

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2016010618

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on March 18, 2016, in Tehachapi, California.

Mark Meyer, Program Manager, represented Kern Regional Center (Regional Center or Service Agency).

Claimant's grandmother represented Claimant.¹

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on March 18, 2016.

ISSUE

Should Regional Center fund a garage remodel/conversion for Claimant?

FACTUAL FINDINGS

1. Claimant is a nine-year-old Service Agency consumer with qualifying diagnoses of autism, epilepsy, and intellectual disability. He resides with his grandparents.

¹ Claimant's name and the names of his family members have not been used to protect Claimant's privacy.

2. Claimant is dependent on his grandparents to assist him in all areas of self care and with all daily living activities. Claimant is not toilet trained, and wears diapers at all times. He is mobile, but experiences imbalance when walking and running, and is often held by the hand when walking. He is non-verbal, and points and makes sounds to communicate. He is able to feed himself with his hands, as he cannot properly grasp objects. His food is chopped into bite size pieces to help him eat and prevent choking. Claimant takes medication for seizures. Claimant requires supervision at all times for his safety and for redirection. He climbs furniture, grabs items and puts them in his mouth, and grabs and pulls at people.

3. Claimant has also been diagnosed with Angelman Syndrome, a rare neurological condition that causes him to have irregular sleep patterns. Claimant has problems falling and staying asleep at night. He is under the care of Steven Ehrreich, M.D., a neurologist with Children's Hospital of Central California.

4. Claimant's grandparents take turns providing care for him when he is awake at night. When he cannot sleep, Claimant is very active and loud. Claimant's grandparents are reluctant to allow access to the home by respite workers throughout the entire night, but have at times tried the services of respite workers during part of the night. Claimant awakens his grandparents during the night even if he is under the care of respite workers.

5. Claimant and his grandparents live in an L-shaped 2,650-square-foot, two-story house. Three bedrooms, including Claimant's, are on the first floor. Claimant's room has been equipped to meet his needs, and is close to his grandparents' rooms. A garage is on the short-end of the L, away from the grandparents' bedrooms.

6. Claimant's grandparents want to convert the garage into a bedroom for Claimant. The garage already has a large walk-in shower. They want the new room to have its own exit door to enable respite workers and other care givers to come in and out without having to go into the main house, a feature that would enhance privacy and security. His grandparents hope that by keeping Claimant in the converted garage during the night with outside supervision, they will be able to obtain respite from the difficult task of providing care and supervision for him.

7. On August 15, 2015, Gold Star Construction, Inc. (Gold Star) provided a bid to accomplish the conversion. Gold Star bid \$11,700 for demolition, framing, and installation of a new door and two windows, \$3,000 for the installation of a heating and cooling system, and \$4,252.50 for the installation of a rubber-tile floor. With profit and overhead of \$5,685.75, the total bid was \$24,638.25. Claimant's grandmother believes she can obtain cheaper materials herself to lower the cost of the project.

8. Claimant's grandmother testified that Claimant's erratic sleep patterns are causing such difficulty for them that Claimant may have to be placed in a community care facility. However, the possibility of such placement is speculative at best, and, more importantly, it was not established that the garage conversion was required for Claimant to remain in the family home.

9. On January 12, 2016, Service Agency issued a Notice of Proposed Action denying funding of what it described as a "room addition" on the bases that the modification did not relate to or ameliorate Claimant's developmental disability, that generic funding had not been exhausted, and that it was not a cost-effective service. On January 20, 2016, Claimant's grandmother filed a Fair Hearing Request challenging the Notice of Proposed Action.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code² section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into

² All further statutory references are to the Welfare and Institutions Code.

account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

2. Section 4512, subdivision (b), defines the services and supports that may be funded, in pertinent part, as: "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. . . ."

3. The garage conversion sought by Claimant's grandparents does not constitute a "specialized service" or a "special adaptation" of a generic service directed toward the alleviation of a developmental disability. Unlike, for instance, a ramp that may provide access to the home to an individual with cerebral palsy, the conversion is simply a home improvement not related to his disability, one that would benefit any individual, regardless of disability, desiring to increase his or her living space. The requested conversion, therefore, does not fall within the definition of a "service" or "support" under section 4512, subdivision (b).

4. Since it is not a specialized service or special adaptation to alleviate his developmental disability, Claimant will not receive any direct benefit from the garage conversion. Any potential benefit to Claimant by enabling his grandparents to obtain respite is outweighed by the cost of the project. More cost-effective measures may involve allowing respite workers to remain in the home through the night or changing the location of the grandparents' rooms. Accordingly, even if it qualified as a service or support that Service Agency could fund, the garage remodel is not a cost-effective service or support.

5. Service Agency need not fund a garage remodel/conversion for Claimant, by reason of factual finding numbers 1 through 9 and legal conclusion numbers 1 through 4.

ORDER

Claimant's appeal is denied.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.