

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Appeal of:

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2018060302

DECISION

This matter was heard by Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, on August 28, 2018, in Modesto, California.

Claimant was represented by his parents.

Anthony Hill, Legal Affairs Advisor and Attorney at Law, represented Valley Mountain Regional Center (VMRC).

Evidence was received, and the record was left open to allow both parties to submit videos,<sup>1</sup> VMRC to respond to claimant's video, and claimant to reply to VMRC's response. Claimant's video is marked as Exhibit H, and VMRC's video is marked as Exhibit 12. The Declarations of Robert Borman, Pam Kidroske, and Mendel Uychutin and

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<sup>1</sup> VMRC played its video at hearing, but did not have it in a format that could be submitted at that time. Claimant's mother said VMRC's video is only a portion of the video she provided VMRC. She wanted to submit the entire video, but did not have it in a format that could be submitted at hearing.

Mr. Borman's video response submitted in response to Exhibit H are marked as Exhibits 13 through 16, respectively. Claimant did not reply to any of the declarations or Mr. Borman's video response. Exhibits H and 12 are admitted, without objection. Exhibits 13 through 16 are not admitted for any purpose, and none of those exhibits was considered, because the attached proof of service does not indicate any of the exhibits was served on claimant. The record was closed and the matter submitted for decision on September 26, 2018.

## SUMMARY

It is undisputed that the manner in which claimant has been accessing the second floor of his two-story home for the past 13 years – by crawling up the stairs on his knees and sliding down the stairs on his stomach – is not safe. It is also undisputed that his home needs to be retrofitted with durable medical equipment to allow him to access the second floor in a safer manner, and VMRC is agreeable to purchasing the necessary equipment and paying for its installation. The sole issue is the type of equipment that should be funded. VMRC is agreeable to funding the purchase and installation of a stair lift system. But claimant's parents have safety concerns with such a system, and believe a vertical platform lift is a safer and more appropriate alternative.<sup>2</sup> Given the circumstances of this matter, the evidence established that a stair lift is more cost-effective than a vertical platform lift. Therefore, claimant's appeal of VMRC's denial of funding for a vertical platform lift is denied.

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<sup>2</sup> A stair lift consists of a chair attached to a rail system on a stairway. The rail system is generally attached to the treads of the stairway. A vertical platform lift works similarly to an elevator, but has an open cab, except for panels on the sides of the platform.

## FACTUAL FINDINGS

1. Claimant is a 17-year-old consumer of VMRC who is eligible for regional center services because he suffers from a seizure disorder and intellectual delay. He is just under five feet tall, and weighs approximately 176 pounds. His service coordinator is Jackie Jenkins, and his program manager is Pam Kidroske. He lives at home with his parents. He has a brother, but the evidence was unclear whether the brother lives at home.

2. Claimant was recently diagnosed with diabetes and scoliosis, and is currently unable to independently monitor his health and dental needs. He requires total assistance with all activities of daily living, which is provided by his parents. He is cooperative with lifting his hands when dressing, but his limited strength and agility prohibit total independence at this time. He is semi-ambulatory, but has an unsteady gait and continues to have difficulty with balance when walking. He is incontinent of bowel and bladder, and wears diapers all the time.

3. Claimant receives specialized educational services through the local public school system, and is in his senior year of high school. He attends school five days a week, and also receives speech and language therapy, physical and occupational therapy, and adaptive physical education through a highly specialized educational program. He has earned more than 150 credits toward his Certificate of Completion, and has maintained close to a 4.0 grade point average.

4. A psychological report prepared during the 2017-2018 school year described claimant as a "very friendly and happy" person who "came to testing willingly and cooperated throughout." It further described him as usually having a smile on his face, "willing to interact either socially or by doing some work," and always putting forth his best effort. He "often smiles when he completes" his work. He participates in class by

"listening, singing and swaying to music." When exiting the school bus in the morning, he generally greets people with a smile and a fist bump.

5. Psychological testing placed claimant's cognitive skills in the first percentile of his age group. He tested in the six-year-old range for skills needed to live independently in the community, such as using community resources, shopping, and traveling throughout the community. His basic academic skills needed for daily living tested in the kindergarten/first grade range. He also tested substantially lower than average for his age group for health and safety skills, such as responding appropriately to illnesses and injuries, properly using medication, and showing appropriate caution.

6. Claimant and his parents have lived in their two-story home for 13 years. His bedroom and bathroom are upstairs next to theirs. While there is a bedroom and bathroom downstairs, it is occupied by claimant's grandfather who is physically incapable of climbing stairs. Claimant accesses the second floor by crawling up the stairs on his knees, and gets down the stairs by sliding on his stomach. He requires constant supervision when climbing the stairs.

7. On June 5, 2016, claimant's mother contacted Mr. Jenkins to schedule a home visit to determine whether claimant's bathroom could be modified to include a walk-in shower. At the time, claimant was bathing in a Jacuzzi-type bathtub. His mother would assist him with stepping one foot into the bathtub, sit him on the edge, and then lift his other leg into the bathtub. She then helped him slide down to the bathtub floor. To get out of the bathtub, she lifted him off the bathtub floor, sat him on the edge, and supported him in a seated position while lifting each leg one at a time over the edge. Claimant and his mother have tried to use the shower stall, but its small size does not accommodate the two of them and a shower chair at the same time.

8. VMRC authorized an evaluation of claimant's home by an occupational therapist for purposes of identifying options for improving claimant's and his mother's

safety when using the bathroom for hygiene care. In the meantime, Mr. Jenkins and Ms. Kidroske met with claimant and his mother in their home for an individual program plan meeting on December 16, 2016. During the meeting, the issue of modifying claimant's bathroom to include a walk-in shower was discussed. His mother also explained he had begun experiencing pain in his core from constantly sliding down the stairs.

9. Claimant's December 16, 2016 Individual Program Plan provides:

[Claimant's] mother has requested a walk-in shower and assistance obtaining an elevator. Currently [claimant] cant access his bathing area independently. [He] crawls on his knees to go upstairs and slide on his stomach to descend down. It was reported that [he] is starting to exhibit pain in his core area due to the repeated sliding. An OT home visit was completed in 1/17 and recommendations from the OT specialist will follow.

(Punctuation and spelling original.)

The IPP further provides, "**[Claimant] will be provided Durable Medical Equipment.**" (Bold original.)

10. On January 10, 2017, Mendel Uychutin, a licensed occupational therapist, evaluated claimant's home "to determine options to improve safety when using the bathroom for hygiene purposes." He was initially asked to evaluate the upstairs bathroom for purposes of adding a walk-in shower. During his evaluation, however, claimant's mother also discussed the manner in which claimant climbs the stairs, and Mr. Uchutin had an opportunity to watch claimant crawl up and slide down the stairs.

11. After evaluating claimant's home, Mr. Uychutin prepared a report, in which he recommended the following modifications to claimant's bathroom:

Replace upstairs bathroom bathtub with roll-in handicap shower stall. Use same footprint of existing bath tub.

Relocate water supply to opposite wall of existing location.

Apply floor and wall tiles. The unusual two showers upstairs in the same bathroom was discussed with the mother who stated that she is fine with that. Further, mother also agreed to use the same footprint of the existing bathtub for the recommended shower stall to preserve the existing floor tile work in the bathroom.

(Spelling original.)

Mr. Uychutin's justification for his recommendations was: "Needed to provide safer means of accessing hygiene care facilities; eliminate safety risks associated with present method of getting in and out of the bath tub." (Spelling original.)

12. Mr. Uychutin also recommended the following regarding the manner in which claimant was climbing the stairs: "Consult with contractor to determine (1) if installing an elevator is feasible and if so, (2) what are the options and (3) what is the cost comparison between an elevator and a stairlift."<sup>3</sup> He provided the following justification for his recommendations:

It appears that an elevator might be feasible but the feasibility of a stairlift should also be explored and costs compared. An elevator or a stairlift appears to be viable solutions to improve access and safety when going up and

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<sup>3</sup> While Mr. Uychutin referenced an elevator, he was actually referring to a vertical platform lift.

down stairs. Mother has stated preference towards an elevator.

Use of handrails opposite of the existing handrails were previously considered but the client's weak grip, poor balance and generalized [hypotonia]<sup>4</sup> and weakness of the lower extremities makes it an inadequate solution.

13. Ms. Kidroske approved Mr. Uychutin's recommended modifications to claimant's bathroom. She also instructed Mr. Jenkins to obtain two bids for the purchase and installation of a vertical platform lift, and two bids for the purchase and installation of a stair lift.

14. Mr. Jenkins obtained a bid for the purchase and installation of a stair lift from Modesto Mobility Center Inc. in the amount of \$17,453.95. He also obtained a bid for the same equipment from One Source Mobility, Inc., in the amount of \$22,292.48.

15. Once Source Mobility, Inc., also prepared a bid for the purchase and installation of a vertical platform lift in the amount of \$39,494.86.<sup>5</sup> The bid did not include the cost of structural engineering work and preparing plans for cutting floor trusses and reinforcing them, which is necessary to support the access hole that would need to be cut in the second floor landing to accommodate lift travel. Claimant's mother obtained a quote for such work in the amount of \$2,220.

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<sup>4</sup> Hypotonia is commonly known as "floppy baby syndrome, and refers to poor muscle tone.

<sup>5</sup> Mr. Jenkins did not obtain a second bid for a vertical platform lift, because VMRC did not have a contractual relationship with any other vendors that sell and install vertical platform lifts.

16. Neither Mr. Jenkins nor Ms. Kidroske knew that installation of a vertical platform lift would require the involvement of a structural engineer. Ms. Kidroske explained at hearing that the amount of Once Source Mobility, Inc.'s, bid for the vertical platform lift exceeded her approval authority, and she instructed Mr. Jenkins to submit a request for funding to VMRC's Purchase of Service Committee.

17. VMRC's Purchase of Service Committee denied funding for a vertical platform lift, but approved Modesto Mobility Center Inc.'s \$17,453.95 bid for the purchase and installation of a stair lift. Mr. Jenkins prepared a Notice of Proposed Action denying claimant's "request for more costly lifting system." Claimant's mother timely requested a fair hearing to challenge VMRC's denial.

18. While claimant's Fair Hearing Request was pending, he, his mother, and Ms. Kidroske visited Modesto Mobility Center Inc.'s showroom so claimant could try a stair lift that was on display. Robert Borman, the owner of Modesto Mobility Center Inc., explained at hearing that claimant rode the stair lift on display in his showroom "a number of times." The first few times, claimant had a smile on his face "from ear to ear like it was a ride, something fun." Mr. Borman did not observe claimant having any difficulty operating the controls, or showing "any signs of timidity."

19. Ms. Kidroske also observed claimant operating the stair lift with little difficulty. She described her observations in an email to Mr. Uychutin:

[Claimant] was able to try the stair lift and operate the switch to push himself up and down. (He caught on very quickly, and was able to keep the pressure on the switch to go up and down a few times.) He actually loved it; he looked very happy, had a big smile, and was yelling, "WooHoo" while going up. He was able to back himself in the seat without assistance (just some verbal explanation), and put his feet on



the foot rest. He exited the seat independently when the demo was over. He was not able to buckle the seat belt, but may be able to learn with some practice. He could unbuckle it.

20. Claimant's mother explained at hearing she is not concerned that her son lacks the cognitive ability to operate a stair lift, but is concerned he does not have the muscle strength to continuously operate the switch to activate the lift. Additionally, he has balance and depth perception issues and tires easily, and she believes he will tire easily from operating the lift. She is also concerned he may remove his seat belt and attempt to climb off the chair before reaching the top or bottom of the stairs, or lose his balance when exiting at the top of the stairs and roll back down.

21. Videos of claimant using the stair lift in Modesto Mobility Center Inc.'s showroom showed him able to climb on and off the chair without assistance. While he had a tendency to sit on the edge of the seat, he was able to push himself up using the armrests and scoot himself all the way back when instructed to do so. The seat was too shallow for him. He was able to operate the stair lift without assistance by pressing the directional buttons mounted under the right armrest.

22. The seat belt consisted of a buckle attached to webbing affixed to one side of the seat, and a tongue attached to retractable webbing on the other side. The tongue is released by pressing a button on the buckle, similar to a car seat belt. Claimant was unable to buckle the seat belt by himself, but he was able to unbuckle it without assistance.

23. There was a foot rest attached to the bottom of the chair that was folded up when claimant began operating the chair, but someone lowered it while it was moving. Claimant's natural sitting position is with his legs abducted, and the foot rest was too narrow to be of any use to him. At one point when the chair was moving up the

stairs, his left foot bumped the top stair, but he moved his foot before it got caught between that stair and the foot rest.

24. At hearing, Mr. Uychutin watched VMRC's video of claimant using the stair lift in Modesto Mobility Center Inc.'s showroom. That was the first time he saw claimant using the stair lift. After watching the video, he commented that claimant was unable to rest his feet on the foot rest, but also noted that claimant moved his foot out of the way as soon as he felt his foot touch the top stair.

25. Mr. Uychutin explained that it is common for people with special needs to not understand how to operate technology when first introduced to it, but expressed confidence claimant would learn quickly how to operate a stair lift based on his initial ability to operate it on his own in Modesto Mobility Center Inc.'s showroom. However, Mr. Uychutin opined claimant would not be able to buckle the type of seat belt shown in the video without assistance.

26. Mr. Borman watched the same video as Mr. Uychutin. He explained that the stair lift claimant rode in the showroom was a prototype meant to be taken to tradeshow and other types of demonstrations. Therefore, it was not fitted specifically for respondent. The foot rest installed on the prototype was the smallest size made, and Mr. Borman estimated the biggest is about three or four inches wider. He also explained the stair lift has a built-in safety mechanism that stops the lift from operating if there is any resistance, such as that which would occur if a rider's foot became stuck between the foot rest and a stair.

27. Mr. Borman also explained there are several different seat belt options that can be installed. One option is similar to that installed on the prototype, but a flap on top of the buckle is lifted to release the tongue, similar to seat belts on airplanes. Another appropriate option for claimant is a harness that fits similar to backpack straps and clips across the chest. Different size seats can also be installed.

28. Mr. Borman stated the controls can be installed on the left or right armrest. Additionally, the stair lift can be operated by remote control, so one of claimant's parents could operate it for him. Regardless of whether the stair lift is operated by claimant or one of his parents, Mr. Borman recommended claimant should always use it under close supervision.

29. Finally, Mr. Borman explained he would install the stair lift in claimant's home so it wraps around the banister at the bottom of the stairs. The top of the stairs lead to a long hallway, so Mr. Borman would install approximately two feet of track beyond the top step to reduce the risk of claimant falling down the stairs when exiting the chair.

## DISCUSSION

30. It is undisputed that the manner in which claimant climbs the stairs in his home is unsafe, and durable medical equipment must be installed to improve his safety. Ms. Kidroske explained that installing a stair lift is the most cost-effective option, because it meets all of claimant's needs and is more economical than a vertical platform lift. Claimant's parents, on the other hand, believe the choice should not be based solely on cost, and a vertical platform lift is the safest option for claimant.

31. VMRC is required to obtain the most cost-effective durable medical equipment that will enable claimant to climb the stairs in his home more safely. However, "most cost-effective" is not synonymous with "least expensive." The cost of the different options being considered is only one factor in determining the most cost-effective one. Other factors include whether the option satisfies claimant's needs, the parties' preferences, claimant's ability to use the equipment, and safety.

32. One Source Mobility, Inc.'s, quoted cost for installing a vertical platform lift in claimant's home is more than double Modesto Mobility Center Inc.'s quoted cost for installing a stair lift. And the former quote does not include the cost of additional

engineering work that would be required for installation of a vertical platform lift. The quote claimant's mother received for such work is \$2,220. Both a stair lift and a vertical platform lift would provide claimant safer access to the second floor of his home. VMRC is willing to fund the purchase and installation of a stair lift, but claimant's parents want a vertical platform lift. Claimant was able to climb on and off the seat and operate the stair lift without assistance in Modesto Mobility Inc.'s showroom. There was no evidence of his ability or inability to operate a vertical platform lift.

33. VMRC's video of claimant using the stair lift in Modesto Mobility Inc.'s showroom raised potential safety issues. Claimant had a tendency to sit on the edge of the seat, and he appeared to be sliding off the seat even after being instructed to move all the way back. He was unable to fasten the seat belt on his own, and the foot rest was too narrow to be of any use. His mother also raised concerns over his ability to operate the stair lift, his tiring easily from operating the stair lift, his potential for removing the seat belt and trying to get out of the seat too early, or the possibility that he could fall down the stairs when exiting the lift at the top of the stairs.

34. Considering all factors relevant to determining the most cost-effective option, a stair lift is more cost-effective than a vertical platform lift. The former is substantially less costly than the latter, and it will eliminate claimant's current need to crawl upstairs on his knees and slide downstairs on his stomach. VMRC is willing to fund the stair lift, claimant is physically capable of using it, and Mr. Borman persuasively explained how it could be customized to claimant's needs to eliminate the safety concerns raised by the video. Ultimately, any equipment installed will need to be used by claimant under close supervision by his parents, just as they closely supervise him when climbing the stairs now. Therefore, claimant's appeal is denied.

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## LEGAL CONCLUSIONS

### APPLICABLE BURDEN/STANDARD OF PROOF

1. Claimant has the burden of proving by a preponderance of the evidence that VMRC is required to fund the purchase and installation of a vertical platform lift. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant need only prove it is more likely than not that VMRC is required to fund the purchase and installation of a vertical platform lift. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

### APPLICABLE LAW

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” in order to enable such persons to live in the least restrictive environment possible. (Welf. & Inst. Code, § 4502, subd. (a).) The state agency charged with implementing the Lanterman Act is the Department of Developmental Services, which is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (Welf. & Inst. Code, § 4520.)

3. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code,

§4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or his representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer's developmental needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), and (4); 4646.5, subd. (a); 4512, subd. (b); and 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. Although regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP, they must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services which a consumer may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.)

5. Purchasing and installing a stair lift in claimant's home is more cost-effective than purchasing and installing a vertical platform lift. Therefore, VMRC is required to fund only the stair lift, and claimant's appeal is denied.

## ORDER

Claimant's appeal of Valley Mountain Regional Center's decision to deny funding for a vertical platform lift in his home is DENIED, and the regional center's action is UPHELD.

Valley Mountain Regional Center shall act expeditiously to fund the purchase and installation of a stair lift in claimant's home. The stair lift shall include a remote control

for operation by a third-party, a seat and foot rest that properly fit claimant, and a seatbelt that includes a harness.

DATED: October 2, 2018

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COREN D. WONG

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.