

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2017030120

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on April 18, 2017.

Ron House, Attorney at Law, represented San Diego Regional Center (SDRC).

Claimant's mother represented claimant, who was not present at the hearing.

The record was held open until April 25, 2017, for claimant to submit a medical certificate and/or approved building permit. On April 21, 2017, claimant submitted a medical certificate that was marked as Exhibit C and received into evidence. On April 27, 2017, after the record was closed and the matter was submitted, claimant submitted a receipt from San Diego County for issuance of a permit, which was marked as Exhibit D. The record was reopened and the document was received into evidence.

ISSUE

Should SDRC fund an Americans with Disability Act (ADA)-compliant ramp, air conditioning unit, and paved walkway for claimant's health trailer and/or provide an

occupational therapy/physical therapy assessment for these items and other modifications to the trailer?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 28-year-old conserved male who qualifies for regional center services based on seizures, severe intellectual disability, and autism. Claimant requires constant supervision during waking hours to prevent injury or harm. He requires two, and sometimes three, caregivers to assist in keeping him safe during self-injurious behavior. He receives licensed vocational nurse (LVN) respite care and an additional 128 hours per week of a second non-LVN respite caregiver. He receives 283 hours per month of IHSS provided by his mother.

2. On January 31, 2017, SDRC issued a Notice of Proposed Action stating that claimant's request for funding of a health care trailer was denied. SDRC stated that the health trailer would be considered an unlicensed residential facility and regional centers are prohibited from purchasing property/homes for clients.

3. On February 13, 2017, SDRC issued a Notice of Proposed Action stating that claimant's request for SDRC to provide funding for an Occupational Therapy/Physical Therapy (OT/PT) assessment was denied. As the reason for denying the request, SDRC stated the assessments were related to the request to fund the purchase of the trailer which was denied on January 31, 2017.

4. Claimant filed a Fair Hearing Request on February 23, 2017. Claimant's mother, who is claimant's conservator, wrote that SDRC improperly labelled their trailer as an "unlicensed residential facility." Claimant believes the assessments are required under SDRC's purchase of service standards.

5. Claimant filed a prehearing brief in order to clarify the issues presented at hearing. Claimant clarified that she is not requesting SDRC to purchase a health care trailer. Claimant's family has already purchased the trailer and claimant is not seeking reimbursement for this cost. However, claimant has requested SDRC fund the following modifications for the trailer: an ADA-compliant ramp, air conditioning, paved walkway from the trailer to the main house where claimant's family resides, removal of walls in the trailer to create a barrier free kitchen, installation of a pocket doorway, widening of a standard door, and enclosure of the porch.

6. At the hearing claimant requested that SDRC be ordered to immediately fund an ADA ramp and the purchase of an air conditioning for the unit. Alternatively, claimant requested SDRC fund an OT/PT assessment for the purchase of these items. Additionally, claimant requests SDRC provide an OT/PT assessment to determine the need of the additional modifications noted above.

7. SDRC contended that the health care trailer would violate San Diego County zoning ordinances because claimant would be living in the trailer. According to SDRC's interpretation of the ordinance, only a health care provider or family member of the person needing assistance may live in the trailer.

#### CLAIMANT'S EVIDENCE

8. Kelly Hedges is a licensed contractor and installs health care trailers. A health care trailer is a manufactured home that is transported to property and connected to existing utilities. San Diego County permits the existence of these trailers if a blood relative of the property's resident has a certification from a California licensed physician. The trailer is considered temporary, and a physician certification is required to be submitted annually in order for the County to continue to issue a permit. Mr. Hedges will be applying for a permit with the County in the immediate future. He said that the

manufactured home does not contain air conditioning, which is an aftermarket modification. As installed, the trailer only has stairs to enter the unit.

9. Alisa Contreras is a program manager for ABA services and has worked with claimant for two years. She described the difficulties in managing claimant's behavior at home, especially when he is engaged in self-injurious behavior. Ms. Contreras testified that a two-person escort is required to move claimant during these periods. Ms. Contreras described the difficulties in moving around claimant's house due to doorways and other obstacles. She believes the trailer will provide open space that is a better environment to provide for his needs.

10. Katie Bolger is a LVN who is vendored by SDRC to provide respite nursing services for claimant. She has worked with claimant for the past six-and-a-half years. Ms. Bolger testified about claimant's difficulties ambulating and his unsteady gait. She believes that an ADA ramp is required for claimant to safely enter the trailer and it would be unsafe for claimant to use the stairs. She also testified about the high summer temperatures in the area where claimant lives. She believes claimant needs air conditioning in the trailer and his behavior is often exacerbated by the heat.

11. Claimant's stepfather and conservator testified about why claimant's family decided to purchase a health care trailer. He believes that claimant's behavioral needs justified their decision to purchase a trailer. He said claimant's current bedroom and bathroom are small, and difficult for caregivers to move around with claimant. It is also hard for them to move around the house safely, especially when claimant is engaging in self-injurious behavior. Claimant's stepfather said they are committed to providing claimant the care he needs at home. He explained that claimant was injured when he was living in a residential facility. He testified about his commitment to providing a safe home for claimant. He believes that the trailer will appropriately suit his needs, and also provide respite for claimant's mother and other family members. He explained that

claimant's behavior is often disruptive and having a separate space for claimant will benefit the entire family.

12. Claimant's family has purchased the trailer to better accommodate claimant's needs. Some of the reasons and goals are to have: an open floor to make it easier for caregivers to provide medical and behavioral care, especially during seizures or self-injurious behavior; more functional environment for taking baths; providing ABA therapy, working on self-feeding; and providing sensory interventions and noise control for claimant and his family.

13. Claimant's mother believes that the ADA ramp and air conditioner can be funded without an OT/PT assessment based on their clear necessity. She is asking SDRC to conduct an assessment for the other modifications to the trailer. Additionally, because the ground from the house to where the trailer will be located is uneven, claimant's difficulty in walking requires a paved surface. Claimant's mother believes that a screened in porch is required due to insects and claimant's often violent reactions to them. Claimant's mother believes that SDRC erroneously has labeled the trailer an unlicensed healthcare facility. She testified that she has absolutely no intention to use the trailer for unlicensed activity, only to provide claimant a place to live that better supports his care needs.

14. Claimant submitted a note from his physician, Asha Dayana, M.D., stating that air conditioning is a medical necessity in order to control his agitation and seizures. His neurologist, Gustavo Alberto Delgado, M.D., submitted a note stating that because of his unsteady gait and significant fall risk, claimant requires an ADA ramp to the trailer and paved walkway to the house.

15. Claimant's health insurer, Kaiser Permanente, denied his requests to fund the health trailer, air conditioning, ADA ramp, or paved walkway to the main house.

16. After the hearing, claimant submitted a Physician Certification for Temporary Health Care Trailer signed by Asha Dayana, M.D. Dr. Dayana indicated claimant needs a barrier-free setting for safety and to meet his behavioral needs. This certification is required for the issuance of an annual permit by the County. After the matter was submitted for decision, claimant submitted a receipt for the permit<sup>1</sup> from the County of San Diego dated April 26, 2017, which was received into evidence.

#### REGIONAL CENTER'S POSITION

17. SDRC believes that the San Diego County Ordinance governing health care trailers only permits a health care provider or family member of a person with a disability to reside in the trailer. Based on its reading of the statute, claimant would not legally be permitted to reside in the trailer. SDRC agrees that if claimant can legally reside in the trailer, it will fund the requested OT/PT assessments. However, SDRC noted that regional centers ordinarily fund extensive modifications to real or personal property, and it is concerned that funding claimant's requested items could result in an unjust enrichment for claimant.

#### LEGAL CONCLUSIONS

##### THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether a regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

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<sup>1</sup> It was not clear if a permit was issued or if the County only issued a receipt for payment.

## THE LANTERMAN ACT

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance ...

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life

of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. 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 independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . ... Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.



5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan (IPP) 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.

7. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

8. 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.

9. 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 shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

10. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

11. The regional center is also required 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. (Welf. & Inst. Code, § 4646.4.)

12. 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.

13. Welfare and Institutions Code section 4685, subdivision (c)(1) provides:

The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

14. Under California Code of Regulations, title 17, section 50612, a purchase of service authorization shall be obtained by the regional center for all services purchased

out of center funds, and except for emergency services, shall be in advance of the provision of services.

#### SAN DIEGO COUNTY CODE

15. San Diego County Code section 6118, subdivision (b)(3), permits the use of a trailer coach under the following conditions:

A dwelling for temporary health care on a lot where there is a permanent single family dwelling is permitted subject to the requirements set forth below. This trailer is exclusively for temporary occupancy by either: (a) providers of health services which are required by an occupant of the main dwelling, or (b) relatives of an occupant of the main dwelling who require physical care. The following are requirements for health care trailer approval:

- a) The health care unit shall be a trailer or mobilehome not exceeding 800 square feet measured from the interior surface of the exterior walls
- b) The trailer shall meet main building setbacks.
- c) The trailer shall be connected to existing utility systems or required expansion of said systems on site whenever possible.
- d) Prior to issuance of a building permit for a health care trailer a Certificate of Need signed by a physician licensed to practice medicine in the State of California shall be

submitted to and approved by the Director. The Certificate shall be renewed annually.

e) When the health care need no longer exists, the unit shall be removed. Failure to comply is a violation of The Zoning Ordinance and may result in any or all remedies or penalties specified in the Enforcement Procedures commencing with Section 7700, including a \$1,000 fine per day or six months jail sentence or both.

f) If the applicant complies with the terms of the temporary occupancy permit, then, upon removal of the trailer coach by the applicant, the full amount of any previously furnished deposit shall be refunded or security released.

## EVALUATION

16. SDRC contends the following language from the San Diego County Code prohibit claimant from living in the trailer, "This trailer is exclusively for temporary occupancy by either: (a) providers of health services which are required by an occupant of the main dwelling, or (b) relatives of an occupant of the main dwelling who require physical care." (§ 6118, subd. (b)(3).) SDRC construes the statute as limiting the individuals who can live in the trailer to either a health care provider or a relative of a person who requires physical care. Claimant contends that a person requiring physical care may live in the trailer, so long as the individual is a relative of an occupant of the main dwelling.

17. As noted in *MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082-1085, courts follow a three-step process in statutory interpretation. Courts begin with the fundamental rule that the primary task is to

determine the lawmakers' intent by looking to the words of the statute, then to its legislative history, and finally to the reasonableness of a proposed construction. If the statutory language is clear and unambiguous, a court's task is at an end, for there is no need for judicial construction. The language of a statute is not viewed in isolation, but within the statutory context. The second step is to apply the canons of construction and extrinsic aids to interpretation. If ambiguity remains after resort to secondary rules of construction, the courts cautiously take the third and final step in the interpretive process, applying reason, practicality, and common sense to the language at hand.

San Diego County Code section 6118, subdivision (b)(3), is ambiguous as it relates to who may occupy the trailer. The code section was added to the County Code pursuant to San Diego County Ordinance No. 1006 on September 16, 2009. There is no published legislative history regarding the ordinance, which included numerous changes to County zoning laws and was adopted by the Board of Supervisors by consent. The intent of the ordinance can reasonably be viewed as providing an exemption to the general prohibition of allowing mobile homes on single-family properties. The Board presumably recognized that permitting these trailers was in the interest of public policy as it permits families greater flexibility in providing medical care to relatives. Nothing in the statutory scheme suggests that the Board would have limited the statute to only caregivers or relatives, but not those in need of care themselves. Such a limited construction would frustrate the purpose of the statute and would serve no rational purpose. Furthermore, the California Legislature has recognized that accessory dwelling units (second units located in single and multi-family residential zones) "are a valuable form of housing in California" by providing housing for "family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods." (Gov. Code, § 65852.150.) Thus, SDRC's construction

would be unduly restrictive and is not in accordance with a common-sense interpretation of the ordinance.

As such, SDRC's contention that claimant would be illegally occupying the trailer is rejected. Moreover, the County of San Diego is in the best position for determining whether a resident is in violation of its zoning laws. A permit issued for the trailer is prima facie evidence that the trailer is in conformance with the law, and it is up to the County to enforce its zoning laws as it deems appropriate.

18. A preponderance of evidence established that an ADA-compliant ramp and air conditioning unit for the trailer are special adaptive equipment that are required for claimant to be able to use the trailer. An OT/PT assessment is not required to establish this need, as the evidence clearly established their necessity given claimant's limitations in mobility and self-injurious behavior. The purchase of these items is authorized under Welfare and Institutions Code section 4685, subdivision (c)(1). Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer under San Diego County Code § 6118, SDRC shall fund these items in accordance with its purchase of service standards.

19. As for the remaining requested items, claimant's request for an OT/PT assessment was reasonable and SDRC agreed that it would conduct the assessments if it was determined that the health care trailer complied with local zoning laws. Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer under San Diego County Code § 6118, SDRC shall fund an OT/PT assessment to address claimant's requested modifications to the trailer and the paved walkway to the main house.<sup>2</sup>

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<sup>2</sup> The OT/PT assessment is a condition precedent for SDRC to fund any additional items other than the ADA-ramp and air conditioning; this decision does not address whether SDRC shall ultimately be required to fund any additional items. It is also noted

## ORDER

Claimant's appeal is granted.

Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer under San Diego County Code § 6118, SDRC shall fund an ADA-compliant ramp and air conditioning unit in accordance with its purchase of service standards. Additionally, upon proof of a valid permit issued by the County, SDRC shall fund an Occupational Therapy/Physical Therapy Assessment to determine the necessity of physical modifications to the trailer and a paved walkway from the trailer to the main house. The valid permit shall be a condition precedent to SDRC's funding of the ADA-compliant ramp, air conditioning unit, and OT/PT assessment.

DATED: May 8, 2017

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ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings

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that some of the internal modifications to the trailer may have already been purchased, and retroactive funding by a regional center is generally prohibited, except in emergency situations. (Cal. Code Regs., tit. 17, § 50612.)

## 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.**