

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

In the Matter of the Appeal of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER

OAH No. 2022060728

DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 4, 2022, from Sacramento, California.

Jason Toepel, compliance manager, represented Valley Mountain Regional Center (VMRC).

Claimant's mother and authorized representative represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on August 4, 2022.

ISSUE

Should VMRC be required to provide funding for claimant to: (1) enlarge claimant's bathroom to accommodate more people; (2) construct or install an outdoor kitchen at claimant's home; and (3) purchase and install a drop-down television in claimant's bedroom ceiling?

FACTUAL FINDINGS

1. Claimant is a 17-year-old VMRC consumer based on his qualifying diagnosis of Autism Spectrum Disorder (ASD).
2. On an unspecified date, claimant's mother requested VMRC to provide funding to enlarge claimant's bathroom, install an outdoor kitchen, and install a drop-down television for claimant. On May 27, 2022, VMRC sent a Notice of Proposed Action (NOPA) denying each of the funding requests. According to the NOPA, claimant's mother requested the bathroom modifications because the "current configuration does not allow for multiple people to safely maneuver in the tight setting [and] [i]t is believed that the intervention of others may be needed while [claimant] is in the bathroom due to potential behaviors." Claimant's mother requested the outdoor kitchen "so that [claimant] will have an open and safe place to learn how to cook and grill and because [claimant] really enjoys eating outside with his family." Claimant's mother requested the drop-down television so claimant could not break it, which would "make his room a happier place and lead to improvement of emotional wellbeing and behaviors."

3. As explained in the NOPA, VMRC denied the funding requests because, “Regulations define supports and services for persons with developmental disabilities, in part, as specialized services or supports or adaptations of generic services and supports directed towards the alleviation of a developmental disability,” and “[n]one of the requested items meet this definition.” Additionally, VMRC determined “there are more cost-effective options for behavioral challenges than modifying the bathroom” and “for teaching [claimant] how to cook than to add an outdoor kitchen to [the] home.” VMRC also determined, “By regulation, service planning is done through a process of needs determination. While [claimant] may enjoy eating outside with family and also having a television in his room, neither constitutes a need.” Finally, VMRC determined televisions may not be funded, pursuant to Department of Developmental Services (DDS) directive.

4. On June 21, 2022, VMRC received a Fair Hearing Request from claimant’s mother appealing the denial of funding. In response to a question about what is needed to resolve the matter, claimant’s mother wrote, “My complaint will be resolve [sic] when VMRC have [sic] a better understanding of [claimant’s] needs.” This hearing followed.

Claimant’s Funding Request and Evidence

5. Claimant has been a VMRC consumer since he was approximately 18 months old. He is presently part of the DDS’s self-determination program. In his childhood, his ASD caused him to become progressively more aggressive. In 2013, when he was nine years old, his family placed him in a group home for his and their safety.

6. Claimant lived in the group home until May 2021, when it closed. In late May 2021, claimant moved back into the family home in Stockton, where he presently lives with his mother and older brother, who also acts as his personal assistant.

7. Claimant's family has modified the home to accommodate claimant's return. Through VMRC, claimant obtained padding for his bedroom because he often hits his head against walls during behavioral outbursts. Additionally, the family has removed the mirror and all other loose items from a hallway bathroom so claimant can use it with minimal risk of injury.

8. Claimant's mother observed that claimant's behavior improved somewhat during his stay at the group home. Upon his return to the family home, claimant resumed his aggressive and violent outbursts. He broke walls with his head, which led his family to pad his bedroom.

9. Claimant is now 18 years old and fully grown. He is strong and it sometimes takes multiple people to restrain him when he becomes aggressive. The family typically deescalates claimant by using calm words and body language to encourage him to go to his room, but they must sometimes use physical force to minimize the risk of injury.

10. In addition, claimant suffers from a seizure disorder. Although mostly controlled by medication, his seizures are unpredictable and can happen at any time. Claimant's mother wants to enlarge the bathroom claimant uses so multiple people can fit into it to assist claimant in the event he has an outburst or seizure. She believes "helping [claimant] out of the shower if he seizes will be too difficult."

11. Claimant's mother believes the outdoor kitchen will help claimant "be an adult" and participate with the family while cooking. Claimant enjoys being outside in

nature and refuses to help cook inside. If the family had an outdoor kitchen, claimant could use it to learn to cook. Additionally, being outside would make claimant happier in general, which his mother believes would help avoid maladaptive behavior.

12. When claimant is behaving aggressively, he is most soothed by watching television. He does not have a television in his room because his family fears he will break it, as he has done to other televisions in the house. Claimant's mother believes a television installed in the ceiling that can drop down will reduce the chance of claimant breaking it. She also believes it will enable claimant to soothe himself in his bedroom, where he is safest. At hearing, she clarified she is not necessarily seeking funding for the television itself, but rather to purchase an electronically controlled television mount and install it in the ceiling of claimant's bedroom.

VMRC Evidence

13. On July 7, 2022, Val Harris and Silvia Pinto, Board Certified Behavior Analysts (BCBAs) for VMRC, visited claimant's house to assess the request to enlarge his bathroom. Ms. Harris has a master's degree in counseling and has been a BCBA since 2016. The majority of her professional work has been with individuals with ASD. Ms. Pinto has a master's degree in applied behavioral analysis and has been a BCBA since 2017.

14. Ms. Harris and Ms. Pinto physically observed claimant's bathroom during their assessment. They also interviewed claimant's mother and brother about claimant's bathroom behaviors and levels of need for various tasks. In response to the question, "If [claimant] displays maladaptive behaviors, what does that look like?", his brother said claimant "swats at you so [his brother] tries to stand out of his reach, tries to hit, throw headphones, will throw things, attempt to headbutt, hit self if he cannot

hit the other person." To the same question, claimant's mother responded, "Vocalizations, drops head back, hits others, hits arm against shower wall, sometimes gets out to hit person." When asked what de-escalation strategies he uses, claimant's brother said he "will ask [claimant] 'what are his goals,' count to 10, [use] calm hands, these strategies help him calm down somewhat, usually will completely de-escalate once the shower is over, . . . [claimant] is never really calm in the shower, he doesn't like to shower." To the same question, claimant's mother responded, "Redirection to go to his room, go sit on bed, count to ten, follow thru with demand."

15. After their assessment, Ms. Harris and Ms. Pinto jointly prepared a written report of their findings and recommendations. They both testified at hearing consistent with their report. Additionally, they opined that three people could fit into claimant's bathroom, if necessary.

16. In summary, based on their interviews, Ms. Harris and Ms. Pinto found, "it appears that rarely is there a need for more than 1 person in the bathroom to assist [claimant]." They also found claimant's "current in-home ABA is not addressing his behaviors or bathroom routine." They concluded, "At [claimant's] reported current level of behaviors within the showering routine, it does not seem necessary to modify the hall bathroom." Instead, they recommended "that the ABA provider assist the family with addressing [claimant's] challenges during his shower routine by teaching [claimant] skills to increase his independence with these routines as well as provide caregivers with the tools and training to best support [claimant]."

Analysis

17. VMRC contends that, for various reasons, each of claimant's funding request must be denied. For the reasons discussed below, VRMC's rejections are supported by the law.

BATHROOM MODIFICATIONS

18. Regional centers can only fund either "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 an independent, productive, and normal life." (Welf. & Inst. Code¹, § 4512, subd. (b).) Claimant's mother wants to enlarge claimant's bathroom to enable more people to fit into it to help assist with his ASD-related behavior and his potential seizures. These purposes do not satisfy the requirements of section 4512, subdivision (b). Enlarging claimant's bathroom is not a specialized service or support. Nor is it a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy.

19. Additionally, two BCBA's assessed claimant's bathroom and determined there is "rarely" a need for more than one person to assist claimant. They also opined

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise specified.

that, if necessary, two additional people could fit in the bathroom. Finally, they noted that other behavioral interventions, such as addressing claimant's conduct through his ABA provider, would teach him skills to increase his independence.

20. Finally, under the DDS's self-determination program, services and supports are only eligible for funding if the federal Centers for Medicare and Medicaid Services (CMS) determines they are eligible. (§ 4685.8, subd. (c)(6).) CMS maintains an Instructions, Technical Guide, and Review Criteria manual that provides information regarding, among other things, what services are eligible for CMS funding. According to the CMS manual, "adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the participant" are excluded from CMS funding. This provides a separate basis to deny claimant's request to fund the request bathroom modifications, because the evidence did not show that those modifications would provide claimant with direct medical or remedial benefit.

OUTDOOR KITCHEN

21. The law supports VMRC's denial of claimant's requested outdoor kitchen because it is not a specialized service or support or a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy. (§ 4512, subd. (b).)

22. Additionally, claimant's mother testified that she seeks the outdoor kitchen primarily so claimant can participate in cooking and eating with the family outdoors, where he is most comfortable and least likely to have maladaptive behaviors. Regional centers must fund services cost-effectively. (§§ 4648, subd.

(a)(6)(D), and 4685.8, subd. (b)(2)(H).) Constructing an outdoor kitchen is not the most cost-effective way of teaching claimant to cook or allowing him to eat outdoors with his family. Furthermore, to the extent that constructing an outdoor kitchen would constitute a service that is diversional or recreational in nature, it would not be permissible pursuant to the CMS manual.

DROP-DOWN TELEVISION

23. The law supports VMRC's denial of claimant's requested drop-down television because it is not a specialized service or support or a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy. (§ 4512, subd. (b).) Furthermore, to the extent that installing a drop-down television would constitute a service that is diversional or recreational in nature, it would not be permissible pursuant to the CMS manual.

LEGAL CONCLUSIONS

1. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to the funding sought. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove

it is more likely than not that he is entitled to the funding requested. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

2. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in natural community settings as well as the right to choose their own program planning and implementation. (§ 4502.) “‘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, normal lives.” (§ 4512, subd. (b).)

3. The Legislature has further declared regional centers are to provide or secure family supports that: respect and support the decision-making authority of the family; are flexible and creative in meeting the unique and individual needs of the families as they evolve over time; build on family strengths, natural supports, and existing community resources; are designed to meet the cultural preferences, values, and lifestyles of the family; and, focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective manner. (§§ 4648, subd. (a)(6)(D), and 4685.8, subd. (b)(2)(H).)

4. Regional centers, when purchasing services and supports, must ensure conformance with purchase of service policies and utilize generic services and supports when appropriate. (§ 4646.4, subdivision (a).)

5. Under the DDS's self-determination program, services and supports are only eligible for funding if the CMS determines they are eligible. "The Self-Determination Program shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (§ 4685.8, subd. (c)(6).)

6. As discussed in the Factual Findings as a whole, as particularly Factual Findings 18 through 20, the evidence established that claimant's requested bathroom modification does not qualify for regional center funding because: (1) it is not a specialized service or support; (2) it is not a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy; (3) enlarging the bathroom is neither sufficient nor necessary to address claimant's behavioral problems; and (4) the bathroom modification would not be eligible for CMS funding because it is of general utility and not of direct medical or remedial benefit to claimant. Cause therefore exists to deny claimant's request for funding the bathroom modification.

7. As discussed in the Factual Findings as a whole, as particularly Factual Findings 21 and 22, the evidence established that claimant's requested outdoor kitchen does not qualify for regional center funding because: (1) it is not a specialized service or support; (2) it is not a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy; (3) it is not the most cost effective way of teaching claimant to cook or allowing him to eat outdoors with his family; and (4) it would not be eligible for CMS funding because it constitutes a service that is

diversional or recreational in nature. Cause therefore exists to deny claimant's request for funding the installation of an outdoor kitchen.

8. As discussed in the Factual Findings as a whole, as particularly Factual Finding 23, the evidence established that claimant's requested drop-down television does not qualify for regional center funding because: (1) it is not a specialized service or support; (2) it is not a special adaptation of a generic support or service directed toward alleviating claimant's ASD; toward his social, personal, physical, or economic habilitation or rehabilitation; or toward claimant achieving and maintaining his independence, productivity, or normalcy; and (3) it would not be eligible for CMS funding because it constitutes a service that is diversional or recreational in nature. Cause therefore exists to deny claimant's request for funding the installation of a drop-down television.

ORDER

Claimant's mother's appeal of the denial of her request to fund the cost of enlarging claimant's bathroom, constructing or installing an outdoor kitchen at claimant's home, and purchasing and installing a drop-down television in claimant's bedroom ceiling, is DENIED.

DATE: August 18, 2022

SEAN GAVIN
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).)