

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2018030087

DECISION

A fair hearing was held on June 19, and July 20, 2018, before Erin R. Koch-Goodman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Elizabeth Ballart, Attorney at Law, Disability Rights California, represented Claimant, who was present at hearing on June 19, and observed via Zoom and listened via cellular phone on July 20.

Evidence was received, and the record was held open for the submission of written closing briefs. On August 6, 2018, ACRC filed a Closing Brief, marked ACRC Exhibit 13, and Claimant filed a Closing Brief, marked Claimant Exhibit 26. On August 13, 2018, ACRC filed a Reply Brief, marked ACRC Exhibit 14, and Claimant filed a Reply Brief marked Claimant Exhibit 27. The matter was submitted for decision on August 13, 2018.

ISSUE

Is ACRC required to reimburse claimant's mother for costs incurred to repair and modify claimant's bathroom at her home?

FACTUAL FINDINGS

ELIGIBILITY

1. Claimant was born in 1984. In 1987, claimant was deemed eligible for services under the Lanterman Act, based upon a diagnosis of "Werdnig-Hoffman Disease [spinal muscular atrophy]-other neurological handicapping condition." He has a substantial handicapping condition with major impairment in the following areas: mobility, capacity for independent living, and economic self-sufficiency. He is confined to his bed, is on a ventilator, has a tracheotomy in place, and receives all nutrition via a gastrostomy tube. Currently, claimant is 34 years old and lives at home with his mother and younger brother.

2017 INDIVIDUAL PROGRAM PLAN (IPP)

2. On May 11, 2017, claimant, claimant's mother, and ACRC Service Coordinator (SC) Nancy Butler met for claimant's annual Individual Program Plan (IPP). The IPP identifies two objectives: "(1) claimant will maintain stable health, provided with check-ups by his primary care physician and/or specialists as needed, funded by Blue Shield and MediCal insurance through May 2018; and (2) claimant will live at home, and have opportunities for social, recreational, and community access experiences through May 2018." A schedule of services and supports is listed under each objective.

CLAIMANT'S REQUEST FOR ASSISTANCE

3. On September 5, 2017, claimant's mother telephoned ACRC, seeking assistance for a broken sewer line at her home. SC Butler suggested claimant's mother contact the City of Davis, Yolo County Utilities, and Public Works.

4. On October 10, 2017, claimant's mother telephoned ACRC, explaining that the sewer leak had been repaired, but mold and wood rot were found under claimant's bathroom shower. Claimant's mother reported that shower time was the one time of day claimant gets out of bed. Claimant lies on a five foot long bath cart and is wheeled into the shower. SC Butler referred claimant's mother to the ACRC Durable Medical Equipment (DME): Environmental Accessibility/Minor Home Modifications procedure. Noting claimant's Nursing Facility (NF) waiver,¹ SC Butler indicated claimant might be eligible for Medi-Cal assistance up to \$5,000 for environmental accessibility modifications to his bathroom. SC Butler told claimant's mother that after generic resources had been exhausted, claimant could request assistance from ACRC. On October 12, 2017, SC Butler prepared and submitted paperwork on claimant's behalf to the DME Committee. On October 26, 2017, the DME Committee concluded that insurance and generic resources were responsible for restoring the home to the existing condition prior to the sewer line leak, including the exhaustion of the NF waiver of \$5,000. Thereafter, ACRC could fund the remaining environmental accessibility improvements, but only if an Occupational Therapist/Physical Therapist (OT/PT) report supports claimant's need for the remaining environmental accessibility improvements.

¹ The NF Waiver became known as the Medi-Cal Home and Community Based Alternative Waiver or HCBWA.

5. On November 8, 2017, at 11:03 a.m., claimant's mother sent an email to SC Butler, stating:

I am writing today to ask for your help as a payer of last resort for [claimant]. We have been dealing with major plumbing and sewage issues since August. We are nearing the end of a lot of paperwork and outreach as we head in to our final round of repairs to [claimant's] bathroom.

I am attaching a few documents. 1) a doctor's order addressing [claimant's] habilitation needs. 2) a bid for Choice in Aging, [claimant] qualified for \$5,000 in assistance. 3) the bid for the remainder of the cost.

I will also forward the insurance claim that went towards the sewage repair, the insurance company covered \$5,000 of repairs that cost over \$9,000. (The estimate did not cover the cost of plumbing, environmental clean up under the dwelling, restoration or the pipe replacement – only the damage as the result of the leaks.)

The bids are from a contractor that works with Choice in Aging, and they accept Medi-Cal rates. The shower is a zero entry shower and there is work being done to account for excessive steam in the bathroom.

We are asking for help with the portion that is our share, the \$8,600. We are hoping you can help with \$4,000 and we

hope to get family help with the remaining \$4,600. Thank you.

6. Attached to her November 8, 2017 email to ACRC, claimant's mother provided "a doctor's order addressing [claimant's] habilitation needs", which states:

October 31, 2017

To Whom It May Concern:

[Claimant] has a Diagnosis of Spinal Muscular Atrophy and Reactive Airway Disease and needs an order for Home Environmental Accessibility and Habitation services. He needs to have urgent repairs done in his shower, bathroom area for his daily treatments with hot showers which helps him breath better. The daily long hot showers help clear [claimant's] lungs and keeps him clean. He needs a zero entry shower with room for a reclined bath seat, an attendant, and designed for steam. Due to his recent plumbing disaster and sewage issue, a contractor discovered some major problems with [claimant's] bathroom. It would be much appreciated if these repairs could be done very soon so he can get his daily hot shower treatments.

Sincerely,

Thomas Byron Alan, MD

Claimant's mother also attached "a bid for Choice in Aging" for \$5,000, and the "bid for the remainder of the cost" for \$8,480. The Choice in Aging/\$5,000 bid, dated November 6, 2017, described work to be done at claimant's home by Tony Chavez and John Wright, Eastbay Builders, including: "Masonry – hang DensShield [backer board], install

water proofing, custom curb-less tile shower pan, install vertical wall surround tile and grout. Extra large shower – 45 inches deep and 64 inches wide.” The remainder/\$8,480 bid, dated November 7, 2017, described work to be done at claimant’s home by Eastbay Builders, including:

Scope of Work: (1) Plumbing – extension shower head and bar; (2) Masonry – install 12 x 12 tiles at bathroom floor. Approximately 80 square feet; (3) Carpentry – install 20 linear feet of baseboard; (4) Carpentry – demo existing wall between the shower and toilet. Reframe wall to create shower 45 x 64; (5) Carpentry – demo existing subfloor and any dry rot framing. Install new framing and subfloor; (6) Sheetrock – install 64 square inches of sheetrock – tape and mud; (7) Electrical – install large exhaust fan – wire and vent correctly; (8) Sheetrock – 192 square feet of smooth wall throughout bathroom; (9) Electrical – reroute electrical switch to new wall; (10) Electrical – install two flush mount lights; (11) Plumbing – install new toilet; (12) Carpentry – reinstall everything after sheetrock smooth walls. Mirrors, towel bars, lights, etc.; (13) Carpentry – install new single jam and casing for pocket door; [and] (14) Paint – prime and paint a two coat semi-gloss throughout bathroom. Approximately 192 square feet.

7. The same day, at 4:19 p.m., SC Bulter replied: “Thank you. I received them. Has [claimant] had any Physical Therapy/Occupational Therapy evaluation to make sure that [claimant] is getting what he needs?” At 7:07 p.m., claimant’s mother responded:

We had someone come out from Partnership Health when we ordered a new bath seat. The possibility of a lift came up, but with no muscle tone we didn't take that any further. It may have been a while since you've seen him, but not many things he can do. His wheelchair, van, and medical equipment all seem ok.

On November 9, 2017, at 7:56 a.m., SC Bulter replied: "I am talking about the design of [claimant's] bathroom and the PT/OT evaluation."

8. On or about November 15, 2017, SC Bulter telephoned claimant's mother and requested the name of the person handling the money from Medi-Cal and identifying potential contractors to remodel claimant's bathroom. Claimant's mother identified Karen Stuckey, California Community Transitions (CCT) and Choice in Aging. Claimant's mother indicated that CCT did not require an OT/PT evaluation to complete the bathroom. SC Bulter reiterated that ACRC would require an OT/PT evaluation to make sure claimant was getting everything that he needed in his bathroom. SC Butler requested an itemized list of items ACRC was being asked to fund and Medi-Cal was being asked to fund. On November 17, 2017, Ms. Stuckey faxed SC Bulter three bids from Eastbay Builders: a \$5,000 bid to be paid by Choice in Aging (dated November 6, 2017), a \$4,000 bid to be paid by claimant's mother (dated November 16, 2017), and a \$4,480 bid to be paid by ACRC (dated November 7, 2017). The \$5,000 bid, to be paid by Choice in Aging, lists the following work:

Masonry: (1) hang DensShield [backer board] water proof underlayment; (2) install rubber water proofing; (3) apply waterproof membrane on DensShield walls; (4) Install custom tile shower pan; [and] (5) install vertical tile wall surround and

grout - extra large shower – 45" x 64" to except (*sic*) roll in Gurnee." The \$4,000 bid, to be paid by claimant's mother, lists the following work: (1) Electrical – install two flush mount lights and two raceway bar lights over vanity; (2) Plumbing – install new toilet; (3) Carpentry – reinstall everything after sheetrock smooth walls. Mirrors, towel bars, lights, etc.; (4) Carpentry – install new single jam and casing for pocket door; (5) Paint – prime and paint a two coat semi-gloss throughout bathroom. Approximately 192 square feet; [and] (6) Plumbing – install new wax ring, etc."

The \$4,480 bid, to be paid by ACRC, lists the following work:

Scope of Work: (1) Plumbing – extension shower head and bar; (2) Masonry – install 12 x 12 tiles at bathroom floor. Approximately 80 square feet; (3) Carpentry – install 20 linear feet of baseboard; (4) Carpentry – demo existing wall between the shower and toilet. Reframe wall to create shower 45 x 64; (5) Carpentry – demo existing subfloor and any dry rot framing. Install new framing and subfloor; (6) Sheetrock – install 64 square inches of sheetrock – tape and mud; (7) Electrical – install large exhaust fan – wire and vent correctly; (8) Sheetrock – 192 square feet of smooth wall throughout bathroom; [and] (9) Electrical – reroute electrical switch to new wall.

SC Bulter took the three bids to ACRC Client Services Manager (CSM) Mechelle Johnson.

9. On November 20, 2017, claimant's mother appeared at ACRC and asked to speak with CSM Johnson. Claimant's mother explained that in August, she and claimant experienced a major problem with standing water and raw sewage at their home. The project had cost \$11,000 so far and her insurance only covered \$5,000. The leak was under claimant's bathroom. Choice in Aging had found two contractors who accept Medi-Cal rates and are willing to complete the project. Claimant's mother asked about ACRC's process for keeping clients in their home. She told CSM Williams that the home was restored back to pre-leak condition the first week of October. She is frustrated that ACRC had taken so long to coordinate with the Medi-Cal contractor, and dissatisfied with SC Butler specifically.

Claimant's mother requested a list of available OT/PT vendors to complete an evaluation and a copy of ACRC's DME policy. CSM Williams accessed available OT/PT vendors from the ACRC website and agreed to speak to SC Butler on claimant's behalf. On November 21, 2017, CSM Williams left a telephone message for claimant's mother regarding the availability of OT/PT vendors. On November 22, 2017, SC Butler contacted vendor Jeanne Conca, PT, Shining Star, to secure a PT evaluation for claimant's bathroom. PT Conca scheduled an evaluation for November 30, 2017. On or about November 30, 2017, PT Conca completed her on-site visit to claimant's home.

10. On December 4, 2017, Eastbay Builders began work on claimant's bathroom remodel. On December 11, 2017, SC Jourdan Weitzel, with CSM Williams, telephoned claimant's mother, to introduce herself as claimant's new SC. SC Weitzel asked whether PT Conca had been to claimant's home for an onsite visit; claimant's mother confirmed PT Conca had been for an onsite visit. Claimant's mother asked about the PT evaluation report and SC Weitzel agreed to contact PT Conca to ask about the status of the report. CSM Williams explained to claimant's mother the DME procedure, the DME Committee process, and the next steps after ACRC received the PT

evaluation report. SC Weitzel contacted PT Conca for her report, and received the report the same day.

11. On December 12, 2017, SC Weitzel prepared and submitted paperwork to the DME Committee on claimant's behalf. On December 14, 2017, CSM Williams attended the DME Committee meeting via conference call; SC Weitzel was on vacation. The DME Committee raised concerns about claimant's eligibility for services under the Lanterman Act, fifth Category. The DME Committee recommended CSM Williams discuss claimant's eligibility with ACRC Director Lori Banales.

12. On December 19, 2017, CSM Williams spoke to Director Banales. Director Banales recommended an expedited psychological assessment. The same day, CSM Williams telephoned ACRC Clinical Director Camelia Houston, requested an expedited psychological assessment of claimant. The psychological assessment was assigned to Jamie Milotz, Ph.D.

13. On December 21, 2017, CSM Williams met with claimant's mother in-person and claimant by telephone. CSM Williams informed them that the DME Committee raised concerns regarding claimant's eligibility for regional center services and a referral was made to Dr. Milotz for a review of claimant's medical records.

14. On December 26, 2017, Dr. Milotz telephoned CSM Williams and informed her that, based upon the records, claimant does not have a cognitive disability and there was no evidence of a developmental disability at or around his 18th birthday. A new psychological evaluation of claimant was recommended. On January 2, 2018, CSM Williams telephoned claimant and his mother, informing them of the need for a new psychological evaluation and providing names of available vendors.

JANUARY 2018 NOTICE OF PROPOSED ACTION (NOA)

15. On January 3, 2018, ACRC issued a Notice of Proposed Action (NOA), "denying [claimant's] request to fund any bathroom modifications for your home to

improve environmental accessibility (including those recommended by ACRC-vendored physical therapist Jeanne Conca) at this time.” On January 9, 2018, claimant filed a Fair Hearing Request, requesting ACRC “fund the modifications to [claimant’s] bathroom as recommended by ACRC vendor, Jeanne Conca. The mediation was set for January 29, 2018, and the hearing was set for February 20, 2018. On or about January 18, 2018, Mr. Wright completed claimant’s bathroom remodel. On January 29, 2018, a mediation was conducted and the parties reached a Final Mediation Agreement, which states:

Alta California Regional Center agrees to rescind the Notice of Proposed Action dated January 3, 2018. Claimant agrees that his request to fund any bathroom modifications for his home to improve environmental accessibility (including those recommended by Alta California Regional Center-vendored physical therapist Jeanne Conca) shall be treated by Alta California Regional Center as a request for Alta California Regional Center to reimburse claimant in the amount of \$8,480.00, and the request is referred to the planning team for consideration. The planning team shall meet within 30 days of the date of the agreement to consider the request. The claimant agrees to participate in a psychological evaluation by [ACRC vendor] Andrea Francisco to determine whether he has an intellectual disability. Consumer agrees to Alta California Regional Center sharing his records with Andrea Francisco as part of the evaluation.

16. On February 13, 2018, a planning team meeting was held. SC Weitzel, CSM Williams, claimant, and claimant’s mother were present. SC Weitzel and CSM

Williams informed claimant that ACRC would not reimburse claimant's mother for the bathroom remodel, because claimant went outside the planning team process by moving forward with the remodel without any input from ACRC. Claimant requested to move forward and have ACRC issue a NOA denying claimant's request for reimbursement.

FEBRUARY 2018 NOA

17. On February 21, 2018, ACRC issued a NOA, "denying [claimant's mother's] request to reimburse her the amount of \$8480.00 for the cost she paid for bathroom modifications which began at your home on or about December 5, 2017." On February 22, 2018, claimant filed a Fair Hearing Request, requesting ACRC reimburse her \$15,918 for the total cost to modify claimant's bathroom.

2018 IPP

18. On May 30, 2018, claimant, claimant's mother, and SC Weitzel met for claimant's annual IPP. The IPP identifies two objectives: "(1) With financial assistance and IHSS [In-home Support Services], [claimant] will continue to live with his family through June 2019; [and] (2) Given regular medical, psychiatric and dental care, [claimant] will maintain good physical, mental and dental health, through June 2019." A schedule of services and supports is listed under each objective. Under Objective #2, the services and supports list includes new items, not listed in the 2017 IPP:

2.7 Claimant's primary physician will prescribe any needed adaptive equipment and medical supplies.

2.8 Claimant's family will seek generic resources for funding of all medical supplies and adaptive equipment.

2.9 Based on claimant's condition of eligibility, if there are no generic resources for prescribed equipment and/or medical supplies, pending assessment and need, SC will request ACRC funding per ACRC Service Policies.

2.10 Claimant, with support as needed from his family, will notify SC of any significant changes in health status.

FINAL CONTRACTOR COSTS

19. On June 10, 2018, claimant's mother emailed SC Weitzel two documents: a declaration signed by Mr. Wright, EastBay Builders, dated June 7, 2018, and email from Mr. Wright, dated April 26, 2018. The declaration listed the total cost for the bathroom remodel as \$20,918, with \$5,000 paid by Choice in Aging and the remaining balance paid by claimant's mother. He also verified that the project was consistent with the recommendations of PT Conca. In the email, Mr. Wright explained that his bid software lists the word "summary" on paid in full receipts, but not the words "final payment." At hearing, claimant submitted a one-page document, dated November 16, 2017, listing Scope of Work, with two Change Orders, and a cost of \$15,918.² The document reads as follows:

Scope of Work: (1) Electrical – install two flush mount lights and two raceway bar lights over vanity; (2) Plumbing – install new toilet; (3) Carpentry – reinstall everything after sheetrock smooth walls. Mirrors, towel bars, lights, etc.; (4) Carpentry – install new single jam and casing for pocket door; (5) Paint – prime and paint a two coat semi-gloss throughout

² The document has no identifying parties listed, but it is identical in form to all other bids from Mr. Wright to claimant and his mother.

bathroom. Approximately 192 square feet; (6) Plumbing – install new wax ring, etc.; (7) Plumbing – install extension shower head and bar; (8) Masonry – install 12 x 12 tiles at bathroom floor. Approximately 80 square feet; (9) Carpentry – install 20 linear feet of baseboard; (10) Carpentry – demo existing wall between the shower and toilet. Reframe wall to create shower 45 x 64.5; Carpentry – demo existing subfloor and any dry rot framing. Install new framing and subfloor; (11) Sheetrock – install 64 square feet of sheet rock – tape and mud; (12) Electrical – install large exhaust fan – wire and vent correctly; [and] (14) Electrical – reroute electrical switch to new wall.

Change Order: (1) Extensive dry rot removal and haul off (all copper plumbing and waste pipe straps are connected to the dry rot framing and will need to be unstrapped then reconnected once new framing has been installed – time extensive without damaging plumbing); (2) Demo 50 square feet of tile flooring and underlayment; (3) Carpentry – double 2 x 6 16 foot structural floor joist and 4 foot cross member (main supports on beam and will need to install in stages to keep it structurally sturdy) also 6 2 x 6 support floor joists; (4) Carpentry – install 64 square feet of subfloor; (6) [*sic*] Carpentry – install 3 foot of rim joist (going to have to jack up the framing to support corner at the end of concrete foundation while replacing this rim joist); (7) Carpentry – install 12 feet of double bottom plate; (8) Masonry – install

50 square feet underlayment; (9) Masonry – install 50 square feet of tile in Linen area outside of bathroom; (10) Electrical – two single gang box install to new studs; (11) Sheetrock – tape, mud, texture 32 square feet and install new corner bead at bedroom wall outside of bathroom; [and] (12) spray bug killer under house before closing up the subfloor.

Change Order Two: (1) Demo 196 square feet of underlayment and tile floor and dispose of prep subfloor, secure subfloor to floor joist; (2) purchase and install 196 square feet of tile, including bags of thin set, self leveler, HardieBacker (underlayment), plank tile, grout, sealer; [and] (3) purchase and install 80 square feet of baseboards with paint.

CLAIMANT'S BATHROOM

20. In 2000, when claimant was 15 years old, his mother remodeled her home, building a special room and bathroom for claimant. The bathroom was built with a zero threshold shower, measuring 57 inches long by 41 inches wide.

21. At some point, claimant began taking hot steam showers, lasting 45 to 60 minutes; allowing claimant to clear the congestion in his lungs. Claimant's mother made no environmental or structural changes to the bathroom to prevent the water damage attendant to claimant's 45-60 minute steam showers. In her report, PT Conca opined, "the bathroom was not built to accommodate the amount of steam that is necessary to accommodate claimant's respiratory status." She also noted: "mold, dry rot, and rust issues in the bathroom, and the fan no longer functions, so it is impossible to remove all of the steam from the area."

22. In her report, PT Conca concluded, in relevant part:

There is a need to redo the entire bathroom to accommodate the continued need for steam treatments. It is necessary to make the shower larger. [¶] ... [¶] The length of the shower [should be] 63" and ... purchase a larger shower chair for [claimant]. Currently the shower is designed with standard floor tiles leading into the shower pan. The transition between the flooring and the shower needs to better accommodate water. [¶] ... [¶] The walls of the bathroom need to accommodate the excessive steam. [¶] ... [¶] The thought process would be to make the room a complete wet room

[The toilet] should be replaced. [¶] ... [¶] It is recommended to pursue two heavy duty fans to assist with the quick steam removal once [claimant] is done with his steam treatment. The shower head should be on a slide to allow the caregiver to easily elevate the shower head or slide it down for easier access. Because the caregiver has to stand inside the shower throughout the 45-60 minutes, it would be beneficial to have a bowed shower curtain. [¶] ... [¶] It will be beneficial for [claimant] to have two grab bars positioned within the shower to improve caregiver safety.

THE LANTERMAN ACT

23. The Lanterman Developmental Disabilities Act provides for "services and supports for persons with developmental disabilities." (Welf. & Inst. Code, § 4501.)

“‘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.” (Welf. & Inst. Code, § 4512, subd. (b).) “[R]egional centers [will] 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.” (Welf. & Inst. Code, § 4640.7, subd. (a).)

“The determination of which services and supports are necessary for each consumer shall be made through the individual program plan [IPP] 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.” (Welf. & Inst. Code, § 4512, subd (b).)

Individual Program Plan (IPP)

24. An IPP shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. (Welf. & Inst. Code, § 4646, subd (c).) “[T]he 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.” (Welf. & Inst. Code, § 4646, subd (a).)

25. “The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.” (Welf. & Inst. Code, § 4646, subd (b).) “Individual program plans shall be prepared jointly by the planning team [regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative]. Decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.” (Welf. & Inst. Code, § 4646, subd (d).)

The planning process for the IPP shall include all of the following: (1) gathering information and conducting assessments; (2) a statement of goals and time-limited objectives; (3) a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. 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; and (4) when agreed to, a review of the general health status of the client. Documentation of

health status and referrals shall be made in the consumer's record by the service coordinator. (Welf. & Inst. Code, § 4646.5, subds. (a)(1), (2), (5), and (6).)

26. "An authorized representative of the regional center and the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative shall sign the individual program plan prior to its implementation." (Welf. & Inst. Code, § 4646, subd (g).) "Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative." (Welf. & Inst. Code, § 4646, subd (f).)

27. "Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan ... , the establishment of an internal process." (Welf. & Inst. Code, § 4646.4) "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 ... ; (2) Utilization of generic services and supports when appropriate. [¶] ... [¶]; (3) Utilization of other services and sources of funding ... ; [and] (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service 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.)

Service Coordinator

28. "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." (Welf. & Inst. Code, § 4640.7, subd (b).) "[S]ervice 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." (Welf. & Inst. Code, § 4647, subd. (a).) "The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan." (Welf. & Inst. Code, § 4647, subd. (b).)

Planning Team

29. "In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (Welf. & Inst. Code, § 4648, subd. (a)(2).) "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.” (Welf. & Inst. Code, § 4648, subd. (a)(1).)

Purchasing Services or Supports

30. “A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, when appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer’s program plan.” (Welf. & Inst. Code, § 4648, subd. (a)(3).)

“Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.” (Welf. & Inst. Code, § 4648, subd. (a)(1)(A).)

“A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements.” (Welf. & Inst. Code, § 4648, subd. (a)(1)(B).)

31. The regional center and the consumer shall, pursuant to the IPP, consider all of the following when selecting a provider of consumer services and supports:

- (A) A provider’s ability to deliver quality services or supports that can accomplish all or part of the consumer’s individual program plan.
- (B) A provider’s success in achieving the objectives set forth in the individual program plan.
- (C) Where appropriate, the existence of

licensing, accreditation, or professional certification. (D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports. (E) The consumer's choice of providers, or, when appropriate, the consumer's parent's, legal guardian's, authorized representative's, or conservator's choice of providers." (Welf. & Inst. Code, § 4648, subd. (a)(6).)

32. "[T]he 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.” (Welf. & Inst. Code, § 4659, subd. (a).)

ACRC PROCEDURE – DME: ENVIRONMENTAL ACCESSIBILITY/MINOR HOME MODIFICATIONS

33. “ACRC will provide environmental accessibility or minor home modifications to clients who are eligible and enrolled in the Home and Community Based Services Waiver (HCBSW). Adaptations to the client’s home can be provided to implement an objective in the individual’s IPP.” “Environmental Adaptations shall be deemed necessary to ensure the health, welfare and safety of the client, and/or enable the client to function with greater independence in their home, without which the client would require institutionalization.”

34. Key considerations for services include:

- The review of the DME Committee of requests for environmental accessibility or minor home modification is limited to the least costly, most appropriate and functional option for the client and his/her family.
- ACRC’s funding of environmental accessibility or minor home modification is contingent upon the determination that a client’s home poses a risk to the client’s personal health and safety or presupposes that without the necessary modification, the client will more than likely be placed in an institutional setting.
- Prior to any funding consideration, a Specialized Pool Occupational Therapy (OT) or Physical Therapy (PT) evaluation must be conducted to ensure that the proposed modification meets the client’s needs.
- Any modifications or adaptations to an existing structure are not designed to increase the value of the property but rather to provide for the health and

safety of the client. Requests for high end or premium home materials are therefore not considered for funding by ACRC.

- ACRC will only fund adaptations to real or personal property performed by appropriately authorized and qualified professionals who are licensed by the State of California to perform such work.
- Any labor or material costs associated with damage repair to existing structures or repairs necessary to meet current building code requirements are the responsibility of the family or client.

35. The Service Initiation Process requires:

- The Service Coordinator (SC) to ensure that the IPP identifies the need and includes the necessary authorization prior to proceeding to fund any adaptations to real or personal property.
- All requests for home adaptation or modification shall be presented to the DME Committee.
- Prior to the initiation of the service, SC must have a conversation with the planning team about the requirements for service provisions
- SCs shall ensure that families have contacted their private or public insurances to inquire about funding of the services.
- Medi-Cal will fund environmental accessibility or minor home modifications through EPSDT or NF Waiver funding for a maximum amount of \$5000.
- The IPP shall include the documented need for adaptations to real or personal property to meet the needs of the client. Documentation should clearly identify: (a) The client's specific need(s), a clear description of how the proposed adaptation will meet the client's needs and construction details specific to the client's specifications; (b) All other appropriate, feasible, and least costly options or alternatives to adaptations to real property.

- The IPP shall include documentation by the authorized clinician, specialist or professional making the determination of client need and identify the type of adaptation to real property. (a) The OT/PT report must indicate whether non-permanent options (e.g., temporary ramps) are available and appropriate for client's needs prior to requesting the use of POS [purchase of service] funds. (b) The documentation should also indicate in what way the needed adaptations are required to: (i) eliminate immediate risk to the health and safety of the client; and/or (ii) remedy an immediate risk which would require the client to move to a more restrictive living arrangement. (c) The report supplementing the IPP should explain how the adaptation would enhance the client's ability to live a more independent and productive life in the community.
- Once the OT/PT's report is obtained, the SC shall access the intranet under "Committee Review" link in order to schedule a record review at the DME Committee. If the OT/PT's recommendation is supported by the Committee, an environmental accessibility vendor will be assigned. SC will then provide the OT/PT's evaluation report to the environmental accessibility vendor and coordinate a date and time for the vendor to visit the client's home in order to generate a quote.
- When the quote from the environmental accessibility vendor has been obtained, the SC [is] to schedule a staffing [/meeting] at the DME Committee. If the quote is supported by the DME Committee, [the] SC [is] to inform the environmental accessibility vendor and ensure the following two forms are signed prior to having any adaptation or modification work started: (a) "Client Home Modification Agreement" to be signed by client or client's legal

guardian; (b) "Home Modification Additional Work Acknowledgement" to be signed by the environmental accessibility vendor.

DISCUSSION

36. The Lanterman Act requires regional centers to provide services and supports to persons with developmental disabilities. ACRC adopted a procedure for clients to obtain funding for durable medical equipment, environmental accessibility and/or minor home improvements. The procedure requires: an exhaustion of generic resources; securing an IPP documenting the need for adaptations to real property; obtaining an independent evaluation of the home and the accessibility needs of the client by a vendored OT/PT; seeking approval by the DME Committee on the accessibility needs identified by the OT/PT report and the bid of a vendored environmental accessibility contractor; and allow the improvements to be completed by a vendored environmental accessibility contractor.

37. Claimant did not follow the ACRC procedure. Instead, claimant secured insurance and Medi-Cal monies and a private contractor, and completed modifications to the bathroom without notice or agreement/approval from ACRC. Now, claimant seeks reimbursement from ACRC for the entire cost of the bathroom remodel, alleging: (1) all construction work was consistent with the OT/PT report and the entire remodel was required to serve claimant's needs; (2) SC Butler failed to adequately assist claimant navigate through the DME procedure process; and (3) claimant should be excused from following the DME procedure because the bathroom was inaccessible and the home modification was urgent and had to be completed immediately.

38. Claimant's arguments are unconvincing. ACRC repeatedly advised claimant of the procedural requirements for funding an environmentally accessible minor home modification. ACRC also attempted to assist claimant in following the DME procedure, directing claimant to exhaust potential Medi-Cal funds, insisting on a

vended OT/PT evaluation, and requesting a list of environmental accessibility items (e.g. shower head slide bar, bowed shower curtain bar, grab bars, etc.) claimant was asking ACRC to fund. While claimant acquiesced to the OT/PT evaluation on or about November 30, 2017, claimant initiated construction a few days later, without notice/agreement from ACRC; and the construction plan failed to consider the PT report, because the PT report was not available until December 11, 2017. In addition, claimant failed to provide ACRC a detailed list of environmentally accessible items to fund; instead, claimant provided ACRC with invoices for bathroom repairs (i.e., extensive dry rot removal and haul off, replace floor joists and cross members, install subfloor, etc.). Ultimately, claimant was aware of the ACRC procedure and failed to follow it; his failure to follow the ACRC procedure is enough to deny claimant's request in its entirety.

39. Notwithstanding the above, claimant's failure to follow the ACRC procedure cannot be excused. Claimant failed to produce evidence that the bathroom was ever inaccessible, and therefore, claimant was compelled to rapidly complete the remodel without ACRC approval. In fact, claimant continued to use the bathroom, and take 10 minute steam showers, up to and until the remodel began on or about December 5, 2017. Claimant alleges he was unable to continue his required 45-60 minute steam showers after the bathroom damage was discovered in September. However, claimant failed to produce evidence that he is medically required to take 45-60 minute steam showers each day, at home or elsewhere; or that 45-60 minute steam showers in his bathroom are the only means by which his chest congestion can be relived.

40. Finally, ACRC cannot assess the bathroom modification after the fact. There are too many questions that cannot be answered. For example, what modifications were made for claimant's environmental accessibility and what modifications were to repair the home; and were the environmental accessibility

modifications the most cost-effective or were other less expensive modifications available.

41. When all the evidence is considered, claimant's request for reimbursement of \$15,918 is denied. In the future, claimant must follow the procedure developed by ACRC for funding of minor home improvements.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act provides for "services and supports for persons with developmental disabilities." (Welf. & Inst. Code, § 4501.) "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan [IPP] 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." (Welf. & Inst. Code, § 4512, subd (b).) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (Welf. & Inst. Code, § 4646, subd (d).)

2. "Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan ... , the establishment of an internal process." (Welf. & Inst. Code, § 4646.4)

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 ... ; (2) Utilization of generic services and supports when appropriate. [¶] ... [¶]; (3) Utilization of other services and sources of funding ... ; [and] (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service 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.)

3. "A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, when appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan." (Welf. & Inst. Code, § 4648, subd. (a)(3).)

The regional center and the consumer, or when appropriate, his or her parents, legal guardian, conservator, or authorized representative ... , shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports: (A) A provider's ability to

deliver quality services or supports that can accomplish all or part of the consumer's individual program plan. (B) A provider's success in achieving the objectives set forth in the individual program plan. (C) Where appropriate, the existence of licensing, accreditation, or professional certification. (D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports. (E) The consumer's choice of providers, or, when appropriate, the consumer's parent's, legal guardian's, authorized representative's, or conservator's choice of providers." (Welf. & Inst. Code, § 4648, subd. (a)(6).)

4. ACRC adopted a procedure for clients to obtain funding for durable medical equipment, environmental accessibility and/or minor home improvements. The procedure requires: an exhaustion of generic resources; securing an IPP documenting the need for adaptations to real property; obtaining an independent evaluation of the

home and the accessibility needs of the client by a vendored OT/PT; seeking approval by the DME Committee on the accessibility needs identified by the OT/PT report and the bid of a vendored environmental accessibility contractor; and allow the improvements to be completed by a vendored environmental accessibility contractor.

5. As set forth in the Factual Findings, claimant failed to follow the ACRC procedure on environmental accessibility and minor home improvements and his request for reimbursement is denied.

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's denial of reimbursement to claimant is SUSTAINED.

DATED: August 24, 2018

ERIN R. KOCH-GOODMAN
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 the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)