

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018090664

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on November 1, 2018.

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

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

The matter was submitted on November 1, 2018.

ISSUE

Should IRC fund claimant's request for a bathroom remodel for the purpose of installing a walk-in bathtub to bathe claimant?

FACTUAL FINDINGS

1. Claimant is a 27-year-old man who qualifies for regional center services based on diagnoses of cerebral palsy and severe intellectual disability. According to

claimant's Client Development Evaluation Report (CDER), claimant cannot walk, uses a wheelchair, and requires assistance to eat, take medication, toilet, and engage in self-hygiene activities. Claimant lives with his parents in the family home.

2. Between April and August 2018, consumer ID notes showed that IRC had conversations with claimant's parents regarding their request for IRC to fund equipment for the safe bathing of claimant. Claimant's parents requested IRC to fund a bathroom remodel to accommodate a walk-in bathtub for claimant.

3. Claimant's parents obtained an estimate for the requested bathroom remodel and walk-in bathtub, in the amount of \$16,900. Claimant's parents requested their insurance to fund the bathroom remodel and walk-in bathtub, but their insurance denied the request. Claimant's parents did not appeal the denial through their insurance.

4. On May 14, 2018, IRC Physical Therapist Michelle Knighten and IRC Occupational Therapist Annette Richardson went to claimant's home and completed an assessment. They also testified at the hearing. The following is a summary of the assessment report (report) and their testimony.

There are two bathrooms in the family home. One bathroom is the hallway bathroom, which has a standard 5-foot bathtub. The other bathroom is the master bathroom, which has a 5-foot shower. The shower has a 4 to 6-inch lip on the bottom. There is much easier access for claimant to bathe in the master bathroom than the hall bathroom, because there is more clearance in the master bathroom.

Claimant used a transfer bath bench for years, which had been provided by his insurance. The bench is placed over the bathtub and requires claimant to get on the bench and slide over into position to be bathed. The bath bench was very old so claimant's mother called the insurance company for a replacement. The insurance company provided a standard bath chair. This requires that claimant hold onto a

handicap bar while his mother lift's his leg, allowing him to step into the bathtub. Claimant's mother reported that she and claimant had fallen on at least two occasions using the bath chair because claimant failed to hold on to the handicap bars when stepping into the bathtub. The report also noted the following:

Claimant's mother further discussed claimant's constipation and the medication that he takes to alleviate constipation. She reports that often his bowels will become very loose, and she will need to clean him in the shower. She reported that she did not want him to sit on something and scoot as the feces would transfer onto the bath bench. She also reported that she would clean him in the living room or in his bedroom before going into the bathroom, but still continued to have concern over the feces that remained on his legs.

The report did not dispute that a bath bench or bath chair might not be appropriate for claimant's bathing needs. Ms. Knighten discussed with claimant's mother the possibility of a sliding transfer bath bench, which contains a set of tracks over the bathtub where claimant would sit on a chair outside the bathtub and then be easily slid over into position for bathing. Claimant's parents were instructed to request a demonstration of the sliding transfer bath bench from their private insurer, and upon denial, make a request through their secondary insurance, Medi-Cal. There was no evidence submitted that those requests for the generic resource were made and denied.

5. The report concluded that claimant has "many" options for safe bathing:

1. The family could continue to utilize the shower chair that was recently obtained through claimant's insurance. This chair does not work as well as his previous

bath bench that the insurance should have replaced. Therefore the family should look into other generic resources.

2. The family could request through their insurance a replacement of the previous transfer bath bench that worked for several years with claimant. This bath bench requires that claimant sit on the bench outside the tub and then shimmy himself to the center of the bath for more bathing. This keeps him in a seated position throughout the bathing process. Claimant's mother reports that claimant is able to scoot by himself.

3. The family could consider a sliding bath chair. This would eliminate the need for stepping into the bathtub which claimant's mother reports to be unsafe.

4. Despite claimant's mother's resistance to [having claimant] use the shower in the master bathroom, the safest transfer for claimant would be provided by stepping into a shower dam of 4 to 6 inches as opposed to the entire side of a tub.

6. On August 8, 2018, IRC notified claimant's parents that the request to fund a bathroom remodel and walk-in bathtub was denied. Specifically, IRC referred to the assessment report and noted that there were many bathing options short of IRC funding a bathroom remodel and walk-in bathtub, and generic resources had not been

exhausted. IRC also wrote that a walk-in bathtub, based on the assessment report, was not needed to safely bathe claimant.

7. On September 10, 2018, claimant's mother requested a fair hearing contesting IRC's decision not to fund a bathroom remodel and walk-in bathtub.

8. Christina Calderon is claimant's Consumer Services Coordinator, and she testified at the hearing. Ms. Calderon testified generally about the above-referenced history regarding this case, and also noted that she had advised claimant's parents to appeal the insurance company's denial of the request to fund a bathroom remodel and walk-in bathtub. However, they did not do so, or at least had not provided IRC with any documentation that they had done so.

9. Ms. Knighten also testified at the hearing consistent with the assessment report, detailed above. Ms. Knighten also stated there was no evidence that claimant's insurance company had denied any request for a sliding transfer bath chair like the one discussed when she completed the assessment. Ms. Knighten also testified that, if claimant's parents were insistent on bathing him in the hall bathroom as opposed to the master bathroom, there is a way that the existing bathtub could be remodeled and fit with a fiberglass insert for under \$1,000 to eliminate the need for claimant having to step over the bathtub.

10. Ms. Richardson testified at the hearing that there are other options for bathing claimant other than a bathroom remodel and walk-in bathtub, and that, in light of those options noted in the assessment report, a walk-in bathtub is not a medical necessity.

11. Alexander Rubio is a Program Manager for IRC. Mr. Rubio testified at the hearing. Mr. Rubio stated that claimant's parents did not appeal the denial of the walk-in bathtub and also had not explored the other generic resources noted in the assessment report. He said that the generic resources, such as the sliding transfer bath

bench, would meet claimant's needs without issue. Mr. Rubio explained the safest option for claimant was using the existing master shower. This would eliminate the need for claimant to have to step over a bathtub edge. Moreover, even assuming that claimant's bathroom was remodeled to accommodate a walk-in bathtub, the walk-in bathtub has the same kind of "lip" the master shower has. So, even the walk-in bathtub would not completely eliminate the need to step over something. Mr. Rubio explained that claimant is incontinent and the walk-in bathtub might not be the best option because if claimant were to have an unplanned elimination while being bathed, he would have to remain sitting in the walk-in bathtub until the water drained before he could be removed.<sup>1</sup>

In sum, given the fact that generic resources have not been fully explored and the fact that a walk-in bathtub is not cost-effective in light of other adequate bathing options, the request had to be denied.

12. Claimant's mother's testimony is summarized as follows: Ms. Knighten told them to obtain a durable medical equipment assessment from the insurance company so they did. The insurance company gave them a sliding transfer bath bench with the rails, like Ms. Knighten had described. She feels the chair is much easier and feels that

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<sup>1</sup> Claimant's father became angry and strongly objected to Mr. Rubio raising the issue of incontinence, and noted that claimant has "never" had an accident while being bathed. However, claimant's CDER report and Individualized Program Plan both document claimant's incontinence and the assessment report also showed claimant's mother told Ms. Knighten that claimant sometimes has bowel movements that leave him soiled, so she did not want to have to slide him on the bath bench. Thus, it was neither improper nor irrelevant for Mr. Rubio to note his concerns regarding a walk-in bathtub should claimant have an unplanned elimination.

claimant is “too heavy” to slide on the rails. She felt it is more dangerous and harder to push so she is not using it. Instead, she has gone back to using the old bath bench. Claimant’s mother said while using the old bath chair she has dropped claimant twice.

13. Claimant’s father’s testimony is summarized as follows: They are not there to get a walk-in bathtub just because they want one; they are there because they feel claimant should be able to take a shower like a normal person and be safe. They have tried using other equipment. Claimant is 100 pounds so pushing him on the rails is difficult for his wife. He does not feel the master bathroom shower is appropriate for claimant because although it has a 5 foot opening, there is also a glass door. Trying to move claimant into the master shower with a glass door so close, given that claimant has no control over his body, is a concern. Claimant’s father thinks more time should have been spent trying to see what it takes to get claimant into the bathtub. He cannot stand and his mother is short, so it is difficult. Claimant’s father also said he didn’t “feel” that they were told they had to appeal the insurance company’s denial of their request for the insurance company to fund a walk-in bathtub. Presently, they are only using the replacement transfer bath bench (without the rails) which is not appropriate. They have to help him in the bathroom, hold him, lift his legs over the bathtub, place him in the bathtub, and then lift him out after the bath. A walk-in bathtub would be easier.

## 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 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 of the 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 the need for the requested service and support, funding of a bathroom remodel and walk-in bathtub. Claimant has not met that burden.

Although a walk-in bathtub may be the most convenient and preferable method of bathing claimant, the evidence established that a walk-in bathtub is not a medical necessity and there are other adequate generic resources available that meet claimant's needs. The transfer bath bench, a generic resource, worked for years without issue. Although there is no disagreement that the replacement bath chair funded by claimant's insurance to replace the transfer bath bench was not the safest way to bathe claimant, claimant's insurance company did provide a second transfer bath bench with rails. The transfer bath bench with rails, a generic resource, is a workable solution. While claimant's mother may experience difficulty sliding claimant for several feet across the tracks, there are two parents in the household that can assist with claimant's bathing needs.

Moreover, it would make it much less cumbersome to utilize the transfer bath bench with rails (or one of the other non-railed bath chairs) in the **master** bathroom, where there is only a 4 to 6-inch lip instead of a full bathtub. Claimant would not have to be lifted or slid over the side of a bathtub in order to safely bathe him, if his bathing was completed in the existing master bathroom. It is also noted that the 4 to 6-inch lip that exists on the shower in the master bathroom is the same height that would exist with the walk-in bathtub sought by claimant's parents. In other words, the master

shower coupled with any one of the generic resources like the bath chair, transfer bath bench, or transfer bath bench with rails would offer the same level of safety as a walk-in bathtub. Although claimant's parents were concerned that there is a glass shower door in the master bathroom, this concern can easily be eliminated by replacing the glass door with a shower curtain.

While claimant's parents' desire to remodel the hallway bathroom for claimant to have his own walk-in bathtub is understandable, having IRC fund such a remodel is not the most cost-effective use of public resources; would be fiscally irresponsible; and would therefore violate the Lanterman Act given that there are other generic resources available to meet claimant's needs.

## ORDER

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

DATED: November 13, 2018

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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.**