

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for a Bathroom Remodel:

CLAIMANT,

and

THE INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015030527

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 23, 2015.

Claimant's mother (Mother) and father (Father) represented claimant, who was present at the hearing.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

The matter was submitted on April 23, 2015.

ISSUE

Should IRC fund claimant's request for bathroom remodel for the purpose of making it easier for claimant to maneuver in and out of the bathroom?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On February 19, 2015, IRC notified claimant that her request for it to fund a bathroom remodel was denied.
2. On March 5, 2015, claimant requested a fair hearing. Claimant was thereafter given notice of this hearing.

EVIDENCE PRESENTED AT HEARING

3. Claimant is a fifteen year old female. She qualified for regional center services on the basis of a diagnosis of epilepsy and severe intellectual disability. Claimant lives at home with her parents and five siblings. Claimant is fed through a G-tube for supplemental feedings and medications. She has no bowel or bladder control. She is non-verbal, but does understand voice-tone and, when spoken to, will respond with facial expressions. Claimant requires total care for all basic life functions. Claimant has Medi-Cal and private insurance through Blue Cross.

Claimant currently receives 90 hours per quarter of preferred provider respite care and 18 hours per month of one-on-one adaptive skills training funded by IRC.

4. Joanna Clifton testified at the hearing. Ms. Clifton is a Pediatric Rehabilitation Occupational Therapist employed at California Children Service (CCS). Ms. Clifton visited claimant's home on October 16, 2013, to assess what bath equipment claimant might require in light of her disabilities. Ms. Clifton was accompanied by a vendor and a physical therapist. During the visit, they demonstrated the use of a bath chair proposed by CCS. It allowed for the transferring of claimant from her bed to the chair in her bedroom; draping claimant with a blanket for modesty; moving claimant into the bathroom; attaching the bath chair onto a sliding bridge; sliding claimant into the bathtub; and removing the bridge to allow caregiver access during bathing time.

According to Ms. Clifton, the recommended bath chair is safe, would address claimant's needs, and is a covered benefit that would be provided by CCS.

Mother refused to accept the bath chair, and instead opted to stay with claimant's current bath chair, because she did not believe it would provide easier access during ingress, egress, and bathing. She also believed claimant's feet would hit the wall, the bathroom cabinets, or the toilet during transfer onto the bridge system. Ms. Clifton noted that allowing claimant to test the bath chair on a trial basis is not permitted due to hygiene reasons – once the chair is purchased, claimant would have to utilize that bath chair. However, if the bath chair did not work for claimant, there are multiple vendors that manufacture a variety of bath chairs and transfer systems for disabled individuals. CCS has a process to explore alternative equipment available in the event the proposed bath chair was not effective in addressing claimant's needs.

5. In June 2014, claimant's mother notified IRC that she was going to CCS to request a remodeling of the downstairs bathroom of her home due to the difficulties experienced by claimant with bathroom access and bathing. CCS denied the request.

6. Mother made a request to IRC to fund the bathroom remodel. Claimant's mother provided a prescription from Comp Care Medical Group dated June 20, 2014, indicating that claimant required a bathroom remodel to make the shower handicapped accessible. Mother also provided letters from Blue Cross, dated August 22, 2014, and CCS, dated October 7, 2014, denying the request for a bathroom remodel.

7. In light of claimant's request, Diane Hernandez, Consumer Services Coordinator for IRC, requested an occupational and physical therapist visit claimant's home to assess claimant's needs.

8. On December 4, 2014, IRC performed a physical therapy equipment assessment to evaluate claimant's request for the bathroom remodel. Michelle Knighten, an IRC physical therapist, prepared a report following the assessment. In that

assessment Ms. Knighten noted that claimant is dependent for all functional mobility. Claimant is 75 pounds and approximately 4 feet 6 inches tall. Claimant's mother reported that their bathroom is too small to accommodate claimant's wheelchair; claimant has been dropped on a few occasions by caregivers; a nurse injured herself carrying claimant from the doorway to the present bath chair in the tub; and that there were privacy concerns due to claimant having to be undressed in her bedroom, carried through a hallway, and into the bathroom. Claimant's mother reported that the requested modifications would allow direct access to the bathroom for more modesty, and the shower remodel would allow for the use of a roll-in chair to eliminate transfers into the bathtub.

Ms. Knighten concluded that, although the bathroom remodel would provide for caregiver convenience and modesty, the use of the sliding bath chair provided by CCS would allow claimant to be transferred from her bedroom into the bath chair, draped with a blanket, and transported into the bathroom while maintaining her modesty. Ms. Knighten testified at the administrative hearing consistent with the findings in her report. Ms. Knighten acknowledged that she never actually observed claimant use the bath chair.

9. IRC Program Manager Marilee Gribbon testified about why the request for a bathroom remodel was denied. She explained that the reasons for the denial were due to claimant's failure to exhaust her generic resources. The bath chair that is available through CCS is an alternative way to meet claimant's needs, so IRC must defer to that generic resource.

10. Mother testified consistent with the information provided to Ms. Clifton and Ms. Knighten during the home evaluations. It was apparent from her testimony that the process of bathing claimant is a difficult one. Claimant must be bathed every day, and mother is not comfortable handling claimant due to claimant's increasing weight,

rigidity of claimant's body during transfer, and the possibility of seizures. Mother indicated that claimant's father or a nurse usually handles the bathing of claimant. Mother noted that claimant has been dropped on occasion during the transfer. Mother is also concerned about claimant's modesty during the transfer to the bathroom, and the fact that the bath chair equipment would have to be stored in the downstairs bathroom which would render the bathroom and shower unusable by others unless the bath chair equipment was removed.

Mother added that they would be willing to try the bath chair proposed by CCS, but that option was not available due to CCS hygienic constraints.

11. Father testified consistent with the testimony provided by Mother.

12. Susan Martin, a licensed vocational nurse, testified at the hearing. Ms. Martin worked as claimant's nurse three days per week from August of 2013 to November of 2014. Ms. Martin's testimony corroborated the fact that the transfer of claimant from her bedroom to the bathroom is difficult. During bathing, claimant will often shake violently because she does not like the cold. Claimant is very difficult to carry because she is "dead weight." Claimant's legs are rigid, and she has had seizures while in the bathtub. Ms. Martin dropped claimant at least one time during the bathing process. On another occasion, Ms. Martin injured her back while lifting claimant off the bed and into the bathroom. According to Ms. Martin, it is too difficult to maneuver in the small bathroom given claimant's disabilities.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid.

Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. 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.

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

5. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6. Welfare and Institutions Code section 4646.4 requires the regional center to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. Section 4659 of the Welfare and Institutions Code requires regional centers to identify and pursue all possible sources of funding for consumers receiving

regional center services and prohibits regional centers from purchasing 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.

EVALUATION

9. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating her need for the requested service and support, funding of a bathroom remodel. Claimant has not met that burden.

IRC's records amply demonstrated that claimant has critical needs, and bathing her is difficult. Mother, Father, and Ms. Martin testified credibly with respect to the difficulties they have in bathing claimant, and the video evidence provided by claimant also demonstrated those difficulties. However, the bath chair proposed by CCS was never tried. While sympathetic to claimant's position, the testimony from IRC established that the bath chair proposed by CCS was a generic resource that claimant is required to utilize before seeking IRC funds. Providing claimant with the requested bathroom remodel would meet her needs. However, providing a bathroom remodel would not be a cost-effective use of public funds in light of the evidence that established the availability of other generic resources that have not been pursued.

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ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund a bathroom remodel is denied.

DATED: April 28, 2015

KIMBERLY J. BELVEDERE

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 ninety days.