

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017050559

DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Bernardino, California, on June 13 and 29, 2017.

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

Claimant's mother, who is also his conservator, appeared by telephone and represented claimant.

The matter was submitted on June 29, 2017.

ISSUES

1. Should IRC fund the purchase and installation of wheelchair ramp access to claimant's home?¹

¹ Although disputes may exist regarding some of claimant's other requests to IRC for services, this proceeding was limited to claimant's request for wheelchair ramp access to his home.

2. Did IRC fail to provide service coordination to claimant with respect to the purchase and installation of wheelchair ramp access to claimant's home?

FACTUAL FINDINGS

CLAIMANT'S FAIR HEARING REQUEST

1. Claimant submitted a fair hearing request on May 8, 2017. The request stated the following under the heading "Reason(s) for requesting a fair hearing":

IRC has failed to follow thru providing ramp request [sic] a year ago and after request retaliated against parent. See attached 2 pages.

The fair hearing request also asserted that the following was needed to resolve the complaint: "Ramps provided by IRC immediately."

2. In a two-page attachment to claimant's fair hearing request, claimant's mother wrote:

1. Regional Center should agree to and fund the wheelchair ramp for the following reasons.

1. A. Immediate funding could & should be funded as it was requested a year ago and [claimant] does not have safe and appropriate access in & out of his home.

B. The temporary ramp is too short, too [sic] narrow and on many occasions [claimant] has been put in jepady [sic] by using this ramp Regional Center gave us a year ago.

C. Regional Center has known this for a year.

7 [sic]. The excuse that Regional Center Vender [sic] hasn't received the VIN # of [claimant's] chair is unacceptable as

IRC has had opportunity [sic] to send someone out to assist locating VIN # which mother has told them is not usual.

8 [sic]. IRC is payor of last resort and must fund ramp or access should there be no other means of funding.

9 [sic]. At this time there has not been any means of funding and [claimant] being put in danger by the ramp provided by IRC – and 1 year of no assistance by IRC to get the ramp. IRC is now payor of last resort. Also IRC can get reimbursed by Medical [sic] should they agree to pay for it.

Type of Ramp.

1. (1) Roll a Ramp 36" wide 9+ft long with detachable sides.
2. (2) Safe path rubber threshold ramps[.]
3. adjustable short ramp.

EVOLUTION OF CLAIMANT'S REQUEST SINCE HIS FAIR HEARING REQUEST WAS SUBMITTED

3. Before the first day of the fair hearing, claimant's mother sent an email to IRC, dated June 8, 2017, changing what claimant was requesting as follows (emphasis in original):

At this time I would like to (if possible) to [sic] change the request to say "IRC should Fund [sic] safe and secure access in and out of the home, including but not limited to EMERGENCY EVACUATION should it be needed. I am not asking for a ramp that is too short and 9 ft appears to be too

short and IRC should have caught that and notified me when the request was submitted. I am asking for accessibility,, [sic] I believe there is more than a ramp included at this time as there is need for concrete and protection from rain and snow to make [claimant] safe,, [sic] Also there is issue [sic] as to wether [sic] it should be a portable ramp which is cheaper, as ell [sic] as it must have sides and he will need access from both front and back of home. IRC should have considered this a year ago,, [sic] The IRC OT? PT should have considered this a year ago,, [sic]

4. Between the first and second days of the fair hearing, claimant's mother submitted a June 20, 2017, proposal prepared by a company called "Amramp" for two ramp systems. By the close of the fair hearing, claimant's mother wanted IRC to fund these two ramp systems.

For the front entrance, Amramp proposed installing an L-shaped ramp at the front entrance, consisting of "One Top Transition Plate, 3' ramp/platform to 5 x 5' platform, 8' ramp, 6' ramp and 2' Bottom Transition plate and legs, stand, brackets and handrails." Amramp would "[u]se 12" x 12" x 1" pavers to support portions of the Bottom Transition Plate and stand legs that touch the dirt/grass." The Amramp proposal stated the cost for the materials, freight, installation, and taxes for the front ramp system would be \$5,055.19.

For the back/patio entrance, Amramp's proposal stated: "The ramp consists of a straight 16' foot ramp including a Top Transition Plate, one 8' ramp, one 6' ramp and a 2' Bottom Transition Plate with stand, brackets and handrails. For the patio sliding door it needs a 1.75" Rubber Threshold Ramp and a 1" interior Rubber Threshold Ramp. The distance from the deck to the concrete walkway is 12' 7"." The Amramp proposal stated

the cost for the materials, freight, installation, and taxes for the back/patio ramp system would be \$3,167.19, if installed at the same time as the front ramp system.

BACKGROUND

5. Claimant is a 28-year-old man. He is eligible for regional center services based on his diagnoses of profound intellectual disability, epilepsy, and cerebral palsy. Claimant also suffers from blindness. Claimant is non-verbal, non-ambulatory, and requires complete assistance with all his activities of daily living. He lives with his mother, who is his conservator and his In-Home Support Services (IHSS) care giver. Claimant has a motorized wheelchair, stroller, and wagon that his mother uses to move him from area to area. His motorized wheelchair is 24 inches wide.

6. Claimant and his mother moved to a new home in May 2016. Shortly before they moved, claimant's mother called IRC because she was not sure how she was going to get claimant into the new house, as it was necessary to climb stairs to reach the entrances. At that time, IRC had a ramp someone had donated that claimant could borrow. On May 12, 2016, claimant's mother picked up the temporary ramp from IRC to use while claimant's request for a wheelchair ramp was processed. The ramp IRC loaned to claimant is six feet long.

THE ASSESSMENT AND INITIAL HANDLING OF THE WHEELCHAIR RAMP REQUEST BY IRC'S OCCUPATIONAL AND PHYSICAL THERAPISTS

7. Annette Richardson, an IRC occupational therapist, and Michelle Knighten, an IRC physical therapist, testified regarding IRC's assessment and recommendations related to the ramp request. They tried to schedule a time to go out to the home the week after claimant's mother picked up the loaner ramp to determine the specifications for a ramp. However, claimant's mother was busy with the move and unavailable to meet that week. It was therefore agreed that they would meet her at the new home on

June 13, 2016, to assess the situation and obtain the specifications for an appropriate ramp.

8. On June 13, 2016, Ms. Richardson and Ms. Knighten, along with an employee of an IRC vendor, Mobility Solutions, met with claimant's mother to conduct an assessment regarding what was needed for claimant to have appropriate access to his new home. During that visit, they looked at the whole house to make an assessment. The home has two entrances; a front door and a back door to a patio/deck. Both of those entrances were inspected and measurements were taken. There are two stairs to the landing outside the front door and two stairs to the deck outside the back door. At the bottom of the deck stairs, there are wood chips and pavers that lead to a concrete walk way and driveway. At the bottom of the front entry stairs there is a concrete walkway that is parallel to the house, with a grass lawn next to the walkway.

Because claimant receives Medi-Cal benefits, generic resources were available to fund the ramp. Prairie View Industries, Inc. (PVI) manufactures standard portable ramps which, according to Ms. Knighten, are typically covered by Medi-Cal. Due to the configuration of the home, including the location of concrete walkways adjacent to the house, and the rise of the sets of stairs, Ms. Knighten determined that the best place for a ramp would be at the stairs leading to the deck adjacent to the back entrance of the home. Ms. Knighten did not believe a ramp at the front entrance would be appropriate because the ramp would end on the lawn and the rise of the steps is higher at that entrance.

Based on the measurements, and taking into consideration the manufacturer's slope guide chart, an eight-foot ramp was the shortest ramp that would be safe at the deck entrance. However, Ms. Knighten determined that a 12-foot ramp, which was the longest PVI ramp available from the manufacturer and funded by Medi-Cal, would be more appropriate because the incline would then not be as steep, making it less difficult

for claimant's mother, who has her own physical limitations, to assist her son going up and down the ramp. The recommended PVI ramp would be 32 inches wide. Ms. Knighten determined the ramp should not have hand rails because claimant needs assistance maneuvering his wheelchair due to his dependent condition and rails would interfere with giving him such assistance. Ms. Richardson also testified that rails would not be necessary. Ms. Knighten also recommended a two-foot threshold plate to assist claimant entering the home through the sliding glass door, which is the only door into the house at the back/deck entrance.

The distance from the top of the deck stairs to the concrete walkway and driveway below is 12 feet, 7 inches. Therefore, a 12-foot ramp would end in an area that would be approximately seven inches from the concrete, where there are concrete pavers and wood chips. Ms. Knighten believed some pavers could be moved or added in that area to make a flat stable surface for placement of the end of the ramp that would then be adjacent to the concrete walkway and driveway.

Ms. Knighten also testified that there was not any requirement that there be ramps at more than one exit for a home in a rural area.

9. Ms. Knighten prepared a written Physical Therapy Assessment, in which she recommended a 12-foot PVI ramp, 2-foot threshold plate, and a sling for claimant's Hoyer lift. Her assessment noted:

The home has two steps and a threshold to enter the home.

The mother has requested a long ramp because she has difficulty pushing any objects up and down a steep grade secondary to her physical limitations. [Claimant] would benefit from a 12 foot ramp to enter and exit the 15 inch rise to the deck of the home. Additionally, a 2 foot threshold is recommended as there is a second lift to enter the home.

[Claimant] presently has a Hoyer lift for dependent transfers. The sling that he has does not work and he slides through the opening. It is recommended that he obtain a full sling so that he can improve his safety during Hoyer lift transfers.

IMPRESSION: [Claimant] does not have appropriate access to and from his home at this time. He would benefit from a 12 foot PVI ramp and a 2 foot threshold plate to assist with entering and exiting the home. This would allow for [claimant] to dependently be pushed in and out of the family home. Also, he does not have an appropriate sling for his Hoyer lift. He would benefit from a full sling for improved safety during transfers.

10. On June 20, 2016, Ms. Knighten completed and signed a Certificate of Medical Necessity for All Durable Medical Equipment to request that Medi-Cal fund a 12-foot PVI ramp, 2-foot threshold plate, and sling for the Hoyer lift. On the form, boxes were checked to indicate that claimant had manual and power wheelchairs. The form did not request any further details regarding claimant's wheelchairs. Claimant's medical provider also needed to sign a prescription for the equipment requested.

11. On July 5, 2016, Ms. Richardson sent the prescription to claimant's mother so she could obtain claimant's health care provider's signature. Between July 8 and July 12, 2016, Ms. Richardson communicated by email with claimant's mother regarding claimant's insurance coverage and the need for IRC's vendor, Mobility Solutions, to submit the paperwork to Medi-Cal and/or Medicare for the equipment. In July 2016, claimant's mother left Ms. Richardson a message asking IRC to directly fund the equipment so she would not have to wait for the insurance process.

12. In late August 2016, Ms. Richardson learned from Mobility Solutions that it still had not received the necessary documentation from claimant's physician. Mobility Solutions told Ms. Richardson that it believed claimant's mother was going to take care of getting the physician to sign the documentation.

13. Ms. Richardson and Ms. Knighten went back to claimant's home in August 2016 because it had been taking so long. When they made the second visit, they did not know that Medi-Cal would need any additional information. At the time of that visit, they allowed claimant's mother to choose a sling and provided a portable threshold ramp.

14. Ms. Richardson testified that she had been told the ramp request was not submitted to Medi-Cal until October 19, 2016. She believed there may have been a delay submitting the request to Medi-Cal because the initial prescription was not signed by a physician and there were changes in claimant's Medi-Cal and/or Medicare coverage, possibly related to his move from San Bernardino County to Riverside County.

MOBILITY SOLUTIONS' ATTEMPTS TO ORDER THE RAMP

15. Rick Frelke, one of the owners of Mobility Solutions, the IRC vendor who handled submitting the request for the ramp to Medi-Cal, testified about the steps taken by his company. Mobility Solutions sells home access ramps and has been in that business for 35 years. Mr. Frelke had never been to claimant's home, but he saw pictures of the home.

16. According to Mr. Frelke, a 12-foot ramp is the longest available portable ramp and would be the safest choice. He stated that the location at the deck entrance would be the best place for the ramp. The ramp would be 32 inches wide and weigh approximately 72 pounds. According to Mr. Frelke, Medi-Cal pays for portable ramps and the recommended PVI ramp was one that Medi-Cal would fund. That type of ramp is considered "portable" because it can be folded up and moved. Mobility Solutions

does not sell ramps with side rails, and the recommended ramp would not need side rails because claimant was supposed to be assisted when using the ramp. Mr. Frelke stated that Medi-Cal usually takes 30 to 60 days to fund a ramp request.

17. On October 19, 2016, after Mobility Solutions received the paperwork needed from claimant's physician, it sent the first Treatment Authorization Request (TAR)² to Medi-Cal.

18. On November 10, 2016, Medi-Cal deferred the TAR. Medi-Cal's TAR Response explained the deferral under the heading "TAR Review Comments" as follows:

Please refer to the Medi-Cal Provider manual regarding documentation required when requesting a ramp. Max. length of ramp, schematic drawings, details of mock up, etc. Please resubmit with information as per Provider Manual.

CP Epilepsy and profound intellectual disability. 5'4" 140#
Family recently moved[.] [M]echanical lift for transfers.
[W]hat type of wheelchair does bene use? Make, Model, SN
and DOP please.³

² No documents titled "Treatment Authorization Request" or "TAR" were offered or received in evidence. The dates when Mobility Solutions received information and sent requests were based on Mr. Frelke's testimony, the dates on Medi-Cal's TAR Responses, and an email and timeline document Mobility Solutions prepared.

³ "SN" referred to the wheelchair's "serial number," and "DOP" referred to the wheelchair's "date of purchase."

19. According to an email to IRC from Mobility Solutions, after Medi-Cal's November 10, 2016, deferral, Mobility Solutions attempted to contact claimant's mother on November 14 and 25, 2016, and on December 15, 2016.

20. Mobility Solutions prepared a written timeline of events,⁴ which provided the following information:

- On October 19, 2016, Mobility Solutions received paperwork from claimant's physician and submitted the TAR.
- On November 10, 2016, the TAR was deferred.
- On December 15, 2016, claimant's mother told Mobility Solutions that the ramp being requested was not the type of ramp she wanted because she had a disability that impaired her ability to assist her son. She stated that she wanted a roll up ramp submitted to Medi-Cal, and once it was denied, she would take the denial to IRC for funding.
- On January 4, 2017, Medi-Cal denied the TAR because the requested information had not been provided.
- On March 3, 2017, Mobility Solutions resubmitted the request to Medi-Cal in case claimant's mother decided she wanted the ramp.
- Mobility Solutions attempted to reach claimant's mother on "03/06, 03/13, 03/17, 03/23, 03/30" and "4/3 and 4/11 to ask for the sling type and also the model of the chair, the SN# and the date of purchase."
- On April 11, 2017, claimant's mother contacted Mobility Solutions and advised that she could not find the sling information. She "refused" to provide the

⁴ No information was presented regarding when and under what circumstances the undated timeline document was prepared or who prepared it.

wheelchair's serial number, but stated that it was a "Quantum Q6 Edge, 7 yrs. Old." She also advised that she needed a "roll out wide ramp."

- On May 2, 2017, claimant's mother spoke to Mobility Solutions twice. Claimant's mother advised that IRC was going out to discuss the ramp on May 4, 2017. At that point, the TAR had been denied, "as time expired & we could not get a serial # and DOP on PWC."⁵ Claimant's mother still wanted a roll up ramp, but Mobility Solutions advised that it was not able to supply that style ramp.

- On May 11, 2017, the second TAR was denied by Medi-Cal.

21. Medi-Cal's January 4, 2017, TAR Response stated:

The Medi-Cal field office requested additional information. Your office failed to submit the requested information within the 30 day due date. As a result, the TAR has been denied due to lack of information. Your office may submit a new TAR indicating that the previously requested information is included.

22. Medi-Cal's May 11, 2017, TAR Response (in response to the March 3, 2017, TAR), stated, similar to the January 4, 2017, TAR Response:

The Medi-Cal field office requested additional information. Your office failed to submit the requested information within the 30 day due date. As a result, the TAR has been denied due to lack of information. Your office may submit a new TAR indicating that the previously requested information is included.

⁵ "PWC" referred to "power wheelchair."

23. On May 11, 2017, Ms. Richardson emailed a photograph of the wheelchair's serial number to Mobility Solutions. In her email, she stated: "It is my understanding that you will resubmit the request for the ramp and threshold plate upon receipt of this information." However, Mr. Frelke testified that Mobility Solutions did not submit another request for the ramp to Medi-Cal after receiving the serial number because claimant's mother had told Mobility Solutions not to do so.

24. Mr. Frelke testified that Mobility Solutions could resubmit the ramp request to Medi-Cal with the serial number. However, the request was not resubmitted because claimant's mother told him that she wanted a different ramp with side rails that was 36 inches wide.

IRC'S CONSUMER SERVICE COORDINATORS' INVOLVEMENT WITH THE RAMP REQUEST

25. Monica Siegers and Rene Orozco, IRC consumer service coordinators (CSCs), testified about their interactions with claimant's mother and the IRC vendor regarding the ramp request. Ms. Siegers was the CSC assigned to claimant at the time the ramp was first requested and remained his assigned CSC until January 2017. When Ms. Siegers obtained the case, it was on a quarterly status, which meant that she would see the family every three months. Mr. Orozco became the CSC assigned to claimant's case in January 2017. Mary Pounders, the IRC program manager who supervised Mr. Orozco, testified about Mr. Orozco's and her involvement in the matter after claimant's case came under her supervision in January 2017.

Monica Siegers's Testimony

26. Ms. Siegers testified that she made the referral to the occupational and physical therapists to evaluate the need for accessibility to claimant's new home. She stated that the physical therapist handled filling out the paperwork to obtain the

ramp. According to Ms. Siegers, Mobility Solutions was working with claimant's insurance to obtain the ramp. Although she testified that she had communications with Mobility Solutions, she did not recall specific conversations.

27. On July 20, 2016, IRC learned that claimant's mother had complained to the Department of Developmental Services that IRC had failed to follow up with claimant's wheelchair ramp request. On July 20, 2016, Ms. Siegers, checked with Mobility Solutions regarding the status of the request to Medi-Cal for the equipment. At that time, she was told that a nurse practitioner had initially signed the prescription, and the insurance company required a physician's signature. Mobility Solutions told Ms. Siegers that it forwarded a request for another prescription, to be signed by a physician, to claimant's mother on July 18, 2016, and that it had been in touch with claimant's mother with updates of the status of the request.

28. Ms. Siegers's July 20, 2016, consumer notes were received in evidence. However, no other documents were received that showed Ms. Siegers did anything to assist claimant or his mother with the coordination of the ramp request after July 20, 2016, through the time Mr. Orozco took over the CSC responsibilities for claimant's case in January 2017. Even though Ms. Siegers was copied on IRC's executive director's August 2016 emails related to his concerns regarding the safety of the ramp IRC loaned to claimant, the only thing she did at that point was to send an email to the executive director stating that Ms. Richardson had provided the loaner ramp to claimant.

29. Ms. Siegers denied that she was made aware at any time between August 2016 and January 2017 that there were any issues with the ramp request or that any additional information was needed to obtain the ramp.

30. The evidence established that after July 20, 2016, Ms. Siegers did not do anything to keep abreast of the status of claimant's ramp request or coordinate with Mobility Solutions and/or claimant's mother regarding that request. While Ms. Siegers

acknowledged that it was her job to coordinate services and “follow up as necessary,” there was no evidence that she followed up with anyone regarding the ramp after July 20, 2016. Her testimony on this topic was less than forthcoming. When she was asked why she had not made any consumer notes regarding the ramp after July 20, 2016, and why she did not make any notes of conversations with claimant’s mother regarding the ramp, she responded that she does not always document “all” her calls, but she does document information so “someone else could pick it up.” However, her notes did not contain information from which Mr. Orozco could have determined what was happening regarding the ramp request. Ms. Siegers also stated that she “did not understand” questions posed by claimant’s mother that were clear and understandable, making her testimony seem evasive.

Given the information provided by claimant’s mother and Mobility Solutions during the fair hearing, if Ms. Siegers had followed up regarding the ramp, she likely would have been made aware that there were problems and claimant’s mother and/or Mobility Solutions needed some assistance obtaining the information Medi-Cal had requested.

Rene Orozco and Mary Pounders’s Testimony

31. Mr. Orozco took over as the CSC responsible for claimant’s case in January 2017. He went to claimant’s new home with Ms. Siegers in June 2016 to become acquainted with claimant. Nevertheless, he was not made aware of claimant’s ramp request until he conducted an Individual Program Plan (IPP) meeting with claimant and his mother in April 2017. Mr. Orozco wrote in the IPP that:

[Claimant’s mother] informed CSC that she had requested a wheelchair ramp and had been working with Mobility Solutions for approximately a year and still had not received

the ramp. This CSC, [sic] stated that he would look into the details of this matter and get back to her with any information.

32. On April 26, 2017, Mr. Orozco spoke with Mobility Solutions' case manager, who told him that the request for a wheelchair ramp had been closed as of April 12, 2017, because claimant's mother had not been willing to supply the information needed to move forward, including the serial number of claimant's wheelchair.

33. On May 2, 2017, Mr. Orozco communicated with another vendor, Mobility Works, which had been involved with another service request regarding the modification of a vehicle for claimant, about whether that vendor had obtained the serial number of claimant's wheelchair. That vendor told Mr. Orozco that the serial number had been noted and promised to contact Mr. Orozco with that information. However, on May 3, 2017, that vendor told Mr. Orozco that it was not able to locate the wheelchair's serial number.

34. Ms. Pounders, Mr. Orozco's supervisor, wrote a letter to claimant's mother dated May 2, 2017, in which she stated:

- The vendor, Mobility Solutions has closed the case due to lack of information needed by you. According to Mobility Solutions, they were in need of the serial number of [claimant's] wheelchair and stated that they had their technician to [sic] speak with you and tell you exactly where to locate the serial number. To date they never received it from you and as a result of that they closed the case. If you are interested in re opening [sic] this request, we will have to start the process over again and will need all necessary paperwork from [claimant's] insurance as well as the serial number of his wheelchair. We

cannot access or obtain this information from Medi-Cal, the information must come from Medi-Cal through you as his legal representative.

- If you do not agree to extend the time for us to make a determination, we will be required to deny the requested service at this time. If you do not agree to extend the time for us to make the determination, please let us know and we will issue a Notice of Proposed Action Denial of Service letter.

35. On May 4, 2016, Mr. Orozco went to claimant's home and gave claimant's mother the May 2, 2017, letter from Ms. Pounders. While he was at claimant's home on May 4, 2017, Mr. Orozco was able to assist claimant's mother to locate a serial number under the seat of claimant's electric wheelchair, and he photographed the serial number. Claimant's mother then showed Mr. Orozco a photograph on her computer of the roll up ramp she wanted, and Mr. Orozco photographed the computer screen picture of that ramp, with claimant's mother's permission, so he could show it to his supervisor.

36. Ms. Pounders testified that she sent an email to claimant's mother about her request for a roll up ramp, notifying her that claimant's mother could submit a request for such a roll up ramp to Medi-Cal on her own if she wanted to do so. However, at the time of the hearing, Ms. Pounders stated that it was her understanding, based on an email she had seen from Ms. Knighten, that the roll up ramp claimant's mother wanted would not be covered by Medi-Cal.⁶

LEIGH-ANN PIERCE'S TESTIMONY

37. Leigh-Ann Pierce, an IRC consumer services representative, also testified regarding her investigation efforts after the matter was assigned to her in May 2017, to handle the fair hearing.

⁶ Neither Ms. Pounders's email nor Ms. Knighten's email, referenced during Ms. Pounders's testimony, was offered or received in evidence.

38. After Ms. Pierce was assigned the matter for fair hearing, she contacted Mobility Solutions about submitting another request to Medi-Cal with the wheelchair serial number that had been obtained. Mobility Solutions told her it could not do so because claimant's mother had instructed Mobility Solutions not to order the recommended ramp.

39. Additionally, after the first day of the fair hearing, during which claimant's mother made some statements casting doubt on whether IRC had obtained the correct serial number, Ms. Pierce contacted the manufacturer of claimant's wheelchair to double check the serial number. In response to her inquiry, she received an email from an account executive of that company, stating that the serial number IRC had obtained from claimant's wheelchair seat was the number for a "Q6 Edge" model with a 24-inch base, the same kind of wheelchair claimant owned.

40. Before the second day of hearing, claimant's mother supplied the Amramp proposal, dated June 20, 2017, for ramp systems for claimant's home's front and back/deck entrances. Ms. Pierce contacted the company representative who had provided that proposal. He told her that his company was a regional center vendor, but that it could not bill Medi-Cal. Ms. Pierce supplied the proposal to Mobility Solutions' owner, Mr. Frelke, by email, and asked him, "Is this a ramp you could request through Medi-Cal?" Mr. Frelke's email response stated:

The MediCal [sic] benefit, as far as I understand it, is for a portable ramp that can be moved from place to place by patient or caregiver. Obviously the ramp included in your email is not portable so would not be a MediCal [sic] benefit as far as I understand. Also, we are not able to order the ramp shown by your email as we are not an authorized dealership for this item.

41. Ms. Pierce also researched Medi-Cal's website and presented excerpts from a document on its website regarding billing for durable medical equipment that discussed "Ramps, Portable." That document explained the difference between "portable" and "non-portable" ramps as follows:

A fixed, modular or in any way attached ramp is considered a non-portable ramp and is not a Medi-Cal benefit. Portable ramps are those that are foldable or collapsible, not attached, suitcase types, which can be easily and readily carried and transported by the recipient for use in multiple locations.

The document also stated (emphasis in original):

Alterations and improvements to real property (for example, a non-portable wheelchair ramp to front door) are not covered. A portable wheelchair ramp is not home or vehicle modification. It should be considered an extension of the recipient's wheelchair and follows the recipient in his and her wheelchair to assist in accessibility to the community.

CLAIMANT'S WITNESSES' TESTIMONY

42. Carolyn Medina, who also has children with disabilities, and Claimant's mother testified.

Ms. Medina's Testimony

43. Ms. Medina has worked as a licensed loss prevention inspector for the California Bureau of Investigations for 12 years. Her experience includes investigations

related to fires. Ms. Medina has known claimant for approximately two to three years and has been to claimant's home.

Ms. Medina has observed claimant use the loaned six-foot ramp that was positioned at the stairs to claimant's front door. She has only observed claimant use the front door, which was where the temporary ramp was located when she was at claimant's home. Ms. Medina stated that the current (loaned) ramp has too steep of an incline, the wheelchair "slides" down the ramp, and there is a risk claimant could tip over. She stated her belief that due to the steep incline, the wheelchair could fall forward onto claimant and the wheelchair would be too heavy for anyone to lift if it were to fall onto claimant. In Ms. Medina's opinion, claimant needs a ramp that is "not too steep with sides." She stated that sides would be needed because, with the steep incline of the current (loaner) ramp, there is no room for claimant's mother and "it is like walking a tight rope." Ms. Medina also opined that claimant needs access to the front and back of the home. She stated that "[claimant's] safety comes first and he has an ADA right to accessibility."

Ms. Medina noted that if there were a fire in the kitchen, claimant would not be able to access the front door to exit. She also stated that if there were a fire in the hills near the home, she would recommend that claimant exit from the front door. When claimant's mother asked her question about drainage issues, she responded that she was not aware of any drainage issues near the home.

Claimant's Mother's Testimony

44. Claimant's mother explained that she and claimant moved to their current home because it was what they could afford and the open layout made the interior of the home accessible for claimant. However, the home is in a high fire danger area, and she is concerned about being able to evacuate if there is a fire.

She complained that IRC had "only focused on what Medi-Cal would pay for." She stated that the loaner ramp only worked with claimant's wagon, not the wheelchair. She discovered that her son would "jolt" the control on his wheelchair, making it dangerous for him to use the loaned ramp. When she has assisted him with the wheelchair, she has been scared that if she were to let go her son might fall off the ramp. She mentioned that because she did not play video games, she was not adept at using the wheelchair's controls.

Claimant's mother believed that the ramp would need to be permanent to be safe, so it could be wider and have rails. She stated that she needed a concrete L-shaped ramp at the front door, so it would not end in the lawn, and an emergency access out the back way (where the deck is located) in case of a fire inside the house. She stated that when it rained, all the water from the garage flooded near the deck, making that area inaccessible.

Although she had told Mobility Solutions and IRC that she wanted a roll up ramp, during her testimony, claimant's mother stated she was no longer sure a roll up ramp would work or be safe. She had wanted it because she believed it would be wider, it had detachable rails, and she thought she would be able to roll it up and move it with a dolly. She believed it would weigh close to the same as the PVI ramp suggested by IRC, but she would not be able to put the PVI ramp on a dolly to move it. During the hearing, she looked up the width of the roll up ramp on the internet. Although she testified that it said online that the roll up ramp was 32 inches wide, she believed she could find one that was 36 inches wide. She also believed the only way to obtain the roll up ramp would be to order it from a company through the internet. She has not seen one in person.

Claimant's mother told Mobility Solutions not to order the ramp IRC recommended because she was "sure" it would not work out or be safe. She

acknowledged that she did not have expertise regarding physical therapy or ramps, but that from what she had learned in this process, she had decided that the recommended PVI ramp would not work out. She also stated that she did not “refuse” to supply the wheelchair’s serial number. She could not figure out where the serial number was located when that information was requested. Claimant’s mother’s testimony was credible. Although Mobility Solutions may have interpreted claimant’s mother’s failure to provide the serial number as a “refusal” to do so, the only evidence regarding Mobility Solutions’ interpretation was a written timeline, without any information concerning when that document was prepared, who prepared it, or how it was determined that claimant’s mother “refused” to give that information as opposed to her simply being unable to find it.

Claimant’s mother reasoned that because IRC’s witnesses stated that Medi-Cal would not fund the permanent ramps described in the Amramp June 20, 2017, proposal she submitted, that meant IRC was required fund the ramps in that proposal as the payor of last resort. She argued that IRC dropped the ball, and then blamed her for its failure to obtain safe ramp access for her son.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The burden of proof is on the claimant to establish IRC is required to fund the requested wheelchair access expenses and that IRC failed to provide service coordination to claimant with respect to his ramp request. (Evid. Code, § 115.) The standard is a preponderance of the evidence. (Evid. Code, § 500.)

2. “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.] . . . The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the

quality of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325 (emphasis in original).) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

STATUTORY AUTHORITY

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq., governs the state's responsibilities to persons with developmental disabilities.

4. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports. A consumer of services and supports, and where appropriate,

his or her parents, legal guardian, or conservator, shall have a leadership role in service design.

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities. . . .

5. Welfare and Institutions Code section 4502.1 states:

The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

6. The services and supports provided to persons with disabilities are defined by Welfare and Institutions Code section 4512, subdivision (b), as follows:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or

her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, telehealth services and supports, as defined in Section 2290.5 of the Business and Professions Code, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

7. Welfare and Institutions Code section 4640.7 states the legislative intent that regional centers assist persons, such as claimant, with the coordination of services, as follows:

- (a) It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.
- (b) Each regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model, in which each consumer shall have a designated service coordinator who is responsible for providing or ensuring that needed services and supports are available to the consumer. Regional centers shall examine the differing levels of coordination services needed by consumers and families in order to establish varying caseload ratios within the regional center which will best meet those needs of their consumers.

8. Additionally, Welfare and Institutions Code section 4647, subdivisions (a) and (b), provide the following regarding the regional center's service coordination responsibilities:

- (a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

(b) The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services, or persons described in Section 4647.2. The regional center shall provide the consumer or, where appropriate, his or her parents, legal guardian, or conservator or authorized representative, with written notification of any permanent change in the assigned service coordinator within 10 business days. No person shall continue to serve as a service coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

9. Welfare and Institutions Code section 4646, subdivision (a), provides:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

10. Welfare and Institutions Code section 4646.4, subdivisions (a) and (b), state in part:

- (a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:
- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
 - (2) Utilization of generic services and supports when appropriate.
 - (3) Utilization of other services and sources of funding as contained in Section 4659.

[¶] . . . [¶]

- (b) At the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the consumer, or, where appropriate, the parents, legal guardian, or conservator, shall provide copies of their health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

11. Under Welfare and Institutions Code section 4648, subdivision (a)(1) and (8):

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

(8) Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

12. Welfare and Institutions Code section 4659, subdivisions (a), (c), and (d), provide:

- (a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:
- (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.
 - (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] . . . [¶]

- (c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.
- (d) (1) Effective July 1, 2009, notwithstanding any other law or regulation, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan

denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. . . .

EVALUATION

13. In this case, IRC's occupational therapist and physical therapist, along with an IRC vendor, assessed the entrances to claimant's home and determined that a standard PVI ramp to be positioned at the back/deck entrance to claimant's home, with a threshold plate, would provide claimant with appropriate and safe access to his new home and could be funded by Medi-Cal. IRC's physical therapist took claimant's mother's disability into consideration when she recommended that a 12-foot ramp, the longest available PVI ramp, be ordered, so as to minimize the slope of the ramp. IRC's physical therapist prepared the paperwork to initiate the request to Medi-Cal for the ramp and threshold plate and IRC's occupational therapist forwarded that paperwork to claimant's mother so she could obtain claimant's health care provider's signature. IRC's vendor handled submitting the request to Medi-Cal after claimant's physician signed the necessary paperwork. IRC and its vendor appropriately sought a standard ramp and threshold plate that could be funded by Medi-Cal as required by Welfare and Institutions Code section 4659, subdivisions (a), (c), and (d).

14. A break-down in communication occurred after Medi-Cal deferred the request in November 2016 and sought additional information regarding claimant's motorized wheelchair. At that point, claimant's mother had decided that a different type of ramp would be better. Additionally, although claimant's mother provided Mobility Solutions with some of the wheelchair information Medi-Cal had requested, she did not know how to locate her son's motorized wheelchair's serial number. IRC should have been providing coordination and assistance to claimant and his mother at this point.

However, the IRC CSCs assigned to claimant's case did not communicate with the vendor or claimant's mother about the ramp request for over eight months, after July

20, 2016, until the April 2017 IPP meeting. The evidence established that IRC “dropped the ball,” as claimant’s mother argued. IRC’s CSCs did not provide claimant any service coordination whatsoever regarding his ramp request for over eight months after July 20, 2016, although IRC’s occupational and physical therapists communicated with claimant’s mother in August 2016. It is disconcerting that the CSC assigned to claimant’s case up through January 2017 was not aware of the problems with the ramp request, particularly given that both Mobility Solutions and claimant’s mother, with whom that CSC should have maintained contact regarding the request, were aware that: (1) Medi-Cal deferred the request and asked for more information, (2) Mobility Solutions experienced some trouble reaching claimant’s mother to obtain the requested information, (3) claimant’s mother was unable to locate the requested serial number on claimant’s motorized wheelchair, and (4) claimant’s mother thought a different ramp would be better. These were problems that merited coordination efforts by IRC.

When a different CSC was assigned to claimant’s case in January 2017, he was not even made aware that a ramp had been requested. He did not learn about that request until April 2017, when claimant’s mother told him about it during an IPP meeting. Although that newly assigned CSC then took swift action to help claimant’s mother locate the requested serial number, by then claimant had been waiting almost an entire year for the ramp. Accordingly, claimant proved by a preponderance of the evidence that IRC failed to provide service coordination to claimant with respect to wheelchair ramp access to claimant’s home.

15. IRC’s failure to meet its service coordination responsibilities to claimant does not, however, end the inquiry. Unfortunately, even after IRC obtained the serial number for the wheelchair, the ramp request was not resubmitted to Medi-Cal because claimant’s mother had instructed Mobility Solutions not to submit it because she wanted to order a different type of ramp. Now claimant’s mother wants another type of

ramp based on the June 20, 2017, proposal from a company that advised IRC it cannot bill Medi-Cal for the ramp systems it proposed, which would require permanent improvements to claimant's home.

16. Contrary to claimant's mother's argument, the fact Medi-Cal has not yet funded the ramp because it needs additional information does not equate to a Medi-Cal denial that would require IRC to fund, as the payor of last resort, a different type of ramp system that claimant's mother thinks would be better. The evidence established that the type and size of ramp recommended by IRC's physical therapist was a ramp that would typically be funded by Medi-Cal and that would provide claimant appropriate access to his home. Medi-Cal's TAR Responses denied the requests due to the lack of required information and invited resubmission with the necessary information; Medi-Cal did not determine it would not fund the requested ramp. Rather, Medi-Cal advised that it needed additional information to process the request. Medi-Cal's TAR Responses seemed to indicate that once Medi-Cal received that information, it would fund the ramp IRC recommended.

17. Claimant failed to prove that IRC should fund the type of ramp claimant's mother would like, which was not the type of ramp IRC recommended. If claimant wishes to pursue obtaining ramp access with the ramp IRC recommended, he and his mother need to cooperate with IRC in requesting that ramp from Medi-Cal.

ORDER

1. Claimant's request for an order requiring Inland Regional Center to fund ramp access to his home is denied at this time. This decision is without prejudice to a later request for funding in the event Medi-Cal denies a request to fund the ramp and threshold IRC's physical therapist recommended.

2. Claimant established that IRC failed to provide service coordination to claimant with respect to the purchase and installation of wheelchair ramp access to

claimant's home. Should claimant desire to continue to pursue obtaining the IRC-recommended ramp access with IRC's assistance, IRC shall provide claimant and his mother with coordination services and assistance in pursuing such a request as required by the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.

DATED: July 7, 2017

THERESA M. BREHL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.