

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No: 2017100662

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 16, 2017, in Alhambra, California.

Jacob Romero, Fair Hearing Coordinator, represented the service agency, the Eastern Los Angeles Regional Center.

Mother represented the claimant consumer (family members' names are omitted to preserve confidentiality).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 16, 2017.

ISSUE

Must the Service Agency fund purchase of a new system to weigh claimant at home?

FACTUAL FINDINGS

1. Claimant is 34 years old. He lives with mother. He is eligible for services by reason of (i) intellectual disability and (ii) cerebral palsy. These two conditions severely affect claimant's health and ability to function and make him entirely dependent on mother and caregivers. The others are: (iii) fatty liver disease, (iv) spastic quadriplegia, (v) scoliosis, (vi) post spinal fusion surgery, (vii) closed dislocation, (viii) congenital talipes equinovarus (clubfoot), (ix) anomalies of the urinary system, and (x) dyskinesia (abnormal movement) of the esophagus.

2. Claimant is non-ambulatory, non-verbal, incontinent of both bowel and bladder, and is unable to care for himself or communicate when he requires attention, such as a change in position. He must be monitored and supervised at all times, 24 hours per day, seven days per week. Besides his mother, nurses provide care: 360 hours per month funded by Medi-Cal, 180 supplemental hours funded by the service agency. He has few opportunities for recreation or social interaction. He enjoys Spanish-language singers.

3. Claimant's health is affected to an unusual degree by weight fluctuation and calorie intake. He cannot be weighed, however, except in a supine position. At times in the past caregivers have weighed claimant during hospital visits, such as when he lay on a bed equipped with a scale. Recently, however, despite mother's requests, hospital personnel have insisted that claimant's admission to the hospital is required before its personnel are allowed to weigh him. Mother found it increasingly difficult to find any caregiver willing to weigh respondent during times when he is not hospitalized.

4. Mother has learned a great deal about nursing and care-giving from having cared for claimant in every conceivable way over the decades of his life. She has no formal training in nursing, medicine, or medical technology and equipment, however.

5. In an August 4, 2016 letter, one of claimant's physicians, Cheryl V. Gray, M.D., requested that the service agency purchase equipment for weighing claimant at home, explaining:

These items are for use with the Diana Lift system (he already has the Lift device at home), the Digital Scale D-101840 cost listed at \$1583.69; the Sling with head support, listed at \$283.50 and the Battery listed at \$252.00. While the cost of these items could be considered high, the ability to accurately weigh [claimant] is of great importance.

He can't stand due to Cerebral Palsy with Spastic Quadriplegia and thus a traditional scale will not work. [Claimant] receives Gastrostomy tube feedings and the amount of fat/calories must be regulated to maintain his weight well below 99 pounds and yet provide enough nutrition to prevent skin and muscle break down. Since he also suffers from fatty liver disease, it is important to regulate the fat load per se, that his liver must process.

(Exhibit 4.)

6. The service agency submitted Dr. Gray's request to Angela Espinoza Puopolo, a licensed occupational therapist at the service agency. As reflected in a December 2, 2016 Occupational Therapist Consultation, Ms. Puopolo recommended the service agency's purchase of components of the Diana Lift system according to Dr. Gray's request. (Exhibit 5.)

7. A January 31, 2017 email from Sandy Tracy of Barrier Free Lifts – California (Barrier Free) to Whittier Drugs, one of the service agency's vendors, confirmed that the service agency ordered and paid these prices: (i) digital scale, 101840, for \$1,583.69; (ii)

Sling Mesh with head support and clips for \$283.50; and (iii) IBS Battery D103-1111 for \$252. (Exhibit 7.) There were some initial problems in delivering the correct equipment, but in approximately July 2017 these problems had been sorted out and the equipment Dr. Gray specified was delivered to claimant's home.

8. The manager of Whittier Drugs, Raul Munoz, testified that his company delivered the specified equipment as well as the appropriate battery charger. Dr. Gray had not specified a battery charger, but one was provided to make the system complete and able to function after repeated use. Mr. Munoz's testimony was corroborated by delivery receipts.

9. Mother testified that she has not used the system to weigh her son. She contended that the system delivered was unsafe and inadequate because: (i) it included components, particularly the digital scale and battery charger had labels indicating that they were not from the correct company, Barrier Free; (ii) the sling delivered had a slit for use with a commode, whereas claimant cannot use a commode; (iii) the straps and clips that were meant to hold the sling were too weak and one broke because they were not double- or triple-stitched; (iv) the lift system was altered and damaged, as indicated by at least two caps over screws on the cantilevered arm that came loose and dropped off the machine; and (v) the system is a basic model, whereas claimant should have the most expensive of three available models.

10. Mother contended further that she had not been provided proper instruction on how to use the system. She testified that when the system was first delivered to her house, she asked how the system worked, but the delivery person was unable to answer and written instructions were not provided. Mother acknowledged that she had an instruction manual for the system, however. Mother testified she called Whittier Drugs several times to ask for instruction, and left messages requesting a return

call from Mr. Munoz, but Mr. Munoz did not call her back and no one at Whittier Drugs provided assistance.

11. Mr. Munoz testified that soon after delivery of the system he visited mother and claimant's house to test the system to check that it worked. He hung the sling from the lift system's cantilevered arm and sat in the sling and weighed himself in a sitting position. He found no problems, though he weighs closer to 200 than 100 pounds. The evidence did not indicate whether mother or a licensed vocational nurse (LVN), who regularly attends to claimant, was present during the testing by Mr. Munoz. Mr. Munoz also maintained that in response to messages, he tried to return mother's telephone calls, but she refused to speak to him.

12. Mother contended that she will not use the lift system unless Whittier Drugs and the service agency acknowledge that they would be liable if claimant were injured while using the lift system. Mother testified that she demanded, but both entities have refused, such an acknowledgement.

13. Mother testified that she tried to speak about all of her problems relating to the lift system with Asusena Torres, a service coordinator and mother's main contact at the service agency for the past five years approximately. According to mother, Ms. Torres has refused to communicate with her regarding all such matters.

14. Ms. Torres refuted mother's contentions, testifying that she is at a loss to understand mother's position, since they have regularly communicated over the years for the benefit of claimant and she has never refused to assist mother. For corroboration of this testimony Ms. Torres pointed to the service agency's interdisciplinary notes, Exhibit 11, which indicate a wide variety of topics on which Ms. Torres and mother communicated by telephone several times per month for several months, from February to September 2017.

15. Ms. Torres noted that in September 2017, she met and worked with mother on claimant's Individual Program Plan (IPP), Exhibit 3. Ms. Torres attempted to discuss the lift system with mother then, so that any problem might be resolved, but mother refused. Page 4 of the IPP notes that claimant needed and had been supplied many types of medical equipment funded by Medi-Cal, such as the Diana lift system, which included a battery and battery charger, funded by the service agency.

LEGAL CONCLUSIONS

1. The burden of proof is on claimant, the party seeking to change the status quo. The evidentiary standard is proof by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.) Claimant did not meet that burden in this case.

2. It is a service agency's responsibility to implement the Lanterman Act, Welfare and Institutions Code section 4500 et seq. The Lanterman Act describes "a comprehensive statutory scheme . . . to provide a 'pattern of facilities and services ... sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.'" (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388, quoting Welf. & Inst. Code § 4501.)

3. Because the scheme is meant to be comprehensive, service agencies are authorized to provide many services and supports. Among them, under Welfare and Institutions Code section 4512, subdivision (b), is "adaptive equipment and supplies." Welfare and Institutions Code section 4512, subdivision (b), states further that, "The determination of which services and supports are necessary for each consumer shall be made through the [IPP] process."

4. Under Welfare and Institutions Code section 4685, subdivision (c)(1), a service agency "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 [IPP]. This assistance may include, but is not limited to . . . special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies”

5. Welfare and Institutions Code section 4646, subdivision (a), mandates cost-effective planning. The Service Agency, taking account of the needs of both the consumer and the consumer’s family, must:

ensure that the [IPP] and provision of services and supports . . . is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate . . . [and] the cost-effective use of public resources.

6. In this case, the service agency has followed the Lanterman Act, as outlined above. It worked through the IPP process. It arranged for purchase of the Diana lift system specified by claimant’s physician, Dr. Gray, as necessary to weigh a person like claimant who is unable to stand on a scale. It accepted, as mother maintained, that the lift system was the most cost-effective way to weigh claimant, rather than force him to be weighed only during hospital admissions.

7. Mother’s contention that the equipment was unsafe, particularly the sling’s straps, was not based on credible information. Mother testified that she did not use the sling to weigh her son and did not indicate what she did with the straps to cause damage and breakage. Mother testified that the manufacturer should have double- or triple-stitched the straps, but gave no explanation for how such reinforcement might prevent the damage she claimed to observe in the simpler strap.

8. Mother's contention that the equipment was inadequate for various reasons was not based on credible information. Mother prefers that all equipment originate from one company, Barrier Free. She asserted that at least some of the auxiliary components of the lift system, such as the digital scale, were not from Barrier Free. She based this contention primarily on a label on the scale that indicated it had been manufactured by another company. However, the evidence established that Barrier Free was the sole supplier of the equipment the service agency caused to be delivered from Whittier Drugs. Whether Barrier Free manufactures its own scales or incorporates components from different manufacturers and distributes them as part of its lift system is not of consequence in this context.

9. Additionally, there was no showing that a more elaborate scale, or a more expensive model, is necessary. Dr. Gray specified no particular model. There was no showing that the scale, the model that was ordered and delivered, did not function properly or adequately.

10. Mother objected further that claimant should not rely upon products from Whittier Drugs because the pharmacy had not adequately explained how to use the lift system. The lift system, however, is a basic scale. Mother conceded, moreover, that she had been supplied a manual on the system's operation.

11. Mother was nevertheless dissatisfied for the further reason that, as she asserted, her telephone calls to Whittier Drugs following delivery of the lift system were ignored. It was more credible, however, as both Ms. Torres and Mr. Munoz testified, that they both tried on multiple occasions to reach mother by telephone, and left messages, but were unsuccessful in reaching mother or having her return their calls. As mother also testified, she is often very busy, called away from home or attending urgently to her son's needs. Understandably she may become frustrated or dissatisfied that she has

trouble communicating with others. Mother's frustration, or dissatisfaction, however, is not grounds for ordering a new or different lift system.

12. The service agency purchased a digital scale as Dr. Gray specified to avoid medical issues for claimant that could arise if the scale used for weighing him were not as accurate as digital scales. The service agency arranged for purchase and delivery of all of the equipment for the lift system specified by Dr. Gray, as well as a battery charger not specified, but necessary for practical reasons. The service agency has consistently worked and regularly communicated with mother on IPP's and supplies identified in the IPP process, including the lift system here, for the alleviation of claimant's conditions, in accordance with the Lanterman Act.

ORDER

Claimant's appeal is denied.

DATED:

THOMAS Y. LUCERO

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.