

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**FAR NORTHERN REGIONAL CENTER, Service Agency**

**OAH No. 2021090542**

**DECISION**

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter telephonically and by video conference on January 11, 2022, from Sacramento, California.

Far Northern Regional Center (FNRC) was represented by P.J. Van Ert, Attorney at Law.

Claimant's mother appeared at the hearing and represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on January 11, 2022.

## **ISSUE**

Is FNRC required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request for funding to purchase solar panels, a generator, and air purifier for her home?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a nine-year-old client of FNRC who resides at home in Redding, California, with her older brother, mother, and her mother's boyfriend. Claimant was born with Lissencephaly, a condition which caused her brain to be smooth. She qualifies for services from FNRC based on intellectual disability and epilepsy.

2. In the summer of 2021, claimant's mother requested FNRC to fund solar panels, a generator, and air purifier for claimant's home. On September 3, 2021, FNRC issued a Notice of Proposed Action (NOPA), denying claimant's request for funding. FNRC stated that "California public funds cannot be used to increase the value of private property. Also, generic resources have not been exhausted . . ."

3. On September 16, 2021, claimant's mother timely filed a Fair Hearing Request. Claimant's mother wrote, in part, that claimant needed a generator due to her "medical needs." Specifically, claimant uses oxygen, a pulse oximeter, a feeding machine, portable oxygen, a nebulizer, a "shake vest" and uses a lift system. In addition, the house is kept a "specific temperature" because claimant cannot regulate her body temperature. Claimant's mother also wrote that an air purifier would benefit

claimant because air quality in the home is hazardous. She also wrote that running all of claimant's equipment and keeping the home at a specific temperature has become "very expensive."

4. On September 23, 2021, claimant's mother had an informal meeting with Larry Withers, Associate Director of Client Services for FNRC. During the meeting, claimant's mother explained that claimant needed a generator and solar panels for her home because claimant's mother's utility bill had become financially unmanageable. The cost was a result of running claimant's equipment and keeping the home cool in the summer. The air purifier was needed because of the poor air quality due to forest fires, which causes claimant to have respiratory issues.

5. By letter dated September 27, 2021, to claimant's mother, Melissa Gruhler, Executive Director for FNRC, issued a Fair Hearing Informal Meeting decision denying claimant's funding request. Ms. Gruhler stated in part that:

Since you reside in the City of Redding and do not receive power from PG&E [Pacific, Gas & Electric], you have not experienced any power safety shutoffs to date. Mr. Withers explained that FNRC only provides generators to families or clients who experience power shutoffs. He further discussed that generators are more costly to operate because they run on gasoline and will cost far more than the current City of Redding electricity. FNRC does not fund the gasoline for generators loaned to families or clients.

With regard to your request for solar panels, this would increase the value of your home. As a state-funded agency,

FNRC is precluded from funding anything that might add value to a private home. The cost of a solar panel system is not an efficient use of public funds.

You also requested an air purifier for your home due to the summer fires in Northern California. You told Mr. Withers that [claimant] was a high risk for acquiring sepsis during a recent home remodeling project due to the dust and poor air quality from the activity. Due to this risk, you purchased an air purifier for [claimant's] bedroom, but it only works in a small area. Although [claimant] might benefit from an air purifier, the need for it is not related to her eligible diagnosis with FNRC.

Ms. Gruhler informed claimant's mother of her right to proceed with a fair hearing. Claimant's mother appealed the Fair Hearing Informal Meeting decision.

### **Claimant's Evidence**

6. Claimant's mother testified at hearing. She explained that claimant is non-verbal and non-ambulatory. She is fed through a feeding tube and feeding machine. Claimant has low muscle tone which restricts her ability to breathe and causes respiratory issues. Claimant requires suctioning of her oral secretions. Claimant has seizures which also causes her to inhale her oral secretions which can also cause respiratory illness. When claimant has a respiratory infection, she wears a shake vest and uses an electric nebulizer. Claimant uses oxygen at night and sometimes during the day. Claimant's mother uses a pulse oximeter to check claimant's oxygen saturation. Claimant cannot regulate her body temperature, so her home must be kept

cool in the summer and warm in the winter. Claimant's home is a four-bedroom, two-bathroom home.

7. Claimant's mother is requesting funding from FNRC for installation of solar panels to help offset the cost of running claimant's equipment and keeping her home at a constant temperature. Claimant's mother explored options with the City of Redding to reduce her utility bill, but her only option was to pay a monthly average amount so her bill does not fluctuate.

8. Claimant's mother is also requesting funding from FNRC to purchase a generator to use when the power goes out in their home. Claimant's mother submitted a note from claimant's medical provider Carey Venglarcik M.D., explaining that claimant needs the generator to ensure power for claimant's equipment during "rolling blackouts." However, claimant's home has not been affected by rolling blackouts. Claimant's home is not powered by PG&E, which has instituted rolling blackouts to reduce forest fires. Claimant's electricity is provided by the City of Redding. In the last year, claimant's home lost power one time.

Claimant's equipment can be charged and run on a battery. For example, claimant has a suction machine that can be charged and used without being plugged into an electrical source. Claimant also has a portable oxygen machine that she travels with that can run for at least an hour and can be charged with a cigarette lighter in a vehicle. Her pulse oximeter can also run on a battery.

9. Claimant's mother is requesting funding from FNRC to purchase an air purifier for her home. There were forest fires near Redding that affected the air quality inside claimant's home. Claimant's mother purchased an air purifier for claimant's bedroom, but would like a bigger air purifier that will filter the air in the larger areas of

the home where claimant spends her time. Dr. Venglarcik wrote claimant a November 2, 2021 "Generic Prescription for Air Purifier" but did not include any information regarding the medical need for the air purifier.

## **FNRC Evidence**

10. Mr. Withers was assigned by Ms. Gruhler to review claimant's request for funding for solar panels, a generator, and air purifier. In doing so, Mr. Withers reviewed information submitted by claimant's mother concerning the reasons for the request. The solar panels were requested to reduce claimant's utility bills. This request could not be granted because FNRC is a publicly funded agency and is prohibited from funding anything that would increase the value of private property. Utility costs are also not unique to regional center clients.

Mr. Withers conducted research to provide claimant assistance with paying her utility costs. Mr. Withers discovered that the City of Redding has a program that will average a customer's utility bill for one year and charge the customer the average monthly cost. The purpose of the program is to allow the customer to have a consistent utility bill.

11. Mr. Withers also determined FNRC could not fund the purchase of a generator, because there are other more cost effective means to deal with infrequent power outages, such as utilizing battery powered equipment. While the FNRC does have a generator loan program for clients who are affected by PG&E rolling blackouts, claimant does not qualify because she receives her power from the City of Redding and is not affected by rolling blackouts. Mr. Withers also explained that in the event of an emergency that results in the extended loss of power, FNRC will help clients find temporary shelter.

12. Mr. Withers also explained that FNRC cannot fund claimant's request for a large air purifier because the smaller air purifier claimant used during the fires met her immediate needs. The fires were isolated and not an ongoing issue that needs to be funded by FNRC.

## **Analysis**

13. When all of the evidence is considered, claimant did not establish that the Lanterman Act requires FNRC to grant her request for funding for solar panels, a generator, or an air purifier. While claimant's mother may be struggling with costly utility bills, FNRC may not use public funds to increase the value of private property. Additionally, the funding of a generator is not a cost-effective use of public resources. Loss of electricity is a rare occurrence at claimant's home. Her equipment runs on battery and can be charged in a vehicle. If there is an emergency, FNRC can assist claimant with finding temporary shelter. Likewise, claimant failed to establish a larger air purifier is medically necessary and related to her eligible diagnosis with FNRC. Therefore, her appeal must be denied.

## **LEGAL CONCLUSIONS**

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 *et seq.*) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700-4716.) Claimant requested a fair hearing to appeal FNRC's denial of her request to fund solar panels, a generator, and an air purifier.

2. Under the Lanterman Act, the provision of services to eligible persons with developmental disabilities is administered by regional centers. Regional centers

are required to take into account the needs and preferences of the individual and the family, but the provision of services must also reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).)

3. The burden is on claimant to establish that FNRC is obligated to fund the purchase of the solar panels, a generator, and an air purifier, which are new benefits. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

4. Welfare and Institutions Code section 4646.4, provides in relevant part that:

(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. The individualized family service planning team for infants and toddlers eligible under Section 95014 of the Government Code may determine that a medical service



identified in the individualized family service plan is not available through the family's private health insurance policy or health care service plan and therefore, in compliance with the timely provision of service requirements contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations, will be funded by the regional center.

5. Pursuant to Welfare and Institutions Code section 4659:

(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.

(b) Any revenues collected by a regional center pursuant to this section shall be applied against the cost of services

prior to use of regional center funds for those services. This revenue shall not result in a reduction in the regional center's purchase of services budget, except as it relates to federal supplemental security income and the state supplementary program.

(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. [ . . . ]

6. Additionally, pursuant to California Constitution Article 16, Section 6, California public funds cannot be used to increase the value of private property.

7. As set forth in the Factual Findings and the Legal Conclusions as a whole, claimant failed to establish that FNRC is required under the Lanterman Act to grant her request for funding for solar panels, a generator and an air purifier. Therefore, her appeal must be denied.

### **ORDER**

Claimant's appeal of the denial of her request for funding for solar panels, a generator, and an air purifier, is DENIED.

DATE: January 24, 2022

MARCIE LARSON

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).)**