

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for a Bathroom Remodel:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018031266

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on August 13, 2018.

Claimant's mother and father represented claimant, who was present at the hearing.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

The matter was submitted on August 13, 2018.

ISSUE

Should IRC fund claimant's request for bathroom remodel for the purpose of making it easier for claimant to maneuver in and out of the bathroom?

FACTUAL FINDINGS

1. Claimant is a five-year-old girl who qualifies for regional center services based on diagnoses of cerebral palsy, epilepsy, and profound intellectual disability. Claimant also suffers from spasticity, quadriplegia, and Aicardi Syndrome.¹

2. Claimant receives 48 hours of licensed vocational nursing services funded through Medi-Cal, and In-Home-Supportive Services with her mother as the provider. Claimant resides at home with her parents and three brothers. Claimant's home is a two-story home, and claimant's room is on the first level. In that room, there is a bathroom that has only a toilet and sink; no shower or bath. The upstairs has at least one full bathroom where claimant is currently bathed.

3. At claimant's October 9, 2017, Individualized Program Plan (IPP) meeting, claimant's mother requested a home modification. Specifically, claimant's mother requested a modification of the downstairs bathroom to make it a full bathroom so claimant would be able to take a shower without having to be transported upstairs. IRC considered the request, and directed claimant's mother to first obtain denials of the requested modification from California Children's Services (CCS) and her medical insurance.

4. Between October 19, 2017, and March 15, 2018, consumer ID notes showed that IRC worked with claimant's mother regarding the request for a bathroom remodel, including reviewing all pertinent documentation and presenting the request to the clinical review team.

¹ Aicardi Syndrome is a rare genetic malformation syndrome characterized by the partial or complete absence of a key structure in the brain called the corpus callosum, the presence of retinal abnormalities, and seizures in the form of infantile spasms.

5. Claimant's parents obtained four estimates for the requested bathroom conversion as follows: \$15,620, \$17,939.06, \$28,897.50, and \$68,510. Each estimate varied widely regarding how the contractor was choosing to approach the project, and some of the estimates also included modifications to claimant's existing room to make it more private, which is not the subject of this fair hearing.

6. On March 15, 2018, IRC notified claimant's mother that the request to fund a bathroom remodel was denied. IRC wrote:

This letter is about your request to Consumer Services Coordinator (CSC) Karla Torres on June 13, 2017 for Inland Regional Center to fund or provide financial assistance for the modification of a room² and bathroom in your home. You provided documentation of this request on January 24, 2018. . . . [You are] requesting the . . . half-bath [adjacent to claimant's room] be remodeled into a full bathroom to include a shower.

[IRC] has reviewed your request and your request has been denied because IRC is prohibited from funding any home modifications that is [sic] not a direct medical or remedial benefit to an individual with a developmental disability. Furthermore, IRC can only fund specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental

² Although claimant's parents did originally request a modification of the room where claimant resides, that request was withdrawn and is not the subject of this fair hearing.

disability and that without these modifications the consumer would require placement in a more restrictive environment. Additionally, it would not be a cost-effective use of public funds to fund this request when generic resources have not yet been exhausted. A home and bathroom modification would be the most convenient way in assisting with [claimant's] daily self-care, however IRC cannot fund a home modification whereby the modification would add value to the home. In this case, the modification of the room and conversion of the bathroom from a half bath to full bath would add value to your home. You have requested home modification assistance through your insurance provider. The request has been denied but the appeal process has not been exhausted through the insurance provider and or California Children[']s Services (CCS). Through CCS you can request an assessment of [claimant's] durable medical equipment needs to help facilitate her care.

7. On March 21, 2018, claimant's mother requested a fair hearing contesting IRC's decision not to fund a bathroom remodel so claimant can have a shower downstairs, where her bedroom is located.

8. On April 11, 2018, claimant's mother attended a telephonic informal meeting with representatives from IRC. A letter memorializing discussions at the informal meeting provided the following information: Claimant currently weighs 32 pounds. At the time claimant's parents purchased their current home, they did not know the level of care claimant would eventually need. They have no plans to move. Claimant's medical insurance denied the request for a home modification, and

claimant's parents did not appeal the denial within the 90-day time frame. CCS also denied the request. During the meeting, IRC agreed to conduct further in-home assessments regarding the request.

9. On May 1, 2018, IRC Physical Therapist Michelle Knighten and IRC Occupational Therapist Annette Richardson conducted an in-home occupational and physical therapy equipment assessment. They prepared a joint report. They also testified at the hearing concerning their report. The following is a summary of their testimony and report.

It was concluded that a chair lift to aid claimant's parents with transporting her upstairs, which would be funded by CCS, would not be a viable option because of clearance problems upstairs. Purchasing an inflatable bed bath from Bed, Bath, and Beyond is an option so claimant's parents could sponge bathe her in her bed, as families of many other consumers do. A similar option, the EZ bath, is also an inflatable tub which could be used to bathe claimant near her bed. Given that there is a sink within 25 feet of where claimant would be bathed, this is a viable option. The Fawssit Portable Shower System was also found to be a viable option. This option is a fold-up portable shower bay which allows enough room for a reclining bath chair as well as the caregiver. Several other options involving a track or rail system to transport claimant upstairs in her wheelchair were also noted as a possible solution, short of a home modification.

10. Karla Torres, claimant's consumer services coordinator, and Carmelita Florentino-Rodriguez, IRC's Program Manager, also testified at the hearing. Ms. Torres testified that there was no medical documentation showing a need for a home modification and other bathing options were available. Ms. Florentino-Rodriguez testified similarly, and added that IRC's determination was based on its purchase of service policies.

11. IRC's purchase of service policies for home modifications defines home modifications as:

permanent changes made to a home where the consumer has lived on a long-term basis that are deemed necessary to ensure the health, welfare, safety or the consumer and/or enable the consumer to function with greater independence in the home. Without these modifications, the consumer would require placement into a more restrictive environment. This may include, but is not limited to, door widening, and home access items such as ramps or environmental controls.

In addition to the general policy, there are other limitations on what IRC may do regarding home modifications, including: any home modification requested must be prescribed by a physician; any modification to an existing structure may not increase the value or square footage of the property; no home modifications may be completed that are not a direct medical or remedial benefit to the consumer; and it must be considered whether the family made a decision to purchase a two-story inaccessible home when the need for accessibility was known to the family at the time of purchase.

12. Claimant's mother's testimony is summarized as follows: she has difficulty carrying claimant upstairs. When claimant's nurse or father are present, they assist. She worries claimant could have a seizure while carrying her upstairs. At the time she and her husband purchased their home in 2015, they did not yet know the level of care claimant would require. When claimant is bathed, she is transported upstairs; sponge bathed while in her bath chair; and brought into the shower to rinse her off. Claimant loves her shower/bath time; it is her favorite part of the day.

13. Claimant's father's testimony is summarized as follows: they are requesting to modify the bathroom because when they moved into their home they did not know claimant's mobility would be limited to the degree it currently is. They knew she could

not walk at the time, however, children with claimant's challenges range from limited mobility to no mobility, so they were hopeful claimant would be able to walk at a later age. Claimant's father and claimant's mother began researching options available to claimant. The Lanterman Act is supposed to help a consumer be as normal as possible; a bathroom modification would accomplish that goal.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports."

5. Welfare and Institutions Code section 4646 requires that the 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.

6. Welfare and Institutions Code section 4646.4 requires the regional center 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.

7. 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.

8. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services and prohibits regional centers from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, CCS, private insurance, or a health care service plan.

EVALUATION

9. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating her need for the requested service and support, funding of a bathroom remodel. Claimant has not met that burden.

IRC's records amply demonstrated that claimant has critical needs, and bathing her is difficult. Claimant's mother testified credibly with respect to the difficulty in bathing claimant because of the possibility of seizures while transporting her upstairs, as well as claimant's weight, which will obviously only increase with time. While sympathetic to claimant's position, the testimony from IRC established that there are multiple other options available to bathe claimant downstairs. It would also violate IRC's

purchase of service policies as it is has not been prescribed by a physician and modifying the half-bath to a full-bath would increase the value of the home.

Providing claimant with the requested bathroom remodel would meet her needs. However, providing a bathroom remodel would not be a cost-effective use of public funds in light of the evidence that established the availability of other generic resources that also meet those needs.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund a bathroom remodel is denied.

DATED: August 22, 2018

KIMBERLY J. BELVEDERE

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 ninety days.