

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019011167

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2019, in San Bernardino, California.¹

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

Wendy Dumlao, Attorney at Law, represented claimants, who were present at the hearing with their mother and father.

¹ On February 5, 2019, claimant's case was consolidated for hearing with OAH Case Nos. 2019011168 and 2019011171, and these three cases were heard together. All three cases involved the same issue. Welfare and Institutions Code 4712.2 requires separate decisions. For clarity of the decision, this claimant will be referred to as Claimant #1, and her brothers will be referred to as Claimant #2 (OAH No. 2019011168) and Claimant #3 (OAH No. 2019011171).

The record was held open until April 29, 2019, for the parties to submit simultaneous closing arguments, which were timely received. Claimants' closing argument was marked as Exhibit W for identification. IRC's closing argument was marked as Exhibit 27 for identification. The record was closed and the matter submitted on April 29, 2019.

ISSUE

Should IRC fund claimant's request to purchase a changing table and fund a home addition, remodeling, and a ceiling track system?

FACTUAL FINDINGS

BACKGROUND

1. Claimant #1 is a 15-year-old female who qualifies for regional center services based on diagnoses of autism and mild intellectual disability. Claimant's mother testified that claimant #1 also has a possible diagnosis of cerebral palsy and suffers from drug resistant epilepsy. Claimant #1 requires constant supervision and assistance with all self-care tasks. Claimant has 17-year old twin brothers who are also IRC clients.

2. Claimant #2 is a 17-year-old male who qualifies for regional center services based on diagnoses of autism and epilepsy. He is 5 feet 6 inches and weighs approximately 100 pounds. He has deteriorating vision and can walk short distances with someone walking side-by-side, but cannot walk independently. His epilepsy is drug resistant; he wears a helmet to protect his head from falls. He has no control over bladder or bowel and wears a diaper. He is dependent on others for all personal care tasks.

3. Claimant #3 is Claimant #2's twin brother who qualifies for regional center services based on diagnoses of autism and epilepsy. He is 5 feet 6 inches and weighs 130 to 140 pounds. His mother testified that he also has cerebral palsy, Chiari brain

malformation, and orthopedic impairments. His self-care needs are similar to those of his twin. He no longer is able to walk independently.

4. Each of the three claimants receives 283 hours per month of In-Home Supportive Services, 128 hours per month of in-home respite service, and health care through private insurance and California Children's Services (CCS). They receive special education services through their school district and each have a one-to-one aide in addition to a nurse aide at school.

5. On January 3, 2019, IRC issued a Notice of Proposed Action and attached a letter for each claimant stating that it was denying their request to fund a changing table, home addition, and remodeling. The letters stated that IRC was denying the request because the purchase of a changing table, home addition, and remodeling were not medically indicated. The letter stated, "Although, remodeling the family home would give the home an overall open floor plan concept, making doorways wider and bathroom access simpler is not a medical necessity." In addition, IRC stated that it was required to pursue all potential funding sources including medical insurance, CCS, and parental income, as well as considering parental responsibility to provide the necessary supports and services.

6. Claimants filed Fair Hearing Requests that were received by IRC on January 24, 2019. Claimants' father wrote that the assessment completed by IRC was not accurate and IRC should have consulted with a mobility expert in addition to an occupational therapist and physical therapist. Claimants requested modifications to the home to make it a "safe and dignified environment."

EVIDENCE PRESENTED BY IRC

7. Sandra Fuller is a Consumer Services Coordinator for IRC and has been claimants' case manager for the past two years. During an Individualized Program Plan (IPP) meeting in 2018, claimants' parents requested IRC fund a home modification. They

explained that claimants were getting bigger and it was more challenging to get them into the bathroom. They also requested that IRC fund the purchase of a diaper changing table. Ms. Fuller informed them that they needed a denial letter from their insurance company.

8. On April 16, 2018, claimants' mother emailed Ms. Fuller and expressed that the situation had gotten worse. She said Claimant #3 injured his shoulder when he became stuck between the tub and the toilet while she was trying to get him out of the bathtub.

9. On July 3, 2018, Ms. Fuller spoke with claimants' mother who said she had a floorplan for the requested bathroom modification. Ms. Fuller instructed claimants' mother to send the floorplan to their insurance company first, and if the claim is denied, then IRC would "pick up from there and try to assist" with the bathroom modification. Claimants' mother also inquired about converting their home to an adult residential facility.

10. Claimants presented denials from CCS and their insurance indicating that they do not cover payment of a diaper changing table or home modifications.

11. IRC's Operations Manual provides criteria for funding home modifications, where, without the modifications, the consumer would require placement into a more restrictive environment. Under the manual, any modification may not increase the value or square footage of the property. Excluded from the criteria are home modifications that do not provide a direct medical or remedial benefit such as air conditioning, roofing, or floor repair.

12. Michelle Knighten is a licensed physical therapist, and Annette Richardson is a licensed occupational therapist, both of whom are employed by IRC. Ms. Knighten has worked at IRC for the past 15 years and Ms. Richardson for 18 years. They visited claimant's home on November 14, 2018, and conducted an occupational and physical

therapy equipment assessment. They prepared a joint report and both testified at this hearing. The following is a summary of their testimony and report.

13. The purpose of their evaluation was to determine the need for a home addition and remodel as requested by claimants' parents. They reviewed floorplans of the current house and proposed plans for the remodel. The home is 2,100 square feet, has three bedrooms, two bathrooms, an office, a living room and family room. Claimant #1 has her own bedroom and the twins share a bedroom that accommodates two queen-sized beds and a massage table. A guest bathroom is located off the hallway between the two bedrooms. The hallway that leads from the living room to these two bedrooms is 36 inches wide. The opening from that hallway into the kitchen is only 21 inches because of the depth of the cooktop cabinet and refrigerator. The guest bathroom has a toilet and standard-length bathtub. The doorway clearance is 26 inches. The family uses a bath-chair in the guest bathroom that lowers into the bathtub. The master bathroom contains a 5-foot walk-in shower with an 8-inch dam. The door opening into the master bathroom is 27 inches.

14. The proposal for the remodel consisted of a 662 square foot addition. The existing guest bath and Claimant #1's bedroom would be converted and expanded into a bathroom with a large walk-in shower and jetted bath tub. The current master bedroom would be expanded and occupied by Claimant #1, who would have her own bathroom with similar features. A small caretaker room next to the office would be occupied by the parents. Ceiling tracks would be installed throughout the house. In addition, the kitchen would be remodeled to make it more open to the entire house.

15. Claimants' parents said that the kitchen remodel was needed because the small opening from the kitchen to the hallway posed a safety risk. They also felt that the kitchen and living room needed to be opened up so the children could be monitored from anywhere in the house. As an example, Claimant #3 had a seizure in the family

room while his caregivers were in the living room. They would not have known he had a seizure if they had not heard it.

16. Claimants' parents explained that the guest bathroom was too small to accommodate the children because it takes two people to lift Claimant #3 from the toilet and guide him in and out of the bathroom. The small size also makes it difficult to bathe. Claimants' parents explained they were requesting two new bathrooms because they did not think Claimant #1 should have to share a bathroom with her two brothers as she gets older. Both bathrooms contained showers and tubs so the children could have the option to bathe or shower. The track system was requested in order to decrease the number of caregivers for Claimant #3. Claimant #1's bedroom also contained a track system, despite the fact that she walks, to prepare for the future if her motor ability decreases.

17. Ms. Knighten and Ms. Richardson believed there were other options that could be utilized in the guest bathroom to limit the number of people required to assist claimants. For example, Claimant #3 could be transferred to a commode chair in his bedroom, rolled into the bathroom, and transferred by one person to the toilet. A commode chair would be narrow enough to pass through the doorway. There are bath chairs that could also be utilized to facilitate bathing. These chairs would fit through the doorway and then could slide over the tub using a track system. These products are a covered benefit by CCS if medically necessary. In addition, the master bath could be used as another bathing option, especially if the glass is removed and replaced with a shower curtain. A shower chair could be used and would make cleaning easier for caregivers.

18. In conclusion, Ms. Knighten and Ms. Richardson believed that although the narrow doorways were not ideal, they were adequate for consumers and should accommodate the Convaid Cruiser mobility devices the children use for long distance

mobility or when recovering from their seizures. While opening up the kitchen would provide better access, there are other more cost-effective options, such as cameras, that could allow caregivers to monitor areas not in a direct line of sight. They did not believe that the requested modifications were a medical necessity due to other available options.

19. Ms. Richardson testified that the only thing she might consider recommending IRC fund would be the changing table. With regard to the changing table, Ms. Knighten and Ms. Richardson believed that the massage table currently in use was adequate for changing diapers. A changing table would not be much safer, but it would be more convenient for the caregivers. Many families change diapers on the bed.

20. Both Ms. Knighten and Ms. Richardson admitted that they were assessing the home for the purpose of evaluating claimants' request for a remodel. They did not perform a full physical/occupational therapy assessment because they believed the parents were not looking for other options other than a remodel. They did not observe the children ambulate or observe how transfers were performed. They did not confirm that the Convaid Cruiser chair could actually fit through any of the doorways. Both Ms. Knighten and Ms. Richardson believed that with proper equipment funded by CCS, the house could be made safe in its present condition. A more in depth assessment would be required to identify specific equipment that could be utilized. They did not provide their suggestions to the family because they believed that the family was only interested in having their home remodeled.

CLAIMANTS' EVIDENCE

21. Claimants submitted a proposal from a licensed general contractor outlining the proposed work. The scope of work is for two room additions, two ADA-compliant bathrooms, and a complete kitchen remodel. The bathrooms would have ADA-compliant supply cabinets, changing tables, toilets, jetted tubs, and roll-in showers.

There would be a hoist system from the bedrooms to the bathrooms. Each bedroom addition would be 320 square feet. The kitchen remodel would involve removal of the center wall, new appliances, new cabinets, and granite countertops. In addition, the entire home would be insulated to bring it up to code, painted, and new flooring installed. The cost for the work was \$231,900.

22. Daniel Aguilera is the owner and president of 2B Mobile, a company that provides consulting for medical equipment and architectural design for accessibility. Mr. Aguilera testified at this hearing. Mr. Aguilera believed that a tracking system in the house was necessary. Using a tracking system would eliminate the need for shower chairs and reduce the risk of injury to claimants and their caregivers. Mr. Aguilera prepared plans for installation of a tracking system throughout most of the house based on the proposed addition and remodel. The estimate for that work was \$74,431.94.

23. Claimants' mother testified that as the children have gotten bigger, the chances that they will be injured after a fall following a drop-seizure has increased and such falls have occurred. This has resulted in Child Protective Services coming to the house to investigate injuries that were reported by the school.

24. The children spend most of their time in diapers, and getting them clean has been a challenge. The children love being in the water. Both Claimant #2 and Claimant #3 are high-tone, meaning that their muscles are very tight. The baths help relax their muscles. Claimant #1 is able to toilet but requires assistance with wiping. Wetting or soiling may occur during the night. Two caregivers are required to bathe each child. Claimant's mother hyperextended her knee on one occasion while bathing a child. Another caregiver went out on workers' compensation when she hurt herself trying to use a gait belt to move a child.

25. Claimant #3 suffered a dislocated shoulder. It was not clear how this occurred, but claimants' mother believed it was caused from the constant lifting from

the ground because he was being changed on the floor at that time. She bought a massage table to aide in changing so that it no longer had to be done on the floor.

26. Claimants' parents sleep with the children to avoid them waking up during the night and getting injured. They also have cameras in the bedroom for monitoring. In February 2019, she and her husband were in the living room when they heard a crash. Claimant #1 had gotten out of bed and suffered a burn after falling or leaning against the wall furnace in the hallway. There was no evidence offered at hearing that claimant received medical attention for this injury.

27. Both parents want their children to remain in the home, but they do not want them to be hurt or for caregivers to be hurt. Claimant's mother said if the modifications were not made, the children might have to live out of the home, which would be much less cost effective than if IRC funded the modifications. They have not thought about moving to another house. They have been in the home since 2003; when they moved there, the twins were very young and Claimant #1 had not yet been born. Claimants' parents owe \$100,000 on the mortgage. They do not think they could find a different home for \$1,300 per month, their current monthly mortgage payment.

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 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 similar services and supports for a minor child without disabilities 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 provides in part:

(a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

[¶] ... [¶]

(c)(1) 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. In their closing argument, claimants requested that IRC fund a bathroom expansion with a walk-in shower; expansion of the doorway to the twins' room; a changing table; addition of a room for Claimant #1 because her room would not be functional after the bathroom remodel; a ceiling-track system; and removal of the furnace and the wall separating the kitchen from the dining room and moving the stove to another space.

15. There is no question that claimants are medically fragile and the challenges they face have increased as they have aged. For example, claimants' mother testified credibly with respect to the difficulty in bathing claimants and the risk of injury transporting them from the room to the bathtub. This is a legitimate concern; however, the remodel and expansion claimants requested that IRC fund goes well beyond any reasonable modification *necessary* for the health, welfare, and safety of claimants. For example, there is no justifiable basis for installing *two* full ADA-compliant bathrooms, each with walk-in showers and jetted tubs, for the sole purpose that Claimant #1 would not have to share a bathroom with her brothers. While the family might want her to have her own bathroom, the request has nothing to do with ameliorating a

developmental disability. Likewise, while a full kitchen remodel would allow better visibility throughout the house, less costly options, such as cameras could achieve the same ends. Likewise, claimants' parents identified a wall furnace that poses a potential safety hazard and caused Claimant #1 to suffer a burn. Funding the removal of the furnace is not a service or support within the meaning of Welfare and Institutions Code section 4512, subdivision (b). In addition, claimants' parents bear responsibility for creating a safe home environment. Finally, claimants failed to establish that a diaper changing table is significantly better or safer for claimants than the massage table currently in use. These alternatives might not be claimants' parents' ideal choice, but IRC has an obligation to utilize public resources in a cost-effective manner.

16. Claimants' argument that funding the home modification is more cost effective than if claimants were placed in a residential facility is unpersuasive. As the Legislature noted, the cost of providing necessary services and supports which enable children with developmental disabilities to live at home is typically lower than the cost of providing out of home placement. (Welf. & Inst. Code, § 4685.) However, this does not mean that every request for services or supports is justifiable as cost-effective for the sole reason that it is cheaper than what out-of-home placement would cost. The services and supports must be *necessary* for keeping the child in the family home. In this case, they are not. Although claimants' family suggested claimants might have to move to a residential facility if the home modification is not approved, there was no evidence that this was in fact a realistic possibility, as evidenced by the fact that claimants' parents have not even looked at the possibility of moving to another home.

IRC's physical therapist and occupational therapist testified that there are other more cost-effective generic resources as an alternative to the home modification that was requested. While the purpose of their evaluation was to determine whether the modification claimants requested was necessary, it is equally clear that claimants'

parents were not looking for an alternative to what they were requesting. They had plans drafted and requested IRC to fund the project in its entirety which prompted the physical/occupational therapy assessment.² Mr. Aguilar's testimony that the tracking system and remodel are the only things that can make the home safe was not persuasive. Just as claimants argued that IRC's physical therapist and occupational therapist had reasons for justifying IRC to deny the request, Mr. Aguilar has a vested financial interest in having his proposal approved and the scope of work exceeded the justifiable need (e.g., installing the system in Claimant #1's room as a prophylactic measure should her mobility decrease in the future).

Claimants failed to meet their burden of establishing that IRC should fund the home modifications as requested. However, as noted, claimants' bathing poses a risk of injury to claimants and the alternatives suggested by IRC's physical and occupational therapists were speculative and based on assumptions that certain bath chair accessories would fit through the doorway. This issue of whether more cost-effective

² IRC could have been more transparent from the onset about its policies regarding home modifications. Instead of explaining that its operation's manual prohibited modifications that increased the value of the existing home, for example, IRC repeatedly told the parents that they needed denial levels from their insurance company. Clearly, IRC was aware that by terms for the coverage that insurance companies do not cover home remodels as requested by the family. IRC's insistence that the family first obtain denial levels resulted in the family needlessly wasting time and energy. Instead, IRC could have engaged the family in a constructive conversation about alternatives to a home remodel and requested a physical/occupational therapy assessment directly aimed at identifying more cost-effective alternatives to make the home safer

generic resources have been exhausted has not been fully explored. Accordingly, at claimants' request, IRC shall arrange for an evaluation by an independent physical and occupational therapist to address claimants' bathing needs. The evaluation should address both bathrooms with the purpose of determining whether there are devices such as bath chairs or transfer systems for making either bathroom safe for claimants' bathing. The evaluation may be conducted through a generic resource such as CCS, or funded by IRC. However, it shall not be conducted by an IRC employee. Based on the results the of the evaluation, IRC shall work with claimants to assist in implementing the recommendations. In the event that the evaluation concludes there are no options that could be utilized to create a safe bathing environment, this decision is without prejudice for claimants to pursue their request that IRC fund a *single* bathroom remodel.

ORDER

Claimant's appeal is denied with the exception that at claimant's request, IRC shall arrange for or fund an independent physical and occupational therapy evaluation to address claimant's bathing needs as specified in this decision.

DATED: May 13, 2019

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.