

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018090159

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 11, 2019, in San Bernardino, California.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother and father represented claimant, who was not present at the hearing.

The matter was submitted on March 11, 2019.

ISSUE

Should IRC fund claimant's request for a ceiling lift system for the purpose of making it easier to transfer claimant from her bed to an adjacent bathroom?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 16-year-old female who qualifies for regional center services based on a diagnosis of mild intellectual disability. Claimant also has spinal muscle

atrophy type 1, which leaves her unable to walk, sit upright, or transfer positions without assistance. She has a tracheotomy and is ventilator-dependent. She is fed through a G-tube and does not have bowel or bladder control. Claimant is entirely dependent on others for all self-care tasks.

2. Claimant receives 240 hours per month of In-Home Supportive Services, with her mother as the provider. She receives health care through California Children Services (CCS). IRC provides \$150 per year in diaper reimbursement and 30 hours per month of vocational nursing respite.

3. On August 6, 2018, IRC issued a Notice of Proposed Action stating that it was denying claimant's request to fund a ceiling track system leading from claimant's bedroom to the bathroom. In any accompanying letter, IRC stated that it was denying the request because IRC believed there was sufficient room for a Hoyer lift, which is a generic resource provided by Medi-Cal. In addition, IRC stated that claimant has not requested a Hoyer lift or home modification assistance through CCS.

4. Claimant filed a Fair Hearing Request on September 4, 2018. Claimant's mother, her authorized representative, wrote that claimant does have a Hoyer lift, but the lift does not fit in the bedroom, and there is a bathtub that limits the use of the lift. In an attached letter, she outlined the reasons that a Hoyer lift is not safe and the medical reasons why claimant needs to be bathed daily in the shower.

5. On October 3, 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's family recently moved from a house with a roll-in shower. In the new house, the bathroom next to claimant's bedroom has a bathtub. Claimant's mother currently carries claimant from her bed to a shower chair in the bathroom. Claimant's mother was awaiting a site visit from a representative from National Seating & Mobility, Inc., as well as a home visit from a CCS

occupational therapist. Claimant's mother believes that use of a Hoyer lift is unsafe because it does not provide trunk or neck support for claimant and due to the risk of vent tube disconnection. Claimant's mother provided documentation from CCS listing items not considered medically necessary, which includes ceiling mounted lifts. Claimant's mother also provided two medical recommendations for a ceiling track system and an estimate for installation totaling \$14,603.68.

6. Following the informal meeting, IRC maintained its position that there was enough room for a Hoyer lift, which is a generic resource, and the most cost effective means to meet claimant's needs. IRC maintained that funding the equipment would not alleviate claimant's developmental disability to meet the services and supports identified in the Individual Program Plan (IPP). IRC agreed that it would reconsider the request if it received additional documentation.

7. Michelle Knighten is a licensed physical therapist, and Annette Richardson is a licensed occupational therapist, both of whom are employed by IRC. They visited claimant's home on June 25, 2018, and conducted an assessment. Their initial conclusion was that Hoyer lift could be used to lift claimant in to a bath chair, which could then be rolled into the bathroom, and a sliding bath chair could be used to transfer claimant to the bathtub. However, because these items are resources provided by CCS, they recommended claimant's mother contact CCS for an evaluation.

8. Leticia Peacock, an occupational therapist from CCS, conducted an assessment on October 18, 2018, and determined that the Hoyer lift would not fit in the bathroom and a sliding bath chair would not work because she required a reclined position while seated due to her fragile state. Ms. Peacock considered an inflatable bath tub, but she felt that because it required claimant to be rolled to either side, it would place her at risk for further injury. Ms. Peacock indicated that the safest way to bath claimant was by a sponge bath.

9. Ms. Knighten testified that she believed that use of an EZ Bath is still a viable option. The EZ Bath is an inflatable bath that is inflated on the patient's bed and filled with water via a hose connected to the bathroom faucet. The water is then pumped out of the bath after use. Although Ms. Peacock indicated that there was increased risk with rolling claimant, which is required to transfer her into the bath, it is already necessary to roll claimant in order to change her clothes, change the bedding, and provide pressure relief. Thus, Ms. Knighten disagreed that there any increased risk with the EZ Bath. An inflatable shampoo basin could also be used to wash claimant's hair. Ms. Knighten noted that a sponge bath in bed was also a reasonable alternative, an option used by many IRC consumers. In conclusion, Ms. Knighten and Ms. Richardson believe that there are generic resources that would adequately meet claimant's bathing needs.

10. Carmelita Florentino-Rodriguez is an IRC program manager and supervises claimant's consumer services coordinator. Ms. Florentino-Rodriguez testified that IRC decided not to fund claimant's request because generic resources have not been exhausted and the request does not alleviate a developmental disability, rather, claimant's physical disabilities.

#### CLAIMANT'S EVIDENCE

11. Claimant's mother testified that she and her husband are the only ones who bathe claimant. Since moving into a new house, claimant's mother carries claimant from her bed to the bathtub. Claimant now weighs more than 80 pounds, and this method of transfer is physically taxing to claimant's mother and poses risk of injury to claimant. The family is requesting a ceiling track lift, which would provide head, back, and lateral support to claimant, while minimizing the risk of injury from slippage or falls. Claimant has low bone density, which heightens the risk of fractures associated with a fall or transfers.

Claimant has hyperhidrosis, which causes her to sweat excessively. She also has very oily skin and itchy scalp, which require medicated shampoos. Her skin is also very sensitive. If there is any soap residue she can get blisters. She takes daily showers to help with these skin and medical issues and alleviate the effects of the hyperhidrosis and scalp issues. Claimant enjoys the daily showers. The steamy shower helps alleviate respiratory issues. Claimant deserves to be able to take a shower like anyone else, and should not be subjected to the indignity of being bathed in bed. Claimant's mother believes that the ceiling track system is more cost-effective than a bathroom model and much cheaper than if claimant had to be institutionalized. Based on information from the vendor, IRC and other regional centers have funded this track system for other consumers, which she believes weakens IRC's argument that there are other generic resources.

Claimant's mother was informed by CCS that there was a possibility that Medi-Cal could provide a Home and Community-Based Services (HCBS) waiver up to \$5,000 to cover the cost of the ceiling lift system. However, CCS informed her that IRC would first have to deny the claim before the waiver could be considered.

12. Claimant submitted letters from Diane Carlson, RN, BSN, case manager, and Andrew Skalsky, M.D., a pediatric rehabilitative medicine specialist, at Rady Children's Hospital Neuromuscular Clinic. They recommended a ceiling track system for claimant because it requires less intervention by caregivers in comparison to other transfer devices and permits the caretaker to pay closer attention to the ventilation equipment.

13. Claimant submitted a letter from Mark Beaman, a representative of National Seating & Mobility, Inc. Mr. Beaman performed an evaluation at claimant's home, along with CCS's occupational therapist. He believes that a ceiling track system is the most appropriate solution to transfer claimant due to the layout of the house. He

noted that currently, claimant would need to be transported in an upright position and the Hoyer lift cannot fit in the bathroom, which has a raised tub. The ceiling lift would allow claimant to be transferred in a supine position. Mr. Beaman provided an estimate for installation of such system, which came to \$7,438.44.

## LEGAL CONCLUSIONS

### THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether a regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the 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. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for  
persons with developmental disabilities and an obligation to

them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. 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.

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan (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.

7. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

8. 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.

9. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

10. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

11. The regional center is also required 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. (Welf. & Inst. Code, § 4646.4.)

12. Welfare and Institutions Code section 4685, subdivision (c)(1) provides:

The department and regional centers 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 individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and

supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

13. 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 other governmental programs, such as Medi-Cal and CCS.

#### EVALUATION

14. There is no question that claimant has critical needs, of which bathing is one of them. Claimant's mother testified credibly with respect to the difficulty in bathing claimant and the risk of injury transporting her from her bed to the bathtub. While sympathetic to claimant's position, the testimony from IRC's physical therapist and occupational therapist, in addition to the assessment performed by CCS's occupational therapist, established that there are other options available to bathe claimant in bed. Providing claimant with the requested track system would meet her needs and is likely the best system of transferring claimant from her bed to the bathtub. It would also allow her to have a full shower instead of being bathed in bed, which has inherent limitations. Notwithstanding these considerations, the EZ Bath or sponge bathing are more cost effective alternatives that are sufficient to accomplish claimant's bathing. Although they may not be the desired method of bathing claimant, the Lanterman Act does not require IRC to fund the ceiling track system because there are reasonable alternative generic resources. In addition, all other funding sources must be exhausted before a regional center can fund a service. It was established that CCS does not cover ceiling lifts as durable medical equipment. However, claimant did not establish that funding through the HCBS waiver program had been exhausted or denied. Accordingly, IRC's decision to

deny claimant's request is upheld.

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## ORDER

Claimant's appeal is denied.

DATED: March 22, 2019

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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.**