

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

In the Matter of:

CLAIMANT

v.

REDWOOD COAST REGIONAL CENTER, Service Agency.

OAH No. 2022020101

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on March 9 and 11, 2022, by audio- and videoconference.

Claimant appeared representing himself.

Kathleen Kasmire appeared for service agency Redwood Coast Regional Center (RCRC).

The record was held open for the parties to submit written closing argument. Claimant submitted timely argument, which was marked for identification as Exhibit P and considered. Claimant also submitted additional documentary evidence, although the record had not been held open for any additional evidence. This document was marked for identification as Exhibit O and excluded from evidence. RCRC submitted

timely argument, which was marked for identification as Exhibit 9 and considered. The record closed and the matter was submitted for decision on March 25, 2022.

Claimant submitted additional argument on March 26, 2022. This untimely document was marked for identification as Exhibit Q, but was not considered.

FACTUAL FINDINGS

1. Claimant is an adult who receives services through RCRC in accordance with the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.).

2. Like many adults both with and without developmental disabilities, claimant receives routine medical care. A problem unrelated to the developmental disability qualifying claimant to receive services from RCRC causes him to require a Continuous Positive Airway Pressure (CPAP) device to assist his breathing during sleep.

3. Claimant is dissatisfied with RCRC's efforts to help him solve a problem relating to his CPAP device. He filed a fair hearing request asking that RCRC issue a Notice of Proposed Action confirming its denial of services to him and its reasons for denying those services. In addition, claimant asks for an order requiring RCRC to assist him in obtaining a replacement CPAP device.

4. Claimant has two CPAP devices (a device for regular use, and a backup). He will be eligible to purchase a new CPAP device, with funding through Medicare, in November 2022.

5. The manufacturer has recalled both of claimant's CPAP devices. The federal Food and Drug Administration announced this recall in June 2021. The manufacturer intends to repair or replace all devices, but the recall affects several million devices in the United States. The manufacturer has established a priority system for devices and users, and claimant has registered with the manufacturer to have his devices repaired or replaced. As of the hearing date, however, the manufacturer had not yet reached claimant's position on its priority list.

6. Despite the recall described in Finding 5, Medicare has declined to purchase a new CPAP device for claimant before November 2022.

7. Claimant has asked RCRC staff members to help him obtain a replacement CPAP device as soon as possible.

8. Claimant's Individual Program Plan (IPP) calls, in pertinent part, for RCRC to fund 202 hours per month of supportive living services (SLS). These services include assisting claimant in obtaining and using services that RCRC does not fund or provide, such as routine medical care. Claimant's IPP states that claimant lives with a "natural support" person who also serves for 86 hours per month as his in-home supportive services (IHSS) caregiver.

9. RCRC staff members have corresponded and spoken with claimant about the request described in Finding 7. They have offered to assist him in communicating with the CPAP device manufacturer to make sure that he is in the highest possible position on the manufacturer's priority list. They also have recommended that claimant ask his SLS or IHSS provider(s) to work with his healthcare provider to appeal Medicare's denial of funding to replace one of his existing devices before November 2022. Finally, RCRC staff members have agreed that if claimant identifies any

opportunities to receive a medically appropriate device through donation, they will (1) confirm to any potential donor who needs to know that claimant is an RCRC consumer, and (2) allow him to receive delivery of the device at RCRC's Eureka office.

LEGAL CONCLUSIONS

1. The Lanterman Act requires RCRC to issue a Notice of Proposed Action to claimant if RCRC denies a request by claimant to provide a new service, or changes claimant's existing services without claimant's consent. (Welf. & Inst. Code, § 4710, subds. (a)(1), (b).)

2. The matters stated in Findings 7 through 9 fail to establish that RCRC has withdrawn or altered any services claimant's IPP requires. In addition, the matters stated in Findings 7 through 9 fail to establish that RCRC has denied any request by claimant for Lanterman Act services. RCRC is under no obligation, in connection with any matter described in this decision, to issue a Notice of Proposed Action to claimant.

3. The matters stated in Findings 4 through 9 fail to establish either that any replacement CPAP currently is available for claimant, or that RCRC bears any responsibility for claimant's failure so far to obtain repair or replacement of at least one of his CPAP devices.

ORDER

1. Claimant's request for a Notice of Proposed Action is denied.
2. Claimant's request for an order directing RCRC to provide additional services relating to the manufacturer's recall of claimant's CPAP devices is denied.

DATE:

JULIET E. COX

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 90 days.