

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2018080565

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DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Imperial, California, on October 3, 2018.

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

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

The matter was submitted on October 3, 2018.

ISSUE

Should SDRC reimburse claimant \$8,000 for a bathroom renovation?

FACTUAL FINDINGS

1. Claimant is a 10-year-old male who receives services from SDRC. Claimant is confined to a wheelchair and requires total care for his self-care needs, including toileting, bathing, dressing, and eating.

2. Blesila Wall is claimant's Consumer Services Coordinator. According to SDRC's Consumer I.D. Notes, on April 5, 2016, claimant's mother spoke to Ms. Wall

about obtaining assistance for the installation of an American with Disabilities Act (ADA) accessible roll-in shower. Ms. Wall referred her to Southern California Housing Collaborative (SCHC), a non-profit organization that helps families fund roll-in showers for developmentally disabled children. Ms. Wall obtained information from SCHC that was provided to the family.

3. On June 23, 2016, Ms. Wall sent SCHC a request form completed by claimant's parents. From this point on, claimant's parents had direct communication with SCHC. On April 4, 2017, Ms. Wall spoke to claimant's mother who reported that someone from SCHC came to measure the bathroom in September 2016, but since then, there had been no follow-up. Ms. Wall emailed SCHC to request an update.

4. On May 17, 2017, claimant's mother reported to Ms. Wall that the roll-in shower through SCHC had been approved and they were awaiting installation. During an annual review meeting on October 30, 2017, claimant's parents reported that they were expecting the renovation to be completed in November.

5. On May 25, 2018, SDRC Program Manager Joab Gonzalez met with claimant's parents. They informed Mr. Gonzalez that Ms. Wall had referred them to SCHC to fund a bathroom renovation for claimant. After two years of waiting, SCHC communicated with them that some construction companies would come out and prepare quotes. The first estimate was too high, so SCHC sent another company to prepare an estimate. That contractor asked claimant's parents to sign the quote and indicated that construction would begin soon. Claimant's father did not contact SCHC because he believed that it had already approved the quote and would pay for the bill. After the renovations were completed, the contractor billed the family \$22,059.

6. On July 3, 2018, claimant requested that funding assistance from SDRC for a portion of the cost of the bathroom renovation be included in the Individual Program Plan (IPP) as an addendum.

7. On July 10, 2018, SDRC sent claimant a notice of proposed action denying his request for funding assistance. The notice stated that the renovation occurred through SCHC, and there had never been any IPP team agreement to have SDRC fund or pay for any portion of the project.

8. Claimant filed a Fair Hearing Request on August 14, 2018, in which he requested "reasonable financial assistance" to mitigate the cost of the ADA bathroom. This hearing ensued.

9. Mr. Gonzalez testified that applicable law prohibits SDRC from funding services or supports provided in the past that were not pre-approved by SDRC. SDRC is also required to utilize generic resources in pursuing funding requests. Had claimant requested that SDRC fund the renovation, there would have been an IPP team meeting to request the funding. SDRC would also send out a physical therapist to ensure that the renovation would meet claimant's needs. SDRC would also attempt to obtain funding through other sources, such as Medi-Cal. Only once all generic resources were deemed exhausted or not appropriate for claimant's needs, would SDRC be able to fund the project through a vendored service provider. In this case, SDRC referred the family to SCHC because it is a generic resource in the community that has funded similar projects in the past. Mr. Gonzalez was not aware at the time that it only funded half of a project's costs. SDRC was never aware that there was an issue between the family and SCHC until the renovation had been completed and the family received the bill from the contractor.

#### TESTIMONY OF CLAIMANT'S FATHER

10. Claimant's father testified that they trusted SDRC when Ms. Wall referred them to SCHC for financial assistance with the bathroom remodel. The remodel was necessary because claimant is wheelchair bound and needs a roll-in shower to safely bathe him. Based on the referral, he believed that SCHC would pay for the entire project. During the process they spoke directly with SCHC's executive director, Nathan Schmid,

and Gloria Sandoval, a housing placement coordinator. Claimant's father provided a copy of an email from Ms. Sandoval on August 14, 2017, providing the name of a plumbing contractor he could contact for an estimate. She wrote, "Once that's done then we can be in contact with the company [and] see what can be done."

11. Claimant's father said the plumbing contractor came to their house along with a general contractor. The general contractor returned several days later with an estimate. The contractor provided the estimate and claimant's wife asked him if the amount had been approved. The contractor responded that it had been, and she signed the contract, believing that SCHC had approved the amount. At this point, claimant's father believed that SCHC had approved the construction costs and would completely fund the project. He never spoke to anyone at SCHC to confirm that they would pay all of the costs.

12. After the construction was completed, claimant's parents received the invoice for \$22,059. He believed that SCHC would be paying the cost and the invoice was just for his records. After the contractor followed-up with him regarding payment, claimant's father called Mr. Schmid. He said Mr. Schmid was very unprofessional on the telephone and did not say "nice things." He said that if claimant's father submitted a letter admitting he made a mistake, then he might take a funding request to the board. Because Mr. Schmid had been so unprofessional, claimant's father no longer wanted to deal with SCHC.

13. Subsequently, the contractor filed a civil suit and placed a mechanic's lien on their house. They settled the matter out of court for \$16,000. Claimant's father is requesting \$8,000 from SDRC to help mitigate the costs. He had to take a loan from his retirement account in order to pay the costs. He believes that SDRC should not have referred them to an organization such as SCHC.

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## 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 by a preponderance of the evidence that a regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### THE LANTERMAN ACT

2. Welfare and Institutions Code section 4501 outlines California's responsibility for persons with developmental disabilities and the State's obligation to provide services and supports to them.

3. 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.

4. 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.

5. Welfare and Institutions Code section 4646.4 requires the regional centers to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of supports and services.

6. 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, California Children's Services, private insurance, or a health care service plan.

7. California Code of Regulations, title 17, section 50612, provides:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .

(b) The authorization shall be in advance of the provision of service except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendor service provider. . . .

## EVALUATION

8. The Lanterman Act and applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services and that the regional center must follow when securing those services. When SDRC learned of claimant's parent's desire for a roll-in shower, it referred them to a non-profit organization that provides financial assistance. The Lanterman Act requires SDRC to pursue all available funding sources before funding services. (Welf. & Inst. Code, § 4659.) Although SDRC facilitated contact between the family and SCHC, the family dealt directly with SCHC. It is unfortunate that claimant's family believed that SCHC would be covering all costs when the family entered into a contract with the contractor. However, SDRC bears no responsibility for this misunderstanding. Although this proved to be a costly mistake for claimant's family, which has been a financial hardship, SDRC is prohibited by regulation from reimbursing claimant for services that have already been provided, except in the case of an emergency. (Cal. Code Regs., tit. 17, § 50612.) Accordingly, the Lanterman Act requires that claimant's request be denied.

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## ORDER

Claimant's appeal is denied.

DATED: October 11, 2018

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ADAM L. BERG

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.**