

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2015060900

DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 16, 2015, in San Francisco, California.

Lisa Rosene represented Golden Gate Regional Center, the service agency.

Claimant was represented by one of her parents (H.S.).<sup>1</sup>

The matter was submitted for decision on July 16, 2015.

ISSUE

Must Golden Gate Regional Center fund the installation of a three-stop elevator and modifications to the bathroom in claimant's new home?

FACTUAL FINDINGS

INTRODUCTION

1. Claimant is four and one-half years old. She lives with her parents and twin

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<sup>1</sup> The names of claimant and her family members are not identified in order to protect their privacy.

brother.<sup>2</sup> Claimant is eligible for regional center services based on a diagnosis of epileptic encephalopathy, intractable epilepsy, hypotonic cerebral palsy, profound global developmental delays, cortical blindness, and neurological hearing impairment. She is non-ambulatory and requires an adaptive mobility chair. Claimant has little voluntary movement and takes most nutrition through a gastrostomy tube. Claimant experiences six to 10 seizures daily. Claimant is nonverbal, her needs are extensive and she requires care and supervision 24 hours per day. Claimant currently weighs approximately 40 pounds and has no head or trunk control. She has a 23-inch wide manual wheelchair.

2. Claimant is a client of Golden Gate Regional Center (GGRC), which serves San Francisco, Marin and San Mateo counties.

3. Claimant's Individual Program Plan (IPP) is dated October 14, 2013. The IPP states claimant's long-term goals are to: 1) maintain optimal health; 2) improve fine motor skills; and 3) participate in socialization activities. One of claimant's home objectives is to continue to reside with her family.

4. Claimant receives 90 hours per quarter of in-home respite services funded by GGRC. Claimant has been found eligible for services through In-Home Support Services (IHSS), and receives the maximum number of IHSS hours. Claimant's receives support from her family and IHSS provider for all of her care needs.

Claimant has been found eligible for services through the San Francisco Unified School District and will attend specialized preschool with a one-to-one aide through October 2016. Claimant is eligible for Medi-Cal and has her medical needs met at the University of California, San Francisco Medical Center (UCSF).

#### THE FAMILY'S MOVE

5. In January 2015, claimant's parents decided to purchase a home. They had lived in the same one-bedroom apartment in San Francisco for 10 years and the family

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<sup>2</sup> Claimant's brother is developing typically.

needed more space. Claimant's parents decided to remain in San Francisco, and in the same neighborhood. The family has a network of friends in the neighborhood, and it is also near their pharmacy and UCSF. Claimant's mother, B.I., travels for work and wanted to be near both her workplace and the airport.

6. Claimant's mother, H.S., contacted claimant's social worker at GGRC to advise him that they were looking for a new home and to ask if GGRC would fund needed modifications to their new home. Claimant's case manager advised H.S. that once they had purchased a home, GGRC would fund an occupational therapy assessment to evaluate modifications to the home.

7. In April 2015, claimant's parents purchased a three-story building, built in 1910, in their neighborhood in San Francisco. The first floor of the building is a garage. The second and third floors consist of flats; they are identical except that the second floor flat has one less bedroom. Claimant's aunt, who helps to care for claimant, moved into the second floor flat. Claimant, her brother and her parents moved into the third story flat. The bathroom on the third floor does not have a stand-alone shower; it has a claw foot bathtub with a shower above.

8. Claimant's parents have back problems which make it difficult for them to lift claimant in and out of the bathtub, and up the two flights of stairs from the garage to the third story of the building.

9. In April 2015, GGRC funded an occupational therapy evaluation of claimant's new home by Candace McGuire, O.T./L. McGuire wrote a report addressing the issues of bathing, bed mobility and home egress. With regard to bathing, McGuire recommended removing the claw foot bathtub and installing a step-less roll-in shower, widening the bathroom doorway opening and installing swing clear hinges. Lift & Accessibility Solutions, a vendor of GGRC, estimated the cost of these modifications to be \$16,308.02. McGuire ruled out the use of an overhead track to lift claimant from her wheelchair into the bathtub because claimant would be cold during the transfer and a step-less shower

would be a more convenient alternative.

Regarding bed mobility, McGuire recommended an overhead track/lift system to provide lifts from claimant's bed to her wheelchair and other equipment. Lift & Accessibility Solutions, estimated the cost of providing and installing the overhead track/lift system at \$7,253.88.

Regarding home egress, McGuire recommended the purchase and installation of a three-stop elevator. She noted that claimant's new home had a kitchen pantry and master closet that could be used as an elevator shaft. McGuire ruled out the options of an overhead lift system, a stair climber, a vertical platform and a simplified elevator system due to the configuration of the home. Lift & Accessibility Solutions estimated the cost of providing and installing a three-stop elevator at \$84,856.32.

10. Claimant requested that GGRC fund the modifications recommended by McGuire. On June 10, 2015, Michael Mayer, claimant's social worker, Paul Ogilvie, GGRC Manager of Regional Center Services and claimant's mother, H.S., met to discuss the family's requests.

11. The GGRC representatives agreed to fund the overhead track/lift system to assist in lifting claimant in and out of bed and her wheelchair in her bedroom. GGRC agreed to fund this support in part because the system would be necessary in any home where claimant resided.

12. The GGRC representatives considered, but rejected, the request for an elevator. The denial of the request was based in part on the fact that claimant's parents purchased a three-story home with no elevator fully aware of claimant's needs. In addition, GGRC representatives felt that claimant could live in the second floor unit, and noted that the planned elevator would not be large enough to fit a standard wheelchair, or a

wheelchair and a caregiver.<sup>3</sup> GGRC further pointed out that installing an elevator in the home would increase the value of the home and therefore constitute a gift of state funds, in violation of the California Constitution, article XVI, section 6.

13. The GGRC representatives also denied funding for the bathroom modifications. They found that the bathroom was currently old and in need of a renovation whether or not claimant was disabled. Moreover, they found that the renovation, which would include replacing a linoleum floor with a non-skid tile floor, would increase the value of the home and constitute a gift of state funds, in violation of the California Constitution, article XVI, section 6.

14. Claimant's family counters that the elevator is necessary for them to stay in their neighborhood because single story homes, and homes with elevators are difficult to locate and purchase in their neighborhood. Claimant's parents are a biracial, lesbian couple, and they feel more comfortable living in San Francisco, where such family configurations are more common.

15. Claimant's UCSF physicians and social worker assert that in order for claimant to reside in the new home, the elevator and bathroom modifications are necessary.

16. Claimant's family requested its private insurer to pay for an elevator and the bathroom modification; however, the claim was denied. Claimant investigated various grant options, but did not qualify for help because of the family's income, or based on the donor guidelines.

17. Claimant is not at risk of an out-of-home placement.

## LEGAL CONCLUSIONS

1. Neither the Lanterman Act appeal process (Welf. & Inst. Code, § 4700 et

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<sup>3</sup> Claimant submitted a letter at hearing suggesting that an elevator accommodating the size of a standard wheelchair could be installed at the same cost.

seq.) nor its implementing regulations (Cal. Code Regs., tit. 17, § 50900 et seq.) assigns burdens of proof. Here, claimant is requesting new supports and therefore claimant bears the burden of proof. And, as there is no statute that provides otherwise, the standard of proof to be applied in this proceeding is the preponderance of the evidence. (Evid. Code, § 115.)

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act mandates 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 their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act enumerates the legal rights of persons with developmental disabilities. (Welf. & Inst. Code, § 4502.) These include the “right to treatment and habilitation services and supports in the least restrictive environment” and the “right to dignity, privacy, and humane care,” with treatment, services and supports provided in natural community settings to the maximum extent possible. (Welf. & Inst. Code, § 4502, subs. (a) and (b).)

4. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. (Welf. & Inst. Code, § 4620 et seq.) Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” (Welf. & Inst. Code, § 4640.7, subd. (a).) The Department of Developmental Services allocates funds to regional centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (Welf. & Inst. Code, §§ 4620, 4621, 4787.)

5. The Lanterman Act directs regional centers to develop and implement an

IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

6. While the 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. Indeed, as the Act repeatedly makes clear, 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).) And, generic resources must be utilized when possible. (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

In this matter, the installation of an overhead track/lift system, while not as convenient, would provide a more cost-effective manner of assisting the family in lowering claimant into the bathtub, and lifting her out of the bathtub. In addition, claimant has been afforded the maximum number of IHSS hours to provide care for claimant. It may be that a caregiver funded by IHSS (a generic resource) can assist claimant's family in bathing claimant. In short, claimant did not establish that the requested modifications to the bathroom are the most cost-effective method of bathing claimant.

The purchase and installation of an elevator in a three-story home is very expensive. Claimant's family has chosen to purchase and move into the top floor of a three-story home. Although there may be fewer single story homes in San Francisco than in other cities, claimant did not establish that there are no single story homes, or homes with elevators already installed. That claimant's family wishes to live not only in San Francisco, but in a particular neighborhood, does not establish that the regional center is obligated to install an elevator in the home. It is possible, and more cost-effective, to commute to work, the airport or to a hospital from an outlying neighborhood or city, where a home that suits claimant's needs is available.

Moreover, the family purchased a building that has a flat on the second floor; there would likely be more cost-effective alternatives if claimant were to reside on the second

floor of the building, rather than the third floor of the building.

Claimant has not established that installing an elevator is a cost-effective use of state funds.

7. In addition, the modification of the bathroom and the installation of an elevator would violate Article XVI, section 6 of the California Constitution, which provides:

The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever. . . .

The requested modifications to claimant's home would increase the value of the family home and would therefore constitute a gift of public funds.

8. For the foregoing reasons, claimant's appeal must be denied.

## ORDER

Claimant's appeal is denied.

DATED: July 23, 2015

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JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.