

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

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency

DDS Case No. CS0004281

OAH No. 2023050212

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on June 12, 2023.

Claimant's parents represented claimant.

Keri Neal, Fair Hearing Representative, represented the service agency.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 12, 2023.

ISSUES

(1) Does claimant need assistance to access the second floor of the family home? (2) Is a Scalamobil stair climber the most appropriate and cost-effective solution based on claimant's unique needs? (3) Is the service agency required to fund a residential elevator in claimant's family home?

SUMMARY

The evidence established that claimant has an immediate need for assistance to access the second floor of the family home. The service agency did not perform a complete assessment that considered claimant's unique needs. The evidence did not establish that the Scalamobil is the most cost-effective and appropriate solution for claimant given his health concerns of vertigo, cyclical vomiting, and risk of aspiration. Therefore, the service agency must reconsider the alternatives with a full evaluation that includes consideration of claimant's unique health concerns.

The evidence did not support claimant's assertion that a residential elevator is the most cost-effective solution to address second floor access.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant's parents submitted a request for the service agency to fund installation of an in-home elevator on March 10, 2022. The service agency conducted an occupational therapy and physical therapy equipment consultation dated May 12,

2022. The consultation determined that the family “definitely has difficulties getting [claimant] up and down the interior stairs of the family home.” The physical therapist and occupational therapist concluded that the use of a stair climber, sometimes called a Scalamobil, be evaluated.

2. Claimant’s family disagreed with this solution and declined to submit a request for the Scalamobil to claimant’s health insurance to determine generic sources of funding.

3. On March 28, 2023, the service agency issued a notice of action denying claimant’s request for an elevator. The notice of action stated that the service agency agreed to pay \$11,000 towards installation of the elevator, which was the estimated cost of a Scalamobil stair climber and associated equipment. The estimated cost for an elevator was over \$39,000.

4. Claimant filed an appeal request on April 17, 2023. This hearing followed.

Claimant’s Current Condition

5. Claimant is 16 years old. He lives at home with his parents, older sister, and maternal grandparents. He qualifies for regional center services based on a diagnosis of cerebral palsy.

6. Claimant’s most recent individualized program plan (IPP) is dated March 28, 2023. Claimant attends school and has applied behavioral analysis (ABA) services. Claimant has many complicating conditions, including hypomyelination with atrophy of the basal ganglia and cerebellum, also called H-ABC, a rare genetic disorder that progressively damages the nervous system, dystonia, episodes of vertigo, and severe scoliosis. His hands and arms are spastic. He lacks full control of his neck muscles so

his head and neck must be stabilized. He has chronic lung disease and struggles to breathe due to apnea. He requires assistance with all activities of daily living. He uses a customized wheelchair for mobility and requires assistance to transfer to and from a wheelchair. He is nonverbal and sometimes communicates basic needs with an augmentative alternative communication device that he controls through eye movements while resting his chin on a gel pillow to maintain eye gaze position. He receives nutrition through a G-tube.

7. The family is authorized to receive 283 hours per month of in-home support services (IHSS). His mother is his IHSS provider. The service agency has authorized 516 hours per quarter of LVN respite and 51 hours per quarter of regular respite. The service agency temporarily approved an increase in LVN respite to 620 hours per quarter.

Second Floor Access in the Home

8. The family home has two stories. The second floor is accessed with a staircase that has two 90-degree turns and two landings. Claimant's parents have opened the wall between their bedroom and claimant's room to allow them to monitor him. He requires constant monitoring. His parents testified that he is prone to vomiting and the risk of aspiration. This is part of the reason the parents opened the wall between bedrooms to allow for quick access and, if necessary, suction. The family maintains suction equipment on the first and second floors of the home.

9. Currently, claimant's father carries him up and down the stairs to the second floor. At last measurement, claimant weighed 108 pounds. As claimant grows and his father ages, this solution has become more difficult and more dangerous. His father has increasing spinal and other health problems. Claimant's involuntary

movements and weak muscles complicate carrying him and transferring him manually. There is a moderate health and safety risk of falling or injury to claimant and his father if carrying claimant up and down the stairs is the only option.

10. To minimize this risk of moving claimant on the stairs, the family limits the number of times per day that they take claimant to the second floor. The family completes his care in his upstairs room in the morning, then brings him downstairs where he remains until the evening when he is carried back upstairs. This limitation impacts the family's use and enjoyment of their home because someone must be always on the same floor as claimant for his safety. If claimant's primary caregiver, his mother, is alone with him, she is unable to safely go to the second floor of her home without risking claimant's health and safety by leaving him unattended.

Elevator Request

11. Claimant's parents requested service agency funding support to install an elevator to allow them to move claimant easily and safely between floors in the home. They secured three bids from elevator companies. They worked with an architect to select a location for the elevator. The elevator shaft would be located outside the home. Claimant's parents have secured financing to self-fund construction of the shaft but would like the service agency to help funding the purchase and installation of the elevator itself.

12. After claimant's request, the service agency authorized a physical and occupational therapy equipment consultation. Michelle Knighten, a registered physical therapist, and Annette Richardson, a registered occupational therapist, conducted a virtual meeting with the parents and prepared a report dated May 12, 2022, with an addendum dated January 18, 2023. Ms. Knighten testified at the hearing. The

therapists recommended the family consider a Scalamobil device instead of an elevator because it is a less expensive alternative.

13. Ms. Knighten testified that the service agency also considered a stair lift, which operates on the side of the stairs on a track. The team found that the stair lift lacks enough postural supports for claimant and would not be appropriate. There was no evidence that the service agency considered any other options for second floor access.

14. A vendor for the Scalamobil device visited the family and demonstrated how the product would work to transport claimant up and down the stairs. The Scalamobil is an external unit that attaches to the back of a wheelchair. It looks similar to a hand truck or dolly that might be used to move boxes. A caregiver stands behind the Scalamobil and tilts it and the wheelchair backward. While the wheelchair occupant is inclined backward, the caregiver presses a switch on the handle and a battery-operated motor and wheel configuration lifts the wheelchair, step-by-step, up or down stairs. Claimant's wheelchair is not compatible with the Scalamobil, so an additional wheelchair would need to be purchased that can attach to the Scalamobil. Claimant would have to transfer to the other wheelchair, then be taken up the stairs step-by-step. In addition to purchasing a special chair compatible with the Scalamobil, the service agency agreed to purchase a second Hoyer lift to assist with transfers on the second floor. The service agency estimated \$11,000 would cover the cost of all equipment needed.

Parent Concerns About the Scalamobil

15. Claimant's parents reported to the service agency that the vendor told them the Scalamobil with a new wheelchair would work for claimant. However, despite

many requests, the Scalamobil vendor did not provide a written report detailing the analysis of how the Scalamobil would meet claimant's unique needs.

16. Claimant's parents testified that they believe the Scalamobil is not an appropriate option for claimant. Claimant's father testified that the Scalamobil was difficult to operate and very slow going up the stairs. It is designed for a typical person who can sit in the wheelchair and lean backward while it moves up or down the stairs. Claimant experiences vertigo when he is inclined backward. Vertigo can trigger vomiting. He is at risk of vomiting at any time and aspiration is always a concern. While he is being lifted in the Scalamobil, if he vomits, another caregiver will need to be present to quickly use the suction equipment. The person operating the Scalamobil will not be able to both hold claimant inclined backward on the stairs and suction him since they have to keep two hands on the Scalamobil at all times. This means that claimant's usual caregiver, his mother, cannot bring him up the stairs when she is alone with him. If emesis occurs on the steps, the Scalamobil is very slow, and it would take more time to get claimant and the Scalamobil up or down to one of the landings to safely suction.

17. Claimant's family is requesting an elevator because it would be easy to operate, does not require training, one person can transport claimant in the elevator, and the family and claimant can better use and enjoy their home with the ability to take claimant upstairs more than one time each day. They would like to move his classroom for ABA therapy upstairs. They would like to be able to do therapy sessions and activities like shower time, stretching, and chest PT at any time of the day instead of limiting these activities only to morning or evening when he is upstairs. They want to be able to move him with ease and keep a direct eye on him while working on projects upstairs. The parents believe this would integrate their son more into the

family life and routines. They purchased the two-story home ten years ago, when claimant was younger, and his condition had not yet been diagnosed. They did not fully understand what his needs would be ten years later.

18. During the Scalamobil demonstration, claimant's mother used the Scalamobil to bring him up and down the stairs twice and she was "absolutely wiped." Father reported that, during the demonstration, "the device tipped dangerously forward" so the vendor representative "spotted" the device on the downstairs side to prevent tipping over. When using the Scalamobil, two additional separate transfers are required because he must transfer from his regular wheelchair to one compatible with the Scalamobil, then transfer him again at the top of the stairs. The parents would like to bring claimant up and down between floors potentially a few times each day. The effort and time needed to use the Scalamobil would make that "much less likely." Claimant's father believes that LVNs and respite workers will not feel comfortable using the Scalamobil.

19. The parents also mentioned storage concerns since they will be required to have another wheelchair compatible with the Scalamobil and another Hoyer lift for transfers.

Service Agency Response to Parent Concerns about Scalamobil

20. Ms. Knighten testified that there was no record of medical visits for aspiration. However, the occupational and physical therapy equipment consultation report, which Ms. Knighten signed, acknowledges claimant continues to have seizures and "cyclical vomiting." The report does not address the risk of vomiting/aspiration or the service agency's consideration of how the family would address this while claimant is in transit on the stairs. There was no evidence a clinical team for the service agency

considered claimant's vertigo, the vomit/aspiration risk to claimant, or his involuntary limb movements and lack of muscle tone when the team recommended that the Scalamobil is appropriate. Ms. Knighten testified she believed suctioning could be done on one of the two landings of the stairs if necessary. This solution is not mentioned in her report and seemed self-serving and not fully developed or supported given claimant's unique health risks.

21. The service agency asserted that the family's concerns about the Scalamobil are hypothetical and most of the family's concerns relate to convenience, time, and storage space.

22. The service agency also argued that there is no evidence from medical professionals that the Scalamobil is inappropriate or unsafe.

23. The service agency correctly noted that installing an elevator would likely increase the value of the home and, if not the least expensive alternative for claimant's unique needs, could constitute a gift of public funds in violation of California Constitution article XVI, section 6.

LEGAL CONCLUSIONS

1. Claimant has the burden of proving the need for change in services. Claimant also has the burden of proving that a residential elevator is the most cost-effective solution. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.)

to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the everyday living pattern of similarly aged nondisabled persons and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized 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.

4. Welfare and Institutions Code section 4646 requires that the IPP and services and supports be centered on the individual and consider the needs and preferences of the individual and family. The services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources. Services and supports must be designed to assist disabled

consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

5. Regional centers are not required to provide all the services a consumer may request but are required to “find innovative and economical methods of achieving the objectives” of the IPP. (Welf. & Inst. Code, § 4651.) Welfare and Institutions Code section 4648 requires regional centers to be fiscally responsible.

6. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports must be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) The regional center is also required to consider generic resources and family responsibility. (Welf. & Inst. Code, § 4646.4.) While the Lanterman Act affirms the importance of honoring the consumer’s choices and preferences, these choices and preferences must be balanced against competing factors such as cost. The Lanterman Act repeatedly makes clear that regional centers must select the most cost-effective method of providing services and supports to consumers. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b); and 4648, subd. (a)(6).) Generic resources must be used when possible. (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

7. In this case, all parties agree that continuing to carry claimant up and down the stairs is not a sustainable or safe solution. The evidence established that a solution to the problem of transporting claimant on the stairs of the family home is necessary. Claimant has met his burden of proof on this issue. However, claimant did not establish with competent medical evidence that a residential elevator is the most appropriate cost-effective solution.

8. The service agency's decision that the Scalamobil is the best and most cost-effective solution lacked medical support. There was no evidence that the service agency considered, and had a plan to address, the time it would take to transport claimant and the risk of vomiting and aspiration if claimant is tilted backward while moving up and down the stairs. The service agency is clearly aware of the spontaneous vomiting risk and claimant's lung disease. Simply ignoring these conditions while recommending a stair transport solution is insufficient. The agency's response that there was no record of hospitalizations for aspiration is inadequate to address these concerns. The service agency must re-evaluate the alternatives for second floor access in light of claimant's unique medical needs, including the vomiting/aspiration risk given his chronic lung problems and the time it takes to transport using the Scalamobil or other proposed solution.

ORDER

Claimant's appeal is granted in part. Claimant's need for assistance to access the second floor of the family home is established. Claimant did not establish in this hearing that a residential elevator is the most cost-effective solution; his request for funding a residential elevator is denied.

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The service agency shall promptly reconsider its decision and all potential second floor access options in light of claimant's unique medical needs, including the vomiting/aspiration risk.

DATE: June 21, 2023

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.