

regularly bathe claimant, causing her to be at risk of infection. Without a functioning wheelchair lift in the van used to transport claimant, Father had to manually crank the wheelchair lift up and down each time he transported claimant. Father, who also regularly lifted claimant in and out of her wheelchair and bath tub, experienced two serious health episodes. In May 2015, at age 50, he had a heart attack. In September 2015, he had surgery to install multiple stents to repair major arterial blockages. Mother has health issues including lupus and arthritis. Use of the van was impacted by the need for modifications, extended negotiations to obtain the modifications and the need for alternative transportation while these tasks were performed. Once major van modifications were accomplished, further corrections were required. (Findings 56 through 64.)

In early September 2015, the Butte Fire burned significant acreage and resulted in the evacuation of the area where the family lives. Claimant's family home was the only one in their area that escaped the blaze. The fire caused further delay in completing the modifications. While at an evacuation center, not knowing if they still had a house and concerned about claimant's hygiene due to lack of bathing capacity, the parents felt abandoned by VMRC. They met a representative from the CSLB and filed a complaint against Delta Bay.

I. RESPITE CARE

16. The Lanterman Act, Welfare and Institutions Code section 4550 et seq., expresses the Legislative finding that: "children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families…" Consequently, the "Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan." (Welf. & Inst. Code, § 4685, subd. (a).) In order to provide opportunities for children to

live with their families, the "department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to … respite for parents …" (Welf. & Inst. Code, § 4685, subd. (c)(1).) Absent extraordinary circumstances, a regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer. (Welf. & Inst. Code, § 4686.5, subds. (a)(2), (a)(3)(A).)

"In-home Respite Services" means "intermittent or regularly scheduled temporary non-medical care and supervision provided in the consumer's own home…" (Cal. Code Regs., tit. 17, § 54302 (38).) Such services are designed to do all of the following: (a) assist family members in maintaining the consumer at home; (b) provide appropriate care and supervision to protect the consumer's safety in the absence of family members; (c) relieve family members from the constantly demanding responsibility of caring for a consumer; and (d) attend to the consumer's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family member. (*Ibid.*) An in-home respite worker who is not a licensed health care professional but who is trained by a licensed health care professional may perform incidental medical services for consumers of regional centers with stable conditions, after successful completion of specified training. (Welf. & Inst. Code, § 4686, subd. (a).)

17. To achieve claimant's goal of living with her family, the IPP provides:

> **Mediation Agreement/Respite/Nursing Care**
>
> [Claimant] is eligible for respite and nursing services. In the past there were no vendors in the area that would provide nursing or respite service for [claimant]. The family's

> residence is also located several miles down a dirt road in a rural area of Calaveras County. Respite is needed and parents requested respite be provided at an exceptional amount (defined by the 2009 Trailer Bill). This exceptional respite request was taken to Fair Hearing in September 2009 and again in 11/24/2014 at which time all parties reached an agreement. The terms of the agreement are listed in the Final Mediation Agreement. As of this writing, Res Care (Southern Home Care) continues to provide homemaker respite. Currently EPSDT nursing is not in place due to lack of provider.

The Plan to meet this objective was for the parties to comply with the Final Mediation Agreement signed November 24, 2014, and for the parents to "explore EPSDT/Medi-Cal funding for nursing services."[8]

18. *Respite Care Mediation Agreement*: On November 24, 2014, the parties signed a Final Mediation Agreement to resolve a fair hearing request in OAH Case number 2013090164. VMRC agreed to fund 120 hours of in-home respite per month for claimant through March 31, 2017, when the IPP team would assess her ongoing in-home respite needs. The Agreement provides that "[t]his transitional respite is intended to provide the family with support while the family pursues School District services,

[8] The Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit provides comprehensive and preventive health care services for children under age 21 who are enrolled in Medicaid. The regional centers are required to pursue all possible sources of funding for consumers including such governmental programs. (Welf. & Inst. Code, § 4659.)

Community Agency Services e.g. IHSS and Medi-Cal funded nursing services." The hourly amount of respite services to be provided to claimant under the Final Mediation Agreement is four times the typical amount of respite hours provided to other consumers.

19. ResCare (also known as Southern Home Care) has been the vendor designated to provide claimant's respite care. Father estimated that they had respite caregivers approximately 50 percent of the time allotted for this need when claimant was between the ages of four through 12. The parents were initially able to hire family members and friends as respite caregivers. This worked for several years until 2008 or 2009, when these natural resources were exhausted. Since returning to California in the fall of 2014, claimant has had four respite caregivers through ResCare: Diana and Jeanie worked with claimant respectively for two and six weeks in 2014; Father provided these services from February through May 2015; and Karen worked for a brief period ending before Thanksgiving 2015. Claimant has had no respite care provided since late 2015.

20. In February 2015, Father was asked by Eva Montez from ResCare if he would consider being claimant's respite worker. He was told that other parents in the area were also providing respite care for their children. Father explained that he did not seek this position, but agreed to do it as an interim measure until a full-time caregiver could be located. Father previously had his own business in the automobile industry and has historically earned a much higher hourly wage than the $9 paid to respite caregivers. After his return to California, he was offered at least five different work opportunities but has turned them down because caring for claimant consumes most of his day. Caring for claimant begins at 5:00 a.m. and ends about midnight. Father recently incurred expenses to complete a training program to become a school bus driver. He believes that, if respite services were regularly provided, he would be able to find employment and support his family. Until that happens, his primary job is "dad."

21. At a May 5, 2015 meeting with service coordinator Rhonda Trout and various vendors, the parents told Ms. Trout that Father had been claimant's respite caregiver since February 2015. Mother advised that it takes both parents to care for claimant's needs and that, without this support, it would not be possible.

22. *Notice of Proposed Action*: On May 21, 2015, VMRC issued a Notice of Proposed Action (NOPA), denying "the parent's request that the parent is the respite caregiver. Deny any modification to the mediation agreement." Explaining the reason for this proposed action, VMRC wrote:

> The parent is obligated to provide the care and supervision for the minor child. The child is a recipient of IHSS and [*sic*] has decided to be the respite caregiver, eliminating the respite effect. If the parent decides not to serve as the Claimant's IHSS worker, then the care demands of the parent is reduced equivalent to the monthly IHSS service hours from the County. The regional center will not accept the delegation of the parent's obligation to care for her child and will not agree to misuse of respite services as a means to provide an economical benefit or employment arrangement for the parent. If the mediation agreement is disturbed, VMRC will not agree to any modification, but agrees to cancel the agreement and rely on the Family Respite Needs Assessment as is the case with all VMRC consumers in assessing respite service needs. *VMRC is agreeable to* out of home respite and *out of home placement if requested by the Claimant's parents. (Italics supplied.)*

In response to this NOPA, claimant filed the Request for Fair Hearing and Mediation outlining the issues addressed above. (Finding No. 1.) After Father stopped providing respite care in May 2015, no respite care was available until November.

23. On November 10, 2015, Ms. Freeman emailed Mother and told her that ResCare had "indicated to me that they just need you to call them to set something up. They have also requested that hours be no shorter than 4 hours at a time. So that way they can ensure they will have a consistent worker for you." She provided the telephone contact number.

Ms. Freeman also advised Mother that she was "in the process of locating a care home so that you can utilize Out of Home Respite to ensure [claimant] is bathed. I will contact you once a Care Home is located …" Ms. Freeman testified that she offered parents out of home respite twice. The first time was approximately October 31, 2015, when she had identified a respite placement home. This was about the same time as Father's surgery. Parents did not accept this offer. The second offer occurred on November 10, 2015, when she was still trying to identify such a home. Because Ms. Freeman never received a response from Mother on this offer, she stopped seeking an out of home respite placement.[9]

24. Parent described the caregivers who had been referred to claimant by ResCare as generally inadequate. All of them were older women with little in common with claimant. Diana was physically unable to care for claimant. Jeanie was an RN hired by ResCare who had back problems and told parents she was on diet pills and Vicodin. She could not roll claimant to assist in her dressing and diapering. Karen, the last respite

[9] On December 8, 2015, Ms. Freeman testified that, since becoming claimant's service coordinator, she has spent 15 to 20 hours a week on her case and communicates with the parents on almost a daily basis.

caregiver, worked with claimant from November 12 through 27, 2015, just prior to Thanksgiving 2015. Father described her as a person who had recently gotten off of disability for a bad back and was unable to move claimant's body to perform necessary tasks. Karen became "very agitated" when Father told her they would not need her services over the Thanksgiving holiday because they were invited elsewhere. Karen was upset because she was counting on these work hours. They never saw her again. Father denied that this caregiver had been yelled at or told to leave by the parents. After Karen left, the parents talked to Michelle Pereira at ResCare about their desire to find a female caregiver, hopefully someone who is younger with some knowledge of assistive technology and who is physically capable of working with claimant.[10]

25. On January 26, 2016, Ms. Pereira informed VMRC that they were not currently providing respite services to claimant. After a discussion with the parents, Mother told Ms. Pereira not to send just anyone up to them, but to wait until there was a good match for claimant. Ms. Pereira was in the process of hiring new caregivers. Regarding the circumstances in which Karen left the home, Ms. Pereira reported that "the caregiver told the supervisor she was yelled at and told to leave."

26. There was no independent verification of this hearsay report by Ms. Freeman or Mr. Vodden. Neither Ms. Pereira nor Karen testified. VMRC staff never spoke

[10] The parents also testified that, after the NOPA was issued, former service coordinator Trout caused significant confusion for the family and ResCare by narrowing the scope of duties to be performed by the respite worker to "babysitting," even though it had historically involved more significant duties, such as diapering. By November 2015, Ms. Freeman was able to clarify that the scope of respite care was consistent with those historically provided and listed on the vendor's duty sheet and this was communicated to ResCare.

directly to the caregiver and never asked parents what had transpired or whether they had, in fact, yelled at the caregiver and asked her to leave. Parents first learned of this allegation during the hearing. They were concerned that VMRC was perpetuating a stereotype of them as being unreasonable people who are difficult to work with, without ever telling them what was being said about them and giving them an opportunity to respond or to explain what the circumstances were.

27. Parents explained that the lack of a respite caregiver since late 2015 has affected Father's ability to seek work, because claimant is "a two-person job." Claimant has no self-help skills. She is typically a happy child, but can get attention by crying. She does not cry as a precursor to a seizure. Claimant cannot manage her secretions and is always in danger of aspiration. One of the parents always sleeps in the same room with her to ensure her safety and to do any airway suctioning required. Parents believe claimant's needs have increased since she was originally approved for 120 monthly hours of EPDST nursing which led to the Final Mediation Agreement for extraordinary respite care in lieu of nursing. For example, diapering that took 15 minutes when she was an infant can take 45 minutes or longer now that she is a young woman. Her high tone muscles are very strong and she scissor-crosses her legs, making it almost impossible for one person to remove or put on a diaper. Because she is asplenic, typical tone management techniques (e.g. Botox injections) cannot be used due to risk of infection. Parents have observed that manipulation of claimant's body via sling transfers with the overhead lift system and diaper changes may be promoting her seizures. School staff has also seen this connection.

28. Both Calaveras County Office of Education Assistant Superintendent Schumann and School Nurse Brager corroborated the parents' testimony that claimant requires two or more persons to perform certain tasks during the school day. In addition to her Administrative Services Credential, Ms. Schumann has special education

credentials (mild to moderate; moderate to severe) and taught special education from 2004 through 2010. Before assuming her current position, Ms. Schumann was a special education program manager for three years. Ms. Brager has both a Bachelor and a Master of Science in Nursing, and is licensed as a Registered Nurse and as a Public Health School Nurse.

Ms. Brager indicated that a Licensed Vocational Nurse (LVN) is always on campus with claimant because she is one of the most fragile students in the District and has had seizures, including several grand mal seizure, at school this year. A para-educator, who is trained to administer Diastat, a diazepam rectal gel, always rides the bus with claimant in case she has a seizure. Two persons are required to administer the gel; when claimant is seizing, four workers (an LVN and three aides) are required.[11] Diapering requires a log rolling procedure to avoid "tweaking" the rods in her back. Mother is very good at communicating claimant's health issues to Ms. Brager, especially the status of her seizures and the amount of medications she has been given. Under the school district's written policy, two people are required for all of claimant's lifting or transferring. This applies both when a Hoyer lift is used and when transferring occurs without a lift. In each case, one person is in front of, and one is behind, claimant to protect the safety of her subluxed hips, back (rods) and head. Claimant also keeps her arms out rigidly from her torso and a second person often assists in transporting her through doorways to keep her arms from injury. In Ms. Brager's opinion, claimant "is a two-person job." While

[11] Claimant takes a daily maintenance dose of Diazepam (valium), an antiepileptic medication. A supplemental dose is required when she actually has a seizure. In claimant's most recent available Individual Education Plan (IEP), Ms. Brager noted that claimant has had three seizures at school of less than five minutes duration. The school is working on repositioning to see if this might inhibit seizures.

one person might be sufficient during times focused on solely on academics, feeding or socializing, two adults are required for any activities involving moving or transporting claimant.

29. *Mary Sheehan's Testimony*. Ms. Sheehan is an RN with a Master of Science in Nursing and significant experience in providing nursing services to individuals with developmental disabilities. She has worked with VMRC since 1978 in various capacities, including as Manager of Nursing Services and as Health Administrator for the Early Start Program and Nursing. As the only health professional regularly on VMRC's staff, she is in daily consultation with staff and physicians on consumers' health issues.

Ms. Sheehan disagreed that claimant requires two people to provide care. In her opinion, one experienced caregiver who has an appropriate lifting system could provide a majority of claimant's care. Some tasks like diapering might be difficult without two people, but they would not be unsafe. Ms. Sheehan agreed that claimant needed two persons in two situations: first, two people are required to bathe claimant because this is a safety issue; second, two persons are needed to lift claimant out of the wheelchair if she is not at home and able to use the ceiling tracking system. This is not a skilled nursing need and is one that the parents can fulfill.[12]

Ms. Sheehan noted that all respite workers have to be trained in first aid and in CPR. In her opinion, claimant could be cared for by an appropriately trained respite worker when the parents leave the property. She acknowledged that the types of skilled care claimant required would have to be minimized during that time. The respite worker

[12] Ms. Sheehan was aware claimant has seizures and agreed that slings could be problematic. Based on her experience with other large consumers with seizures, she believed that a single caregiver would be able to place claimant in a sling. She was not aware of the school district's two-person lift requirement and what their criteria are.

could perform functions such as toileting, diapering, and feeding. She also testified that a ResCare caregiver was available "today" with advanced notice as long as it was for a minimum four-hour shift. This is an established requirement of respite vendors, because a shorter shift is not feasible for caregivers. Ms. Sheehan acknowledged that the three times of claimant's greatest care need during the day (before and after school and bedtime) are typically less than four hours.

30. VMRC's Respite Services Service Standard provides that respite care "is not meant to supplant other resources, including the parents' routine parenting responsibilities for minors." Ms. Sheehan explained that respite services are designed to give consumers' parents a break from providing constant care. Consumers' parents have a duty to care for their minor children until age 18 and respite services are not intended to terminate this obligation. She also noted that claimant receives 283 IHSS hours a month. If Mother was not the IHSS worker, she would be able to provide additional support in her role as parent. In this case, each month, in addition to the 283 IHSS hours, claimant should receive 120 hours for respite care plus the 144 proposed nursing hours discussed below.

31. At the end of the hearing, parents indicated that the service coordinator has referred them to a new agency, Divine Caregiver, because ResCare could not provide an appropriate worker.[13] Parents have discussed creative options for continuing Father as caregiver, if no one else is available, for example, by using a "homemaker" service code rather than a respite code or by trying to qualify for a self-directed or individual choice budget. In their view, the offer to place claimant out of the home is not an appropriate solution because she has a right to live with them in the community.

[13] The status of this referral is unknown.

32. In her rebuttal testimony on August 22, 2016, Ms. Sheehan discussed two different options to support the family if a respite caregiver was not provided by ResCare. First, VMRC could explore using the Personal Assistant service code, under which the regional center hires and directly pays to provide services to the consumer. Personal Assistants are able to provide any unlicensed (i.e., non-nursing) care. If respite was not available, VMRC could advertise in the paper to locate and hire an appropriate assistant and help them become vendorized. VMRC would agree to fund the Personal Assistant in lieu of the 120 hours of respite care. Second, VMRC could explore using a Homemaker Services employee through a Home Health Agency licensed by the Department of Health Services. If Father had the appropriate license and credential, the regional center would vendor his business and his employees could provide service to claimant.

II. NURSING SERVICES:

33. It is undisputed that claimant requires nursing services. At age three, claimant was approved for EPDST nursing and was found eligible for 120 hours a month of such nursing. Due to the nursing shortage and inability to secure EPDST nursing services, particularly in their rural area, the Respite Mediation Agreement was crafted to provide exceptional respite services in lieu of nursing to meet claimant's needs. The amount of 120 hours per month has remained constant and has been renewed annually each year.

34. Maxim is the home health agency vendor who has been involved in claimant's case. Maxim's December 30, 2014 Health Certification and Plan of Care indicated that claimant was eligible to receive 32 to 40 hours per week (128 to 160 per month) of LVN Skilled Nursing to provide total care "as funded and approved by Medi-Cal EPSDT waiver, to assist parent with all aspects of client care . . ." In a July 1, 2015 email to Mother, Maxim's Administrator Bhakta wrote that Maxim has been "unable to

find adequate nursing coverage in your area to fulfill the nursing needs that you are authorized for." He indicated that "we are continuously looking for nurses in your area to fill this immediate need" and noted that nursing services were last provided to claimant on January 21, 2015. Ms. Sheehan believes Maxim can find a nurse for claimant, but has concerns about the ability to retain a nurse due the family's remote rural location.

35. Dr. Ahmed has written letters recommending nursing services (June 11, 2015), and increased nursing support (December 17, 2015) for claimant. In his most recent letter, Dr. Ahmed urged that "having two people available to care for [claimant] will allow her to continue to receive excellent care as she grows, and the lack of appropriate nursing care can lead to deterioration of her conditions."

36. In an attempt to resolve the nursing services issue, the parties agreed that VMRC would arrange for an independent nursing assessment of claimant's in-home nursing needs and that VMRC would also have its own nurse assess claimant. (September 2, 2015, Amended Order Regarding Case Status and Continuance.) After securing RN Donna Trinchera for the assessment, VMRC withdrew its request for a separate assessment by its own RN.

37. *Trinchera Nursing Assessment*: In her over 30 years of experience, RN Trinchera has worked with hundreds of regional center consumers, ranging in age from infants through adulthood. She began her career as a licensed psychiatric technician at a developmental center. She returned to the developmental center as an RN and worked in the medically fragile unit. In 1985, Ms. Trinchera was hired by VMRC, first as a Nurse Client Program Coordinator and then as an RN Advocate. She worked at VMRC for 22 years, until 2007. When Ms. Trinchera began at VMRC, the developmental centers were moving consumers into community settings. She conducted numerous nursing assessments to ensure that these consumers were receiving appropriate, well-managed

health care services. From 2007 until her retirement in 2015, she worked as a quality improvement nurse/supervisor at Health Plan of San Joaquin (HPSJ), a managed medical care organization. The population she served was primarily pediatric and included many VMRC consumers. As part of her duties at HPSJ, Ms. Trinchera was a liaison with VMRC. Ms. Trinchera now works as an independent contractor nurse consultant. In this capacity, she is vendorized by VMRC to provide training and assessment services.

38. On November 19, 2015, Ms. Trinchera conducted a Nursing Assessment (Assessment) of claimant at her home, to determine her skilled nursing care needs over a 24-hour period. Ms. Trinchera obtained the information used in her assessment from claimant's 2015 IPP and verbal reports from her parents. In her two-page Assessment Report, Ms. Trinchera listed claimant's current diagnosis as:

> Cerebral Palsy, Spastic Quadriplegia, Dislocated Hips, Scoliosis, S/P spinal fusion, Seizure Disorder, S/P Gastrostomy Tube Placement (placement at one year of age); Eosinphilic Gastroenteropathy; Strong Startle Reflex-Panic Attacks; Visual Impairment (Blind Rt. Eye – Cortical Visual impairment Lt.Eye); Elevated Cholesterol, Respiratory Disorder
>
> **Special Conditions**: Total Care for all ADL's; GERD-Dysphagia; Risk for Aspiration Pneumonia; Incontinent of bowel/bladder (Hx. of Urinary Tract Infections)

Under visual-physical assessment, Ms. Trinchera noted that claimant appeared to be well nourished, groomed and dressed. She weighed 115 pounds. Claimant was reported: to sleep moderately well, with occasional suctioning during hours of sleep; to attend high school eight hours per day approximately 60 percent of the time; and to

communicate with good eye contact and smiles. While Ms. Trinchera did not complete a full body inspection, claimant's skin that she observed appeared to be clean.

Ms. Trinchera identified seven problem areas which required nursing care or intervention. These were:

a. **GT feedings**: claimant requires three daily gastrostomy pump feedings each day. Each feeding takes 2.5 hours with a water pump flush for 45 minutes. The first feeding occurs at home at 5:00 a.m. before the 8:15 a.m. school bus; the second is at school; the third feeding is at home at 5:00 p.m. Parents do all three feeding on weekends and days of non-attendance at school. Claimant also receives four water feedings a day.

b. **Respiration**: Claimant receives twice daily nebulizer treatments: one administered before school and one at school in the afternoon. Each treatment takes 10 to 15 minutes to administer. Mother reported claimant requires periodic suctioning, done primarily during hours of sleep [HS].

c. **Digital Stimulation**: Mother reported that claimant receives 45 minutes of digital rectal stimulation per day.

d. **Seizure Disorder**: Mother reported that claimant has two-to-three seizures per month lasting approximately two- to- four minutes each, with new medication providing improved control.

e. **Re-occurring infection**: There were no current infections noted; however, claimant has a history of sepsis and re-occurring urinary tract infections.

f. **DME [durable medical equipment]**: Claimant uses both a manual wheelchair and a power wheelchair with head control; she has a suction machine, pump

for feedings; and "her home was in process of modifications for jacuzzi bath among other bedroom modifications, has hospital bed currently not in use."

g. **ADL's**: "Bathing, dressing, feeding, bladder/bowel care incontinence; ROM, positioning; uses W/C [wheelchair] for mobility."

Under current services, Ms. Trinchera noted that "Mother is receiving 283 hours of IHSS as well as 120 hours of Respite care through VMRC." Mother told her that claimant "has had stable health as she has had no hospitalizations emergency room-urgent care visits since their move back to California."

Based on this assessment, Ms. Trinchera concluded that claimant requires eight hours of skilled care (RN or LVN) per day. On those days claimant attends school for eight hours (generally Monday through Friday), she would require four hours of skilled care at home and eight hours of care each day claimant is home for a full day on Saturdays and Sundays.

39. *Ms. Trinchera's Testimony*: Ms. Trinchera met claimant in her home shortly after she returned from school. Claimant appeared "obviously well cared for." A respite worker was in the home during the visit. Most of the visit time was spent talking to claimant's parents. She had claimant's IPP and took notes of their conversation. Ms. Trinchera reaffirmed her recommended level of nursing services.

Ms. Trinchera was questioned about whether she had spent sufficient time and had sufficient information about claimant to fully understand her conditions and need for nursing services. She explained that she had reviewed the IPP and limited medical records and had a telephone conversation with claimant's mother before the visit. She spent one hour at claimant's home, with the majority of that time spent with the parents. Father suggested it was best not to talk in front of claimant. Because this was not a "quality of care" inquiry, Ms. Trinchera did not have to physically examine claimant.

She did not talk to claimant's school personnel or to her doctors. She believed that the information provided by the parents was sufficient. She asked specific questions about tasks requiring skilled services and the amount of time required to complete these tasks. This information yielded the recommended hours.

Ms. Trinchera agreed that, with a history of chronic sepsis, claimant's underlying infection could be exacerbated any time; however, she noted that claimant was not acutely ill when she saw her and would be in the hospital if this was an acute condition. While she recalled that Mother told her claimant had only 30 percent school attendance the previous school year, she relied on the 60 percent current attendance reported during the assessment because it was focused on claimant's current needs. As a nurse, she has a duty of care to the patient to advocate what is best to promote their physical well-being, regardless of outside agencies and parties. In Ms. Trinchera's opinion, she had sufficient information to make her recommendations.

Ms. Trinchera clarified that the hours she recommended were for skilled nursing only, not for custodial and/or respite care. In her opinion, if the parents are not home, it would not be safe for claimant to be left alone with a respite care worker with no medical training. She did discuss with the parents that VMRC has Level 4 to Level 5 Intermediate Care Facilities with nursing staff that could be a resource for out-of-home respite for family breaks, including one in a nearby community.

40. Parents argued that: (1) Ms. Trinchera's Assessment was not independent based on her historical association with VMRC; (2) her assessment was incomplete based upon the limited amount of time and type of information she reviewed; and (3) these factors affected her assessment of the hours required to meet claimant's needs.

Both parents testified that Ms. Trinchera arrived at their home in November at 4:00 p.m. and was exceedingly worried about "getting off the mountain" before dark. She spent 10 minutes with claimant and did no physical examination of her. She

obtained a "bare bones" medical history from parents, had no medical records and referred to none. Previous assessments of claimant in which parents have participated have taken hours to obtain a full picture of claimant's conditions and needs. Both parent opined that this was not an independent assessment, that if failed to delve into claimant's real needs like the one that was conducted for IHSS, and that she failed to consider the two-person lifting requirement followed by the school district.

41. *Mary Sheehan's Testimony*. In her 37 years with VMRC, Ms. Sheehan had conducted thousands of nursing assessments. She first met claimant when she was in the Early Start program. At hearing, she conceded that she was not up to date on claimant's current medical status and records, had read only limited medical records when she reviewed the Nursing Assessment and had not examined claimant. Ms. Sheehan is aware of the high risk that chronic sepsis will return within five years, and that an asplenic child must be closely monitored as medically fragile. She agreed that claimant is "extremely medically fragile." Based on her experience, claimant falls in the "more complicated" category of consumers. Within the subset of consumers with significant health issues and a need for significant services, however, claimant is not unique. Ms. Sheehan explained that even with such high needs, Ms. Trinchera could have appropriately conducted her assessment during a one-hour in home meeting which occurred after her review of the IPP and a telephone conversation with Mother. The purpose of the assessment was to look at claimant's skilled nursing daily care needs in a 24-hour period. This required information from the parents, who are the best informants for this type of assessment. She estimated that Ms. Trinchera spent approximately 2.5 hours on the assessment. She agreed that medical records may have added more information but did not think it necessary to speak to claimant's school nurse because the focus is on her home care. For the same reasons, speaking with claimant's doctors or other medical professionals was not necessary.

Ms. Sheehan reviewed Ms. Trinchera's Nursing Assessment for claimant, agreed with her recommendations and agreed to approve funding for these services. She noted that VMRC will provide interim funding for skilled nursing services to maintain consumers in the home, while attempts are made to obtain such services from the EPSDT/Medicare program. In her opinion, despite Ms. Trinchera's history with VMRC, nurses have a duty to the patient assessed and the Assessment was independent. Regional centers are required to use vendors and expect them to do an accurate assessment.

42. *Testimony of Mr. Vodden*: As VMRC's Program Manager, Mr. Vodden's responsibilities include approving IPP services. Mr. Vodden has reviewed the Assessment and agreed to approve the nursing service hours recommended by Ms. Trinchera. He estimated that this would amount to approximately 144 hours a month. When these nursing service hours are combined with claimant's 120 respite hours and 283 IHSS hours, claimant will receive 547 hours of care a month, or approximately 18 hours of care a day. This does not count the time claimant is out of home attending school. Mr. Vodden believes these hours are sufficient considering the parents' obligation to provide care for claimant until she reaches age 18.

III. HOME MODIFICATIONS - BATH CHAIR

43. *Evaluations and Testimony of Mr. Uychutin***:** Mendel Uychutin is a licensed occupational therapist who is certified by the National Board of Certification in Occupational Therapy. He is the owner and President of LifeWorks-Applied Clinical Solutions, Inc. (LifeWorks), which is vendored by many regional centers, including by VMRC. Mr. Uychutin participated in evaluations of claimant when she was a toddler.

44. Beginning in January of 2013, Mr. Uychutin performed several Environmental Accessibility Evaluations pertaining to claimant's bathing needs at her family's single story, three-bedroom, two-bath home. His January 15, 2013 evaluation

was focused on claimant's need for a bathroom modification to "allow access to the shower and toilet." VMRC service coordinator Lynda Christian, Ms. Sheehan, claimant, her parents and a nursing care provider were present with Mr. Uychutin for the evaluation. At the time, claimant was 58 inches in height and weighed 82 pounds. There was no operable ceiling-mounted lift system to help move claimant around the house and into the bathtub. The family was using a rental unit from vendor, Lift and Transfer Specialists. Ms. Sheehan recalled Mother saying that she had to be in the bath with claimant and act as her bath chair. They agreed that it was appropriate to start using a bath chair.

Mr. Uychutin identified two architectural barriers: first, there were "inaccessible facilities for hygiene care (bathtub/shower stall)" and, second, there was "inadequate caregiver workspace." Mr. Uychutin identified a safety risk in the current conditions and explained:

> Client gets UTI [urinary tract infections] once every 2 – 3 months for past 3 years and feces reportedly enter her vaginal cavity. Hygiene care is reportedly best completed while care giver (mom) is also in the tub with the client to allow her to flex the hips and abduct both legs while completing hygiene care. Current standard tub is too small for both client and caregiver.

His recommendations included replacing the existing tub with a large capacity tub, integrating the two bathrooms into one larger bathroom, removing two vanities and a toilet, replacing a toilet, installing an ADA sink and notching the bathroom door header to allow installation of tracks for a ceiling-mounted hoist. The justification was that this modification would "provide additional space to allow safer provision of daily

hygiene care…" He also recommended that the existing, inoperable Waverly Glenn hoist be replaced "with current model transportable lift with small mesh divided leg sling with head support for transfers and showers with continuous tract between the master bedroom and proposed modified bathroom…"

45. On January 8, 2015, after a telephone consultation with Mother, Mr. Uychutin provided an amendment to his recommendations in the January 15, 2013 evaluation report. He agreed and recommended changes in the configuration of the proposed tracking system and the addition of an elevated platform on which to mount the bath tub. He noted that an "elevated bath tub will reduce the injuries associated with sustained forward stoop if the bath tub is not elevated." The actual height was to be dependent on Mother's preference, with the ideal working height of her arms while attending to claimant's hygiene needs in the tub. Finally, Mr. Uychutin recommended the "provision of a large Blue Wave bath chair by Rifton." He noted that Mother preferred a unit that could easily be folded and put away after each use. He told her that this chair did not have a commode opening that would provide better access and hygiene care. Models with this feature were heavier and hard to put in and take out of the tub.

46. On March 9, 2015, Mr. Uychutin performed a seating, positioning and mobility evaluation for claimant's manual wheelchair. He noted that claimant now weighed 120 pounds, had grown an additional seven inches in height since acquiring the wheelchair, and that her arms extended beyond the width of the chair, causing a potential risk of injury. Modifications were recommended to her headrest, backrest and seating system.

47. Also on March 9, 2015, Mr. Uychutin provided another report after claimant's service coordinator Rhona Trout requested that he "address changes proposed by the parents and contractor." Claimant, her parents, Ms. Trout and Joe

Azevedo of Delta Bay were present for this evaluation. Mr. Uychutin noted that, between January 15, 2013 and the present time, claimant had gained 38 pounds and grown two inches in height. Because the old hoist was inoperable, the family was currently completing manual transfers of claimant. This resulted in two additional safety risks: "manual lift, carry and transfer" and "limited caregiver capabilities." The modifications previously recommended were continued except parent had opted for a shampoo sink instead of a wall-mounted ADA sink; and a doorway without doors was to be installed in the wall separating claimant's bedroom and the modified bathroom. Mr. Uychutin also recommended a Rifton HTS (medium) toilet chair with mobile base, lateral trunk support and headrest.

48. In a follow-up evaluation report dated August 12, 2015, Mr. Uychutin reported that the recommended Rifton Blue Wave bath chair was delivered to claimant on July 28, 2015; however, Mother indicated that she was expecting to receive an Aquajoy BL100 bath chair by Drive Medical. Mr. Uychutin called Mother who claimed they had discussed the Aquajoy bath chair at the March 9, 2015 visit. She advised that the Aquajoy allows recline of the backrest and change in elevation of the seat height which she requires as part of her hygiene routine in bathing claimant. With this chair, mother could raise the seat to soap claimant and lower the seat to rinse her. When Mr. Uychutin told Mother that he did not remember having any such discussion or agreeing to recommend this chair, Mother "accused this therapist of 'backpedaling' and that this therapist must have 'received marching orders from the regional center.'" Mr. Uychutin attempted to explain his reasoning to the mother about why he could not recommend the Aquajoy. He reported:

> Despite this therapist's multiple attempts to carefully explain the above reasons against the Aquajoy bath chair, [mother] continued to insist on the Aquajoy and became more

> agitated. At one point, she threatened this therapist when she stated that perhaps she 'should go ahead and accept your recommended bath chair (the Blue Wave bath chair), allow [claimant] to get hurt and then hold you (this therapist) liable. She further stated that she is very disappointed with this therapist and that he is being negligent. She also implied that there are other unfavorable hidden motives influencing this therapist's refusal to accept her preferred bathchair by asking 'tell me what's really going on…' and 'something else is driving your decision…'
>
> [Mother] ended the telephone conversation by hanging up on this therapist.
>
> Given the direct threat laid out by [Mother] towards this therapist, this therapist must terminate all services for the client immediately.

Mr. Uychutin had never been threatened before. He contacted the Occupational Therapists Association of California for guidance and was told he was not obligated to continue working with claimant if there is "no benefit" to her. The adversarial nature of his interaction with Mother and the safety issue posed to claimant resulted in his decision to stop serving her.

49. As indicated in this report and confirmed in his testimony, Mr. Uychutin determined that the Aquajoy is a poor choice for claimant for the following reasons:

A. Although the Aquajoy's backrest reclines, the seat remains level and does not allow a change in angle. This potentially leaves the client with a more pronounced increase in trunk-to-hip angle which will exacerbate her extensor

tone (arching back) and likely to slide off the chair especially if the seat is in an elevated position. In brief, the Aquajoy does not have appropriate features that effectively provide postural support for the client.

B. As previously stated, the Aquajoy is designed to allow safer transfer in and out of the bath tub. Typical applications anticipate one cycle of lowering (to get in) and raising (to get out) of the seat when taking baths. [Mother's] application as she described it exceeds well beyond what the product was designed for.

C. Typical applications of the Aquajoy does [*sic*] not include young adults with compromised postural control and exhibits [*sic*] increased extensor tone. The backrest hinge joint design and material not likely to be able to withstand constant and forceful pressure from the client's head and trunk leading to increased likelihood of structural failure and subsequent injury to the client.

50. At hearing, the parents requested that VMRC fund a Bellavita bath chair. Mr. Uychutin explained that the Bellavita is battery operated to raise and lower the seat. In his opinion, the Bellavita bath chair is similar to and has the same problems as the AquaJoy, if used by claimant. He denied that he had every agreed to recommend the AquaJoy. In his opinion, the benefits this chair offered were at the expense of claimant's safety. He noted that the Blue Wave had been tested to up to 100 pounds of force. He acknowledged that claimant is now 120 pounds and that the manufacturer's specifications for the Bellavita chair report being appropriate for up to 300 pounds. Mr. Uychutin would not recommend either the AquaJoy or Bellavita bath chair and reiterated his concern that the back rest on either chair could snap and result in a head injury to claimant.

51. When asked how a caregiver outside of the tub could bathe claimant, Mr. Uychutin noted that the Blue Wave chair can be flat on the tub's bottom or can be

raised on legs up to seven inches. In his opinion, a caregiver could bathe claimant in a high volume (deep) tub, by lowering the amount of water and bending down to reach her. Mr. Uychutin believed that the original reason for the high volume tub was that Mother could be in the tub with claimant. He agreed that the deep water soaking in the tub was to address claimant's high tone and help relax her muscles to accomplishing perianal hygiene.

52. Both Mother and Father testified that Mr. Uychutin had agreed to their preferred bath chair and that they were surprised when the Blue Wave chair was delivered. They believed Mr. Uychutin's recollection of the meeting where this item was discussed was not accurate. Parent tried to establish that the manufacturer's specifications for the Blue Wave were much weaker than those provided for the Bellavita, through Father's experience working with engineers on developing products and via hearsay statements from Bellavita personnel. The evidence was insufficient to establish that Father had the special knowledge, training, skill, experience and education in occupational therapy to render a credible opinion in this regard. (Evid. Code, § 801.) Parents did not call an independent expert witness on the relative merits of these two bath chairs.

53. Ms. Sheehan rejected the suggestion that VMRC would ever ask an occupational therapist to omit part of a recommended bid, even if they disagreed with it. In this instance, VMRC might choose not to fund the part with which it disagreed. Both Mr. Vodden and Ms. Sheehan agreed with Mr. Uychutin's assessment. Based on this assessment, VMRC would not fund the Bellavita chair due to potential safety concerns that claimant could be injured. [14]

[14] Despite admonitions, both parties freely discussed a proposed settlement agreement pursuant to which VMRC would fund the Bellavita chair if the parents waived

54. Father testified that claimant's IPP objective to have functional access to the bathroom has still not yet been met because the parents do not have a shower and claimant does not have a bath chair. The 100 gallon tub is on a platform at hip level. There is no way to reach claimant to wash her if she was on a Blue Wave chair unless the caregiver gets into the tub with claimant. As a result, Mother still has to enter the tub and hold claimant after she is lowered into the bath. This defeats the whole purpose of having the lift system and deep tub. To relax claimant's tone in the warm water can take 60 to 90 minutes and is very taxing on the caregiver. There are still problems with the completion of the bathroom that cause safety concerns for sepsis (i.e., ceiling damage, flaking paint and grout).

55. In discussing claimant's bathing needs**,** Ms. Sheehan acknowledged that claimant has fluctuating tone cerebral palsy. When in high tone, her muscles are very strong and care must be taken as she holds her arms away from her body. Ms. Sheehan agreed it was possible for claimant to kick and break a metal wheelchair in this condition. High tone can be managed in different ways, including by submerging claimant in warm water to relax her muscles. This technique can help the caregiver to bathe her. She agreed that there is a potential hazard to a caregiver if claimant were submerged in the large tub on the Blue Wave Rifton chair and the caregiver had to reach down and into the tub to wash her.

IV. TRANSPORTATION SERVICES

56. On December 18, 2014, Occupational Therapist Joel Cervantes of Life Works completed an Environmental Evaluation of the Ford full size diesel van owned by

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liability and agreed not to request comparable durable medical equipment for a period of four years.

claimant's family and used to transport her in her wheelchair. The van's accordion style wheelchair lift was broken and no longer functioned. As a result, Father had to hand-crank the lift up and down each time claimant was transported, a task he described as "physically grueling." In addition, the van's roof height was too low. Claimant grew significantly after her spinal surgery. She was no longer able to ride in the van in her power wheelchair because her head was hitting the van's ceiling. To provide claimant with safe transportation, Mr. Cervantes recommended that the van have a raised roof conversion and door and that the wheelchair lift be repaired or replaced.

57. Six months later, on April 15, 2015, the parties signed a Final Mediation Agreement (FMA) pertaining to the van modification. VMRC agreed to fund the modification to the van's roof and wheelchair lifting system as set forth in the bid by its vendor Modesto Mobility, in an amount not to exceed $19,819.35. Claimant agreed that VMRC would not fund another such modification for eight years. Claimant agreed to fund the cost of all maintenance and repairs to the lifting systems and VMRC agreed to pay for any repairs that were unforeseeable and not the result of misuse or abuse. The FMA resolved a pending fair hearing request in OAH Case No. 2015040387.

58. On July 6, 2015, the parties filed an Amendment to the Final Mediation Agreement (Amendment), by which claimant's parents agreed "to refrain from making contact with Modesto Mobility and its subcontractor related to the contract between VMRC and Modesto Mobility" for the van modifications.[15] The parties further agreed that: (1) VMRC would fund the cost of a rental van equipped with a lifting system, "not to exceed 28 days or no more than one day after" the parents are notified by Modesto

[15] This proviso was incorporated into an Addendum Agreement to the IPP, signed by the parents on July 17, 2015. This provided that the service coordinator would be the primary contact with the vendor.

Mobility that the modification was completed; (2) the parents "agree to fund the cost in the amount of $280 should the Van Modification take more than 28 days"; and (3) the parents would deliver the van to Modesto Mobility on July 16, 2015. Based on this Amendment, claimant again withdrew her request for fair hearing in Case No. 2015040387.

59. The family dropped the van off on June 17, 2015 and it took almost eight weeks to fix. During this time, Father moved the family's trailer to the local RV park because claimant could not meet the school bus. The family lived in a mobile home park for two weeks, paid for by the school district.

60. Shortly before the August 31, 2015 hearing, the family received the modified van back from Modesto Mobility. Father discovered additional problems that had been caused during the modification process. On October 27, 2015, he sent an email to service coordinator Freeman listing 17 items of corrections required. This included a need for adjustment to the lift, which would sometimes not deploy and usually would not stow. In addition, there was a loose side-door door latch and a "leak in the passenger compartment seating area." On October 28, 2015, Modesto Mobility informed Ms. Freeman that the family would need to schedule an appointment and leave the van at the shop "for a couple of days or longer to address all of these issues."

61. On December 1, 2015, Father advised Ms. Freeman and Mr. Vodden that the van lift had failed that morning and, in order to stow the lift, he had to use the manual back up system. Father noted this has been a problem for "quite some time" and that VMRC again needed to provide a rental van to accomplish these repairs. He explained that, without transportation, claimant could not attend school or go to

doctors' appointments. Father noted that "we cannot give the van up for repair until the van rental issue is resolved."[16]

VMRC originally offered to pay the difference between the cost of an economy car and a rental van. On December 3, 2015, Mr. Vodden replied to Father that VMRC would pay the entire cost of the rental vehicle; however, "we would still require you to cover the deposit for the rental vehicle."

62. While claimant could now be transported without hitting her head, a leak at the rear window allowed water to pour through and the side door did not completely close. Because claimant has breathing difficulties, parents were concerned that these problems had not yet been repaired. On March 21, 2016, Father told Ms. Freeman about the water leak and need for repairs. She asked him to contact Modesto Mobility to arrange an appointment. Father was frustrated by this request because the Mediation Agreement prohibited him from speaking directly to Modesto Mobility or its subcontractor.

63. During the January 2016 hearings, VMRC agreed it would cover the full rental cost, as well as two days rental after notification that the van was ready for pick up. It was also willing to explore if there was a delivery service to return the rental van, rather than having the family drive all the way to Sacramento, and to pay for this service. VMRC only required that the parents place their own credit card down as a damage deposit with the rental company. This was not required for the first van rental and there was a dispute regarding whether that rental van had been returned in good condition.

[16] Father also expressed concern that the ramp leading to the house is rotten and that claimant and her power chair might break through the ramp. Father requested an evaluation for repair of the ramp as soon as possible. This issue is still pending.

Father objected to the deposit requirement and insisted that the original van had been returned in good condition. When the person to whom he returned the first van pointed out some small spots on the van, Father challenged this and "made a stink." Parents did not offer a reason why they were unwilling to secure the deposit on the rental van.

64. On August 11, 2016, VMRC advised that service coordinator Freeman had successfully negotiated away the deposit requirement. Based on that development, claimants' parents were scheduled to turn in the van for these repairs which were to occur from August 19 through 26, 2016. VMRC will pay the $1,073.66 cost for the van rental.

V. HOME MODIFICATIONS

65. VMRC witnesses testified consistently that the length of a consumer home modification process depends on the particular job. VRMC does expect the vendor to do the job in a timely manner and VMRC staff works to ensure this. The parents hoped the project would begin before their return to California. When that did not occur, they were hopeful that it would begin immediately. According to Ms. Freeman, the project was originally scheduled to be done in July or August of 2015. Delta Bay changed the completion dates to the end of October, and then November. When she testified on December 8, 2015, the project was set to finalize on December 11, 2015. She attributed one month of the delay to the Butte fire and resulting evacuation. Additional delays occurred when the contractors were kicked out of the home.

66. On January 27, 2016, Delta Bay owner Jose Azevedo testified that the project was "near completion," with a punch list outlining a few items to remedied. He was awaiting direction from CSLB about when to go back into the home. He also

submitted a letter with a chronology of events detailing the protracted bidding process and change orders.[17]

67. The record reflects that there were various upgrades and changes to the scope of the project which led to delays in its implementation. It was not established whether those disputes arose in the context of VMRC's project or the parents' upgrades or whether those two projects were so intertwined that they must be viewed jointly. Once disputes arose between Delta Bay and the parents, there was conflicting information about whether and when the parents refused to allow access to the property, particularly after the filing of the CSLB complaint and investigation. Father explained that at the CSLB arbitration hearing, the family was not allowed to talk about Delta Bay's work on the VMRC contract, but only about its own portion. He believed that VMRC's absence from the arbitration placed the family at an extreme disadvantage.

68. Regarding the parent's complaint that they had to pay money up front to Delta Bay before it started performance, Ms. Sheehan testified that VMRC would do a quality assurance complaint investigation and sanction the vendor if the complaint was substantiated. VMRC provided a December 11, 2015 Community Services Alert Form (signed on January 6, 2015 [*sic*]), outlining a complaint that Delta Bay "asked parents to buy some of the items needed for home modification and he would give them credits toward the construction so upgrades could occur. This practice led to confusion and helped fuel problems between family and vendor." An investigation was conducted to determine whether Delta Bay had complied with its "duty to bill only for services which

[17] Mr. Azevedo noted that the home modification work was initially scheduled to start on November 30, 2014. It was delayed due to upgrades initiated by the parents. After receiving Mr. Uychutin's Amended Environmental Accessibility Evaluation, Delta Bay submitted modified bids in March 15, 2015, and on May 11, 2015.

are actually provided to the consumer" as required by California Code of Regulations, title 17, section 54326, subdivision (a)(10) and (a)(12). The resolution was "unfounded. A breach has not occurred. There is sufficient evidence to prove that Delta Bay Construction did not bill the consumer's family in advance for items needed for the home modification contract funded by Valley Mountain Regional Center."

69. No findings are made about whether the home modification project was completed on a timely basis, or whether VMRC appropriately monitored its vendor or investigated this quality assurance complaint. As set forth in Factual Finding 4, disputes over the length and adequacy of Delta Bay's construction on the home modification project funded by VMRC and the parents' upgrade contract, as well as VMRC's monitoring of its vendor, are more appropriately addressed by the CSLB or the complaint process outlined in the Lanterman Act at Welfare and Institutions Code section 4731.[18]

[18] In pertinent part, that section provides: "(a) Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section." The complaint shall initially be to the director of the regional center from which the consumer receives services. If not satisfactorily resolved, the complainant may refer the complaint, in writing, to the Director of Developmental Services within 15 working days of receipt of the proposed resolution. (Welf. & Inst. Code, § 4731.)

DISCUSSION

70. VRMC contends that it has provided ample and appropriate services to claimant since her return to California. The parents' position that it has done nothing is a distortion of reality. Over the past year, services provided to claimant have included occupational assessments, environmental modifications, a ceiling lift system and van modifications, the cumulative costs of which have exceeded $88,000.

VMRC asserts that it can find respite caregivers and nursing staff for claimant, but the problem is retaining them. The parents need to be agreeable partners and work appropriately with VMRC staff and vendors for claimant's benefit. The difficult behaviors of the parents, and particularly those of Mother, have alienated vendors and reduced the pool of service providers willing to work with claimant. VMRC staff has had to plead with certain vendors to provide services to claimant. VMRC staff has been instructed to only communicate with parents by email to avoid being verbally berated. VMRC wants to work appropriately with parents as a team, but asserts that their conduct must first change.

VMRC supports the recommendations of Ms. Trinchera and will fund skilled nursing services in the amount recommended by her. It supports Mr. Uychutin's recommendation and will fund a Blue Wave Rifton, but not a Bellavita, bath chair. It will seek nursing staff and will continue to seek respite care providers. If respite services are not available, it will expand its search to include alternative service codes such as Personal Assistants and/or Homemakers. It does not agree to pay for Father to be her respite provider. With the amount of services provided to claimant, there is no reason why Father cannot work. It believes the van issue has been resolved and is moot.

71. Parents agree that a team effort is required for claimant's benefit, but contend that VMRC has shown bad faith. In their view, VMRC uses a strategy of delay and of only offering services a day before a new hearing date. Parents have been

seeking communication with VMRC staff, have asked for telephone contact and to be included in meetings with claimant's vendors, without response. They only learned on the last day of hearing that staff had been instructed not to speak with them. Parents feel cut out of the loop and that VMRC has perpetuated a portrait of them as unreasonable by attacking their character and integrity. They are never told when people complain about them or given an opportunity to explain what happened from their perspective. Parents wonder if they do not have the right to object to vendors in their home who act inappropriately. They have expressed their intention of tape recording future IPP team meetings or bringing witnesses to protect their reputation.

In parents' view, VMRC ignored claimant for 13 years before she returned home. As a result, it will be costly to make up for that neglect and to fully meet her current needs. They believe they have been bullied into signing away claimant's rights in various mediation agreements. If VMRC believes that the parents are the reason claimant is not being appropriately served, it should call Child Protective Services. If VMRC will not directly communicate with parents, they ask that claimant's case be transferred to another regional center or that they be allowed to have an individual choice budget. (Welf. & Inst. Code, § 4648.5) In their minds, the overriding issue is that claimant will outlive them and her Lanterman Act rights have not been met.

72. As reflected above, this proceeding has been characterized by finger pointing and mutual frustration. Both parties agree that claimant has a right to live in her family's home in the community; however, both contend that the other is responsible for the delay and acrimony that has impacted delivery of services to her. VMRC's assertion that Mother, in particular, goes beyond the bounds of advocacy and alienates its staff and vendors was supported by the testimony of Mr. Uychutin and Delta Bay construction worker Juan Nila. Mr. Nila credibly testified that Mother had "cussed at" him and "kicked him off the job" several times but that he did not leave

because he wanted to get the job done.[19] Mr. Azevedo, who was facing parents' CSLB complaint, wrote that he had "never personally experienced foul language, verbal or physical threats" from Mother. He noted that, at times, Mother expressed "strong words of discontent and frustration regarding the lengthy negotiating process and at times disapproval of some of the work which we gladly agreed to redo at her satisfaction and customized the scope of work as much as possible."

73. Mother explained that she is "from New Jersey" and speaks her mind directly. As discussed in Finding 26, parents were concerned that VMRC was unfairly vilifying them by accepting unsupported statements from people they had never spoken to who reported that parents were difficult, rude or threatening. In response, parents submitted numerous character reference letters attesting to their selfless dedication to ensuring claimant had a full life. Most of these letters are from family and extended family members. The December 16, 2015 letter from Mother's Aunt who is an RN made an astute observation worth repeating: "It should not be hard to understand that someone facing such daily challenges without relief might become strident." In Aunt's experience as a Family Care Manager, "once a family is labeled as 'difficult' there is a tendency by agency staff to 'pile on' interpreting any action by the family as more evidence for a conclusion already drawn." In addition to these letters, both Ms. Schumann and Ms. Brager testified about their positive experiences working with the family.

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[19] Mr. Nila also testified that Mother threatened to have CSLB revoke Mr. Azevedo's license. On December 20, 2015, Mr. Nila left a voice mail for Mr. Vodden asserting that Mother was refusing to allow him to finish, "trying to blackmail us" to give her a character letter to use in the case against VMRC and threatening him with CSLB action.

74. Assistant Superintendent Schumann has worked with many families over the years and with claimant's family since 2012. Before meeting them, Ms. Schumann heard rumors that they were "a difficult family." She characterized parents as "very strong advocates" for claimant and she acknowledged that this can sometimes make people uncomfortable. While others may not have felt the same way, Ms. Schumann's own relationship with parents "has been positive and workable." They may not always agree, but they have been able to work collaboratively as a team, focusing on what claimant needs. As a parent of a disabled child, Ms. Schumann understands that such disagreements can be emotional. She has tried to "take it with a grain of salt" and to grant families some leeway.

75. Ms. Brager characterized her relationship with claimant's family as "pretty good." She clarified that, while she has worked to help facilitate communications with the parents, this is something she does for many families and it is part of her job. Ms. Brager tries to put herself into the parents' shoes for empathy and she finds this helps to facilitate parties' communication. Ms. Brager has known the parents since claimant was 30 months old. They have worked through many issues over the years. In her experience, Mother is focused on claimant's best interest and she does it strongly. Ms. Brager respects this, hears her out and tries to see how to work together, even when they do not agree. Ms. Brager characterized Mother as "very passionate" and noted that, from the outside, Mother "can be loud." On the other hand, Ms. Brager has never been yelled at or sworn at by Mother and has never felt intimidated by her. Ms. Brager has had to establish a "no swearing" policy with some of the families she works with, but has never had to do so for Mother. Ms. Brager characterized Father as more soft spoken and as doing a good job of showing and explaining claimant's needs to staff. In her opinion, claimant's parents "balance each other out."

76. Under the Lanterman Act, a consumer's parents are an integral part of the Individual Program Planning Team. The relationship between the regional center and the parent must be mutually and respectfully fostered to achieve the best results for the consumer. Regional center staff must recognize the very difficult circumstances facing parents providing care to consumers like claimant who have intensive care needs. Empathy is essential to fostering communication within the IPP team. At the same time, VMRC is not required to allow its staff to be subjected to abusive conduct by a consumer's parents.

77. *Respite Services*: Contrary to the NOPA, it was not established that there was "misuse of respite services as a means to provide an economical benefit or employment arrangement for the parent." Father credibly testified that he did not seek the respite position and only agreed to it as an interim measure until a suitable worker could be found. All parties acknowledge the difficulty of attracting qualified workers for claimant, particularly in this remote rural area.[20]

Nevertheless, the employment of claimant's Father by ResCare under the respite category conflicts with the statutory purpose for such care. To this extent, the appeal is denied. As set forth in the Orders, VMRC shall expand its search for appropriate respite caregivers and shall begin advertising, directly or through its vendors, for personal assistants and/homemakers to fulfill claimant's right to such care.

78. *Nursing Assessment and Services*: It was established that Ms. Trinchera has the necessary qualifications and sufficient information to perform the very limited scope of assessment with which she was charged. Parents did not establish that a skilled

[20] Similarly, the notion that, if Mother simply stopped being the IHSS worker, another qualified and reliable worker would take her place is unrealistic.

nursing level of care was required for the circumstances in which two persons are needed to lift or transfer claimant. The requirement of a second person in limited instances does not require skilled nursing; rather, this need can be filled by the respite worker in conjunction with Mother in her capacity as IHSS worker, or with either parent in their parental role. Pending further recommendations in the Nursing Assessment ordered below, Ms. Trinchera's recommendation of the amount and scope of monthly nursing services to be provided to claimant shall be incorporated into her IPP and immediately implemented.

79. *Nursing Assessment of Claimant's Emergency Health Care Needs*: Ms. Trinchera's Assessment did not address claimant's emergency health care/nursing needs and this is not addressed by her IPP. Both the current and draft IPP have an Emergency Plan that only delineates who should be contacted to care for claimant in case of a catastrophic event affecting parents. [21]

Claimant requires an Emergency Health Care Plan that will be sufficiently detailed to provide essential information to respite care providers and skilled nursing staff about her medical conditions, medications, care providers and the specific responses required to address her seizures, suctioning and other emergency medical events. While it is hoped that permanent care providers and nurses can be located for claimant, there is a reasonably likelihood that she will experience turnover in workers. Having such information available to caregivers and nurses will help ensure claimant's safety in the home. The detailed Emergency Care Plan provided by Ms. Brager which is used at the

[21] An IPP goal for an emergency health care plan will also provide a mechanism for the family to address potentially serious safety concerns with VMRC. For example, there was little evidence that VMRC was aware of claimant's bathing issues during modification until late October 2015.

school district provides a good example of the specific signs, symptoms and responses that caregivers should be aware of and what actions they should take under such circumstances.

A nursing assessment of claimant's emergency health care needs shall be conducted by a registered nurse, preferably one familiar with EPDST assessments, who has reviewed claimant's IPP, Ms. Trinchera's Assessment, recent medical records, Ms. Brager's Health Summary and the school district's Emergency Care Plan and who has discussed these issues with parents. If, based upon this assessment, the nurse assessor determines that additional nursing hours are required, that recommendation shall be included in the Emergency Health Care Needs Assessment. This assessment shall be incorporated into the IPP and reasonably available to caregivers and nurses working with claimant in the home.

80. *Bellavita Bath Chair*: Parents' request for VMRC to fund the Bellavita Bath Chair is denied. Mr. Uychutin was the only expert witness to testify about the safety of this chair. While parents strongly disagreed, they offered no contrary expert witness testimony.

The weight of the evidence supports a finding that there are risks to caregivers who bathe claimant in the newly modified bathroom with its deep tub on an elevated platform. (Findings 54 - 55.) To ensure that claimant is safely maintained in the home, it is imperative that her caregivers are not injured trying to maintain her hygiene. An occupational therapy assessment by a qualified person other than Mr. Uychutin is necessary to see the current bathing conditions and to make appropriate recommendations on the use of bath chairs and appropriate models of bath chairs. The service coordinator shall be present for the assessment.

81. *Van Modifications*: Because the IPP placed the responsibility for transporting claimant completely on the parents, a six-month delay in approving the

recommendation to modify the van's roof and lift was unreasonable. (Findings 56 – 57.) Once repairs following the original modification were determined to be necessary, further delay was occasioned by the fire and by vendors. VMRC agreed to partially, and then to fully, fund a second rental van. The focus of the delay then shifted to whether the parents would provide a damage deposit for the rental van. Parents offered no persuasive reason why they would not provide a damage deposit for the rental. VMRC continued to accede to the parents' requests, but held firm on the damage deposit. Fortunately, the service coordinator was successful in negotiating this condition away. This issue was resolved as of the closing of the hearing and no order is necessary.

82. *Timeliness of Home Modifications*: As set forth in Findings 65 through 69, no substantive findings are made on this issue.

83. Without change in their relationship dynamics, the parties appear to be headed toward repeated disputes, recriminations and a long series of perhaps unnecessary fair hearings. Under the Lanterman Act, the term "services and supports" includes but is not limited to, self-advocacy training, facilitation, and training for parents of children with developmental disabilities. (Welf. & Inst. Code, § 4512, subd. (b) and (g).)

Claimant's IPP process would benefit from the addition of a Family Component goal with appropriate services to the IPP, as authorized by Welfare and Institutions Code section 4685, subdivision (c), to help maintain her home placement. This goal could include: having a facilitator or mediator at some or all IPP meetings who would ensure that the parties are mutually respectful, do not become mired in past disagreements and focus on creative solutions to providing services in claimant's best interest. Such a goal could also help the parents to discuss and apply for any available service delivery

alternatives and waivers. (Welf. & Inst. Code, §§ 4669.2, 4648.6.) The parties are encouraged to pursue this option.[22]

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

In addition:

> The Legislature finds that the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness. It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served. (Welf. & Inst. Code, § 4501.)

[22] The facilitator/mediator is not intended to be an OAH mediator. It is possible that claimant's school staff, like Ms. Brager, may be able to recommend a good facilitator. When facilitation in an IPP requires the services of an individual, the facilitator shall be of the consumer's choosing. (Welf. & Inst. Code, § 4648, subd. (a)(12).)

2. The Lanterman Act gives regional centers like VMRC a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing Individual Program Plans (IPPs), for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.) When developing IPPs for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685. (Welf. & Inst. Code, § 4646.5, subd. (a)(3).)

3. Welfare and Institutions Code section 4685, subdivision (a), provides:

> (a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

4. Pursuant to Welfare and Institutions Code section 4685, subdivision (b), to accomplish these goals, regional centers must provide or secure family support services that do all of the following:

(1) Respect and support the decisionmaking authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

(3) Recognize and build on family strengths, natural supports, and existing community resources.

(4) Be designed to meet the cultural preferences, values, and lifestyles of families.

(5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.

5. In pertinent part, Welfare and Institutions Code section 4685, subdivision (c), provides:

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care,

special training for parents, . . . respite for parents, homemaker services, . . . day care, short-term out-of-home care, child care, . . .

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. . .

6. IPPs must take into account the needs and preferences of the consumer's parents who shall have an opportunity to actively participate in the development of the plan. IPPs shall be prepared jointly by the planning team. (Welf. & Inst. Code, § 4646, subds. (a), (b), (d).) Regional centers are required to maintain an "internal process" which, when purchasing services and supports, shall ensure various factors, including:

Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's services 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. (Welf. & Inst. Code, § 4646.4, subd. (a)(4).)

7. The planning process for the IPP includes "gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code, § 4646.5. (a)(1).) Assessments "shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies." (*Ibid.*)

8. The individual program plan "shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services." (Welf. & Inst. Code, § 4646.5, subd. (a)(5).) Best practices for regional centers' purchase of service policies "…shall include provision for exceptions to ensure the health and safety of the consumer or to avoid out-of-home placement or institutionalization." (Welf. & Inst. Code, § 4620.3, subd. (f).)

9. As set forth in the Factual Findings and Legal Conclusions as a whole, claimant's appeal is granted in part and denied in part. VMRC's NOPA denying use of claimant's parent as a respite provider is upheld. The amount of nursing services recommended by Ms. Trinchera is upheld. VMRC's denial to fund the Bellavita bath chair is upheld.

10. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Finding 77 through 80 and the Orders below, VMRC shall immediately: (a) take steps to recruit appropriate caregivers and nurses for claimant, using expanded service codes if necessary; (b) authorize and obtain a nursing assessment of claimant's emergency health care needs; and (c) authorize and obtain an updated occupational therapist assessment with particular emphasis on the safety of the caregiver in bathing claimant and the claimant's safety in any bath chair recommended.

11. All other requests are denied.

ORDER

1. Claimant's appeal is GRANTED in part and DENIED in part.

2. **Respite Care**: VMRC's denial of funding for claimant's parent to be her respite care provider is UPHELD. VMRC shall continue to actively seek appropriate respite services providers for claimant.

3. **Alternative Service Codes**: Within 20 days of the date of this Decision, if it has not already done so, VMRC shall advertise, directly or through its vendors, in local and regional newspapers, for appropriate caregivers under alternative service codes (including personal assistants and homemakers). If Father qualifies to provide care to claimant under any of the alternative service codes, he shall be considered for such position.

4. **Nursing Assessment**: The recommendation for in-home nursing services to claimant set forth in the Nursing Assessment of Donna Trinchera RN, is adopted. Such recommended services shall be incorporated in claimant's IPP. VMRC shall immediately begin seeking, and shall continue to seek, appropriate nursing services for claimant to fulfill this recommendation.

5. **Emergency Health Care Nursing Assessment**: Within 45 days of the date of this Decision, VMRC shall authorize and obtain a nursing assessment of claimant's emergency health care needs as set forth in Factual Finding 79. This assessment shall be conducted by a registered nurse, preferably one familiar with EPDST assessments. The IPP team shall develop an emergency health care plan for claimant that incorporates this assessment.

6. **Bath Chair:** Claimant's request for VMRC to fund the parents' preferred Bellavita Bath chair is denied.

7. **Focused Occupational Therapy Assessment**: Within 60 days of the date of this Decision, VMRC shall arrange for an in-home assessment of claimant's need for

durable medical equipment for bathing by an occupational therapist. The assessment shall pay specific attention to claimant's safety while using a bath chair and to the safety of caregivers bathing her in light of the now completed bathroom modifications and ceiling tracking system. The service coordinator and claimant's parents shall be present for the assessment. The occupational therapist shall provide a report addressing the appropriate model of bath chair recommended, if different from the Blue Wave Rifton chair.

8. All other requests for relief are denied.

DATED: September 2, 2016

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MARILYN A. WOOLLARD

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).