

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2014010157

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on February 13, 2014, in Concord, California.

Mary Dugan, Fair Hearing and Mediation Specialist, represented Regional Center of the East Bay (RCEB), the service agency.

Claimant represented himself.

The record closed and the matter was submitted on February 13, 2014.

ISSUE PRESENTED

Whether RCEB is obligated to reimburse claimant \$800 for an aluminum panel that claimant had installed on his trailer.

FACTUAL FINDINGS

1. Claimant is a 50-year-old old man who receives services from the Regional Center of the East Bay due to cerebral palsy. He lives independently and alone in a

trailer in El Sobrante. Claimant relies on an electric wheelchair to transport himself. He uses a combination of his wheelchair, paratransit and BART to get from his home in El Sobrante to downtown Walnut Creek, where he works. Claimant buys specialty soap in bulk and then resells it at retail to individual consumers in Walnut Creek. He has many long-term, loyal customers.

2. Claimant's most recent Individual Program Plan (IPP) is dated October 19, 2011. When that plan was discussed, claimant expressed concerns about his wheelchair ramp, and RCEB paid to have it repaired. (RCEB installed the ramp at its expense in 2004.) Claimant expressed his desire to continue to work in Walnut Creek. He acknowledged to RCEB that he puts a "lot of wear and tear on his wheelchairs," which results in them breaking down. In the IPP, RCEB states that it will continue to fund claimant's monthly transportation, and that it will "assist with necessary funding to maintain his wheelchair and ramp so they are functional and safe." The IPP is otherwise silent about RCEB's obligation to make any improvements to claimant's home.

3. Claimant has long had a problem with sunlight inside his trailer. It was so bright that claimant had to wear transition lenses in his glasses – essentially sunglasses – when he was inside the trailer, and sometimes he had to put his hands over his eyes to shield them; the brightness, claimant testified, was almost paralyzing, and the only way to get out of the sun was to go into the bathroom. (Mobility inside the trailer is difficult, as claimant's wheelchair will not fit inside the trailer.) Claimant wanted to put up an awning, but it appears that a soft awning was not acceptable to his neighbors because it would not be fireproof.

In September 2013, claimant found a vendor who offered to install a premade aluminum panel on his trailer that would offer protection from the sun. The cost of the material alone, not including the labor to install it, was \$800. The aluminum panel was acceptable to claimant's neighbors, and claimant told the vendor he would like it have it

installed. Claimant was surprised that the vendor agreed to do so immediately, so quickly that claimant did not have the opportunity to discuss it with his case manager at RCEB first.

4. After the aluminum panel was installed, claimant asked RCEB to reimburse him for the cost of the materials in the amount of \$800. He presented to RCEB a prescription from his physician that reads, "'Aluminum panel between awning poles' for sun and rain protection." (Emphasis in original.)

5. RCEB refused to pay for the aluminum panels, on two grounds. First, claimant did not seek and obtain the approval of the planning team before purchasing the panel. Second, RCEB concluded that the need to avoid direct sunlight is common to everyone, not a need related to claimant's developmental disability.

6. On November 25, 2013, therefore, RCEB issued a Notice of Proposed Action in which it denied claimant's request for reimbursement on the ground that "RCEB cannot fund the purchase of home improvement items." Claimant filed a timely appeal, which again stressed the need to protect himself from sunlight: "These panels were prescribed by my doctors due to my sensitivity to light. Without these panels my living atmosphere was intolerable." This hearing followed.

7. At hearing, claimant reiterated that the sunlight inside his trailer was unbearable for him. RCEB reiterated its position that it could not reimburse claimant for the panel because he had not received prior approval from the planning team for the purchase; even if he had sought prior approval, RCEB would have denied his request on the ground that protecting claimant from sunlight is not a need that arises from his developmental disability.

8. At hearing, however, claimant testified that the aluminum panel also protects the ramp and his wheelchair from the rain. Leaving home in the morning and arriving home in the evening requires a complicated transfer. How claimant manages

that transfer depends on whether he is having, in his words, a “good day” or a “bad day.” If he is having a good day, claimant brings the wheelchair up to the bottom of the ramp outside his trailer. His attendant helps him unload the wheelchair, and then claimant puts the wheelchair in the shed where it is stored, gets out of it and “hobbles” 20 feet up the ramp and into his trailer. On a bad day, claimant gets out of the chair as soon as he arrives home and his attendant puts it away. In the morning when he leaves home, the process is reversed. The aluminum panel, claimant maintains, protects the ramp and his electric wheelchair from the rain. And although claimant did not say so in so many words, it appears that negotiating the ramp is difficult for him under any circumstances, and is made more difficult by wet conditions.

9. It appears that claimant did not bring these facts, and this theory, to RCEB’s attention prior to hearing. Their prehearing discussions appear to have centered on claimant’s desire to avoid the sun. Claimant’s contention that the aluminum panel provides shelter for the ramp and his wheelchair implicates RCEB’s obligation, under claimant’s IPP, to maintain his wheelchair and ramp so they are functional and safe.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Act, the State of California accepts “a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.” (Welf. & Inst. Code, § 4501.<sup>1</sup>) The Act provides that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support

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<sup>1</sup> The Lanterman Developmental Disabilities Services Act is found at Welfare and Institutions Code section 4500 et seq. All further statutory references are to the Welfare and Institutions Code.

their integration into the mainstream life of the community.” (*Ibid.*) In the context of this case, the term “services and supports” means “specialized services and supports . . . directed toward the alleviation of a developmental disability . . . .” (§ 4512, subd. (b).) Regional centers are required to carry out the state’s responsibility to the developmentally disabled. (§ 4501.)

2. The services and supports to be provided by a regional center are identified by the planning team, through the IPP process:

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 resources shall be made by agreement between the regional center representative and the consumer . . . .

(§ 4646, subd. (d).) The IPP must set forth “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 in order to achieve the individual program plan goals and objectives . . . .” (§ 4646.5, subd. (a)(4).) An IPP can be modified by the planning team at any time in response to the consumer’s changing needs. (§ 4646.5, subd. (b).)

3. These principles support RCEB’s assertion that claimant should have come to the regional center to seek approval for the purchase of the aluminum panel before he bought it. The regional center’s obligation to purchase services and supports is limited to that set forth in a consumer’s IPP. These principles, however, do not bar a consumer from requesting reimbursement after-the-fact on the ground that reimbursement is required under the terms of his existing IPP. While an after-the-fact

request is not barred, it places all of the financial risk on the consumer in the event his claim is denied.

4. RCEB correctly concluded that it has no obligation to make modifications to claimant's trailer to protect him from sunlight. That is not a service or support related to the alleviation of claimant's developmental disability, the prescription from claimant's physician notwithstanding.

5. Under the current IPP, however, RCEB promises to "assist with necessary funding to maintain his wheelchair and ramp so they are functional and safe." RCEB did not have the opportunity to consider whether it is obligated to pay the cost of the aluminum panel, or some portion of that cost, on the theory that the panel protects the ramp and wheelchair; claimant presented that theory for the first time at hearing. The appropriate resolution of this case is to remand the matter back to the planning team to consider claimant's new theory. If claimant's request is rejected by RCEB, then the regional center shall issue a new Notice of Proposed Action, and claimant may exercise his appeal rights under the Act.

## ORDER

Claimant's appeal is granted. This matter is remanded to the planning team to determine whether RCEB is obligated to reimburse claimant for the cost of the aluminum panel, or some portion of that cost, on the ground that the panel protects his ramp and wheelchair.

DATED: February 25, 2014

\_\_\_\_\_/s/\_\_\_\_\_  
DAVID L. BENJAMIN  
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.