

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

NORTH BAY REGIONAL CENTER,  
Service Agency.

OAH Consolidated Case  
No. 2017100730<sup>1</sup>

DECISION

Administrative Law Judge (ALJ) Regina Brown, State of California, Office of Administrative Hearings (OAH), heard this matter on November 14, 2017, in Santa Rosa, California.

Jack Bengel, Attorney, represented service agency North Bay Regional Center.

Claimant was represented by his mother and father. Claimant and his brother attended the fair hearing.<sup>2</sup>

The record was left open for Claimant's mother to submit electronic copies of photographs that the ALJ reviewed at the hearing. Claimant's mother had only brought

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<sup>1</sup> This matter was consolidated for hearing with OAH No. 2017100733. A single set of exhibits was established for these consolidated cases and will be maintained in this case file. A separate decision is being issued in each matter.

<sup>2</sup> The names of Claimant and his family members are not identified in order to protect their privacy.

the original photographs to the hearing and did not have copies for the ALJ or the regional center. On November 16, 2017, OAH was informed that the regional center was having difficulty accessing the electronic copies (over 290 files) of the photographs that Claimant's mother had sent. The electronic copies were forwarded to OAH, but because of the voluminous nature of the submission, the copies were not retrieved and printed out. The electronic copies of the photographs were not marked or admitted into evidence. The record was deemed closed on November 16, 2017. On November 21, 2017, OAH received a letter from Claimant's mother, marked for identification as Exhibit C. It is unclear if this document was disclosed to the regional center. Nevertheless, Exhibit C was not admitted or considered insofar as it was submitted after the record closed.

The matter was deemed submitted for decision on November 16, 2017.

## ISSUE

Whether North Bay Regional Center must fund the completion of an elevator and modifications to an upstairs bathroom/bedroom for Claimant in his new home.

## FACTUAL FINDINGS

### INTRODUCTION

1. Claimant (age 16) and his brother are consumers of regional center services through North Bay Regional Center (NBRC). They live with their parents. They are non-ambulatory and require adaptive mobility chairs. They require care and supervision 24 hours per day.

2. Claimant's Individual Program Plan (IPP) is dated August 8, 2016. Claimant is nonverbal and has a diagnosis of intellectual disability, cerebral palsy, and epilepsy. The IPP states that Claimant needs to be able to access the upstairs bathroom and bedroom in his home.

## THE FAMILY'S MOVE AND RENOVATIONS

3. In 2016, Claimant's parents decided to purchase a home after renting for years.

4. In July 2016, Claimant's parents purchased a two-story, three bedroom home in Santa Rosa. They purchased this house because it suited their needs and allowed Claimant to remain in his preferred school district. Claimant's bedroom could fit two full-size beds for him and his brother and the bathroom could fit two wheelchairs at the same time. Claimant's parents requested that NBRC fund the installation of an elevator and renovate the bedroom and bathroom on the second floor to make it accessible for Claimant and his brother.

5. In July 2016, NBRC funded an occupational therapy evaluation of the new home by Candace McGuire, O.T./L. McGuire wrote a report addressing the accessible modifications to the home and made the following recommendations:

- a. Install room cover overhead track system in 15 feet by 16 feet bedroom size to access two beds and two wheelchairs including split leg slings for each boy.
- b. Install swing clear hinges; on boys bedroom and hallway upstairs bathroom doors
- c. Install Stiltz elevator lift indoors to access from ground level in garage to first floor living area and second level for bedroom and bathroom
- d. Install step less shower stall; remove bath tub install and provide. In space 57 inch long by 30 inch wide. To include but not limited to hand held shower hose, temperature control, curved shower curtain and two grab bars (possibly a 32 inch installed on long wall vertically and 18 inch long vertical under shower head.)

McGuire recommended that NBRC seek bids from either Lift & Accessibility (L&A) Solutions, or Joel Isquith Construction, both vendors of NBRC. NBRC does not provide

direct services and relies on vendors to provide direct services. NBRC does not consult with a consumer or their parents before accepting a bid from a vendor. NBRC does not direct the work of vendors. NBRC does not give money directly to consumers or their parents.

6. NBRC denied funding the installation of an elevator as cost-prohibitive, and wanted to install a chair lift instead. However, that was not feasible given the design of the home. Claimant filed a request for fair hearing. On December 9, 2016, after mediation, the parties agreed that NBRC would fund 50 percent and the parents would pay the remaining 50 percent of the cost of installation of a Stiltz Trio Home Lift and Elevator Shaft with each paying \$19,282.42. NBRC agreed to pay the total cost of the overhead lift system for the upstairs bedroom in the amount of \$7,775, and the installation of durable medical equipment (DME) for the accessible bathroom in the amount of \$17,996.25, with no cost to parents. Funding for the accessible modifications to the home would be split between Claimant and his brother's NBRC cases. NBRC determined that the bid from L&A Solutions was the most cost effective bid that met McGuire's recommendations. Approval for the funding was included in the IPP addendum dated December 12, 2016. In addition, L&A Solutions was the only vendor in California that could install the Stiltz elevator.

7. L&A Solutions began construction in January 2017. Paul Harlin is the owner of L&A Solutions. On or about December 2016, Claimant's parents paid \$17,148.50 to L&A Solutions for the following work: "Provide and install Stiltz Trio Home Life with 11'6" of travel stopping at 3 floors. Includes two year warranty on parts, one year on labor. Maximum load for this unit is 485 pounds. (Shaft preparation on separate estimate)." Claimant's parents also requested that L&A Solutions perform other renovations in the home that overlapped McGuire's recommendations, that they would pay out of pocket. There was no written contract, so the actual scope of work

agreed to by Harlin and Claimant's parents is unknown. The change orders requested by Claimant's parents totaled \$7,037.91. It appears that this additional work included: installing radiant heating in the floors of the bathroom; installing an electrical subpanel in the garage to run the elevator and heating in the bathroom; installing a thermostat; installing tile; installing a marble vanity top; installing a linen cabinet; installing heat lights in Claimant's and master bedrooms; adding reset lights to put on the tracking system in the bedroom; upgrading to bronze bathroom fixtures; adding trim; replacing door knobs; installing three automatic light switches; installing a fan in Claimant's and master bathrooms; installing a light switch in the attic space; and installing a ramp for the elevator in the garage.

8. At some point in February 2017, Claimant's parents became dissatisfied with the workmanship on the project. The contractor stopped working on the project.

9. In February 2017, at the request of NBRC, McGuire inspected the work that had been completed at the home. McGuire issued a report and noted a number of issues with the workmanship provided by L&A Solutions, including:

- a. Elevator controls cannot be called to the floor; with floor level to elevator floor without guessing and reopening the door until level. Wheelchair does not have access until floors level match outside to inside of elevator.
- b. Overhead lift track; Does it require end caps for safety or are stops built into the track for safety and stopping?
- c. Step less shower stall needs ADA grab bars on walls for caregiver safety
- d. Hand held shower hose on a rail for shower head wall for seated and standing position
- e. If base boards sealed (caulked); will that preserve the radiant heat system from getting wet? Also is floor sealed adequately to prevent leakage?

- f. Client requested entire bathroom to become a "mud" room; walls not around shower area do have green board and are painted with exterior paint only. Is this adequate for water sprayed from shower?
  - g. Tiles in shower stall area; Are they ADA slip resistant tiles?
  - h. Short ramp to elevator; at garage level to access base of elevator. Family feels it is in the way of walking traffic to access other areas of their garage. It is about 3 feet long by 3 feet wide with bumper guards on the edges. It is rough wood not painted. Family requesting a portable ramp with lower bumper guards or a beveled edge ramp that can be left in place.
  - i. Was there a contract between client and family for the extras being requested; for instance light fixture in hall in front of elevator, tile used in bathroom and ramp at garage level in front of elevator.
10. McGuire made the following recommendations in her report:
- a. L&A Solutions needs to finish their work including:

Sealing all base boards/tile to tile flooring and edges around door openings.

Painting around fixtures to match all surfaces, hallway bathroom, damaged master room ceiling

Complete stepless shower, bathroom lights and vanity installation in hallway bathroom

Finish elevator shaft enclosing on side opening between edge of elevator and door opening

Finish painting and surfacing the rough edges seen while traveling in elevator from floor to floor

b. If NBRC or parents have concerns they could:

- (1) Have other contractors experienced in the area of construction, elevators and ADA guidelines to inspect the work
- (2) Have Guldman Overhead Lifts representative inspect the installation
- (3) Have Stiltz elevator company inspect the work

11. NBRC claims that it does not guarantee the quality of the elevator/shaft and related construction work.

12. On March 10, 2017, NBRC personnel, McGuire, and Harlin met at Claimant's home to view the construction and discuss the issues. During the meeting, a verbal altercation ensued between Harlin and Claimant's father. He was asked to leave their home. After the meeting, Harlin sent a letter to NBRC indicating the items that he would complete if given the opportunity to return to the home.

13. In an addendum to Claimant's IPP, dated March 10, 2017, NBRC noted that it would like to have Stiltz elevator company inspect the elevator/shaft. Stiltz elevator company is not vendored with NBRC. NBRC wanted McGuire to contact the company and obtain a bid for them to inspect and certify (if possible) the work. In an addendum to Claimant's brother's IPP, dated March 10, 2017, NBRC noted that it would like to have Guldman Overhead Lifts inspect the track system in the bedroom. Guldman Overhead Lifts is not vendored with NBRC. NBRC wanted McGuire to contact the company and obtain a bid to inspect and certify (if possible) the work.

14. On March 10, 2017, NBRC issued a Notice of Proposed Action, denying Claimant's request to fund a new vendor to redo the work done by L&A Solutions as parents requested. The following reason was provided: "NBRC already funded current vendor (L&A Solutions) who has agreed to correct, repair, and finish their work." In support of its decision, NBRC cited to Welfare and Institutions Code sections 4512, subdivision (b); 4620.3, subdivisions (a)-(e); 4646, subdivision (a); 4646.4; California Code

of Regulations, title 17, section 54326, subdivision (d); and NBRC's Purchase of Service Procedure Memorandum. Claimant requested a fair hearing on October 2, 2017.

Claimant indicated what was needed to resolve the complaint as: "NBRC honor Client's IPP with DME and ADA compliance support – NBRC provide resources for access to the home and 2nd story – Have another contractor who meets industry accepted standard work that will be mutually agreed upon by NBRC and Client."

### CSLB INVESTIGATION

15. Claimant's parents filed a complaint with the State of California Contractors State License Board (CSLB). CSLB sent an industry expert to inspect the home and issue a report of findings. The industry expert found that:

- a. Work to the bathroom, elevator, and boys' bedroom was incomplete and did not meet accepted standards and the cost to correct was \$10,291.
- b. The contractor performed the work without obtaining a building permit from the local building authority. This did not meet accepted standards and the cost to correct was \$5,534. However, the cost to correct assumed that a permit meeting the City of Santa Rosa's building department's requirements would be prepared by a registered design professional and that a permit would be issued as per the fee schedule without penalties. The cost to correct also included an allowance of \$500 for additional verification and inspection costs.
- c. Claimants' parents had additional complaints that were not confirmed during the inspection. Some complaints related to the operation of the elevator including inconsistent operation of the call buttons and lights, unsecured wiring in the shaft and static and crackling on the phone line. However, on the date of the inspection, the industry expert found the elevator working properly. Regarding installation of the bathroom tile, the owners claimed that

some tiles were misaligned with sharp corner and/or edges. However, the industry expert found that the floor tile and wall tile were set in a workmanlike manner. There were minor variations in joint widths and slight misalignments between adjacent tiles, but only visible upon close inspection and the overall appearance of the installation was uniform.

16. On October 31, 2017, the CSLB issued a letter indicating that its investigation was complete and there would be a determination on whether a citation would be issued against Harlin's contractor's license.

#### ADDITIONAL EVIDENCE AT HEARING

17. Elisa Reiff, NBRC Case Management Supervisor, testified at hearing. Reiff stated that funding the installation of an elevator was an extraordinary purchase for NBRC. NBRC assumed that Claimant's parents would want the same vendor to install the elevator and renovate the bathroom/bedroom which would create consistency for all the work performed. However, Reiff acknowledged that Claimant's parents can refuse a specific vendor. Reiff confirmed that the family contacted NBRC on February 15, 2017, indicating that they were unhappy with L&A Solutions' workmanship. Reiff met with Claimant's parents who requested that NBRC pay for another vendor as they did not want Harlin to return to their home. Reiff is not aware of anyone else who can perform the work on the Stiltz elevator. Reiff stated that if NBRC had not accepted L&A Solutions bid to install the elevator, then there would be no elevator.

18. Deanna Heibel, NBRC Associate Director Client Services, testified at hearing. Heibel believes that as long as the work is up to industry standard and there are no safety risks, then it is irrelevant if Claimant's parents are unhappy with the work performed. Heibel relies on the CSLB's industry expert's opinion on the quality of the work performed by L&A Solutions. Heibel acknowledges that NBRC cannot require a consumer to allow a contractor into a home. However, Heibel states that NBRC cannot

pay twice for work already done; although she acknowledges that the work was not completed. According to Heibel, the parents requested that all work be removed and replaced by another contractor. Heibel believes that Claimant's parents should allow L&A Solutions to complete the work. Heibel is aware that Harlin did not obtain permits to do the work. According to Heibel, Harlin is willing to pay for the permits.

19. Harlin testified at hearing about the work performed on the installation and renovation project. According to Harlin, he had to fire the foreman after six weeks which slowed down the work on the project. Harlin stated that he billed Claimant's parents an additional \$7,037.19, to cover the extras as agreed before he started the project. Harlin also stated that, during the meeting at the house on March 10, 2017, it became clear to him that he would not be able to provide them with the services, so he wanted to clean up a few issues and would walk away from the balance owed him of \$9,700 (which included part of the elevator costs) by Claimant's parents. Harlin admitted that he violated contracting law when he installed the elevator without a permit.

20. Claimant's mother testified at hearing. According to Claimant's mother, Claimant and his brother live on the first floor. They sleep on twin beds in the dining room and their parents sleep on couches in the family room.

Claimant's mother described all of the remaining work to be done at the home. According to her, the bathroom is not functional and only has tile (that is sharp and causes injury) and a toilet. There is no sink or running water. The stepless shower stall, grab bars and cabinetry have not been installed. She believes that the elevator is unsafe because of electrical issues as it periodically does not stop and open in the correct place; it will stop at inopportune times; there is a problem with the backup battery; the phone inside the elevator is not placed properly; indicator lights go on and off; and another set of doors have not been installed. She does not want Harlin to return to her home

because she has no confidence in his work. Also, before he left the job one of his workers walked in on her while she was using the bathroom and while she was in her bedroom and no apologies were given. She states that she does not want all of the work performed by Harlin to be removed. However, she wants the proper permits, blueprints of the electrical, plumbing and other work he did to determine if it was done correctly; and she wants the bedroom and bathroom to be made accessible for her sons. She insists that NBRC should be held responsible for the improper vendor activity of L&A Solutions.

21. Claimant's father testified at hearing. He vehemently denies the accusation that he told Harlin not to obtain the permits. This seems credible because it makes no sense that Harlin would be convinced by Claimant's father not to obtain a permit to install an elevator in the home. Claimant's father confirmed that he got into verbal altercation with Harlin because Harlin accused them of trying to get more money. During that altercation, Harlin said that if he left he would not return. Claimant's wife told him to leave. They do not want Harlin to return to complete the job because his work has not met industry standards and they no longer trust him or his work.

22. Claimant's parents have filed a claim against L&A Solutions' surety bond. The status of that claim was not established at hearing.

## LEGAL CONCLUSIONS

1. Neither the Lanterman Act appeal process (Welf. & Inst. Code, § 4700 et seq.)<sup>3</sup> nor its implementing regulations (Cal. Code Regs., tit. 17, § 50900 et seq.) assigns burdens of proof. Here, Claimant is requesting new services and supports and therefore Claimant bears the burden of proof. And, as there is no statute that provides otherwise,

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<sup>3</sup> All citations are to the Welfare and Institutions Code unless otherwise indicated.

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.” (§ 4501.)

3. The Lanterman Act enumerates the legal rights of persons with developmental disabilities. (§ 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. (§ 4502, subds. (a) and (b).)

4. Regional centers are 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. (§ 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.” (§ 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. (§§ 4620, 4621, 4787.) Purchase of services best practices may establish criteria determining the type, scope, amount, duration, location, and intensity of services

and supports purchased by regional centers for consumers and their families. (§ 4620.3, subdivision (e).)

5. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.) Services and supports secured by the regional center must be "... flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4648, subd. (a)(2).) Consumers and, where appropriate, their parents, are empowered to make choices in all life areas. (§§ 4501 & 4502, subd. (b).) Regional centers must respect the choices made by consumers and their parents. (§§ 4646, subd. (a); 4502 .1.)

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. (§§ 4646, subd. (a); 4512, subd. (b); and 4648, subd. (a)(6).) But the requirement that regional centers respect consumers' choices does not mean that developmentally disabled individuals and their parents are entitled to unlimited choice in deciding which services and supports are to be provided.

#### THE ELEVATOR INSTALLATION

7. The purchase and installation of an elevator in a two-story home is expensive. Claimant's family chose to purchase and move into a two-story home. The regional center was not obligated to install an elevator in the home. However, it turned out to be cost-effective to do so especially given that there are two consumers sharing and benefitting from the funding and Claimant's parents were willing to pay half the cost of installing the elevator. NBRC is correct that it is not required to fund the full cost

of making sure that the elevator meets accepted standards. It is concerning that the elevator was installed without permits. Given the nature of the problems with the elevator as described by Claimant's mother, there could be potential safety concerns with the elevator. In fact, McGuire recommended having Stiltz elevator company inspect the work on the elevator. In addition, in the IPP dated March 10, 2017, NBRC noted that it wanted the Stiltz elevator company to inspect the elevator and shaft, although they are not vendored by NBRC. An inspection of the elevator should be done.

#### THE BEDROOM/BATHROOM RENOVATION

8. When Claimant's parents changed the parameters of the work to be performed on the bathroom and bedroom, which was fully funded by NBRC based on McGuire's recommendations, they assumed responsibility for the additional work agreed on with Harlin. The evidence did not establish a clear distinction between what NBRC funds covered regarding the bathroom and bedroom and the costs of the requested upgrades. Unfortunately, there was a breakdown in the relationship between Claimant's parents and Harlin which was through no fault of NBRC. It is of note that Claimant's parents are seeking remedies against Harlin before the CSLB and his surety company. If Claimant's parents are successful in recovering any monies, they can use those funds to complete the renovations on the bathroom/bedroom.

9. Generally, all things being equal, equity and fairness require that the service agency not be required to bear the full monetary brunt of the parent's decision to change the scope of the renovations to the bathroom and bedroom. Given the nature of the problems with the overhead lift system as described by Claimant's parents, there could be potential safety concerns. In fact, McGuire recommended that Guldman Overhead Lifts inspect the work on the overhead lift system. In addition, in the addendum to Claimant's brother's IPP, dated March 10, 2017, NBRC noted that it would

like to have Guldman Overhead Lifts inspect the track system in the bedroom, although they are not vendored with NBRC. Therefore, an inspection of the overhead lift system should be performed.

10. Again, in the interest of equity and fairness, Claimant's parents should have no reasonable expectation that NBRC would pay the full amount of the cost to complete the renovations to the bathroom. It is determined that it is reasonable and cost-effective for the service agency not to pay anything toward the completion of the renovations to the bathroom. Therefore, Claimant's parents must bear the cost to complete the renovations to the bathroom and may hire any contractor they wish, as there is no requirement that a consumer of regional center services and supports must use a particular vendor.

11. For the foregoing reasons, Claimant's appeal must be denied in part and granted in part.

## ORDER

Claimant's appeal is granted in part and denied in part. Claimant is not entitled to have North Bay Regional Center pay the cost of completing the renovations to make Claimant's bathroom accessible. However, the regional center is required to have the elevator and shaft inspected by a representative of the Stiltz elevator company and the overhead track system in the bedroom inspected by a representative of the Guldman Overhead Lifts company to ensure that they meet accepted safety standards.

DATED: November 30, 2017

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REGINA BROWN

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.