

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2019040199

DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on May 10, 2019, in Sacramento, California.

Robin M. Black, Legal Services Manager, represented Alta California Regional Center (ACRC). Leslie Barton, service coordinator, also appeared on behalf of ACRC.

Claimant was represented by his mother, who is also his court-appointed conservator.

Evidence was received, the record was closed, and the matter was submitted for decision on May 10, 2019.

ISSUE

Is ACRC required to reimburse claimant's mother for the cost of purchasing and installing a new toilet in the family home's sole bathroom?

FACTUAL FINDINGS

PROCEDURAL BACKGROUND

1. On February 26, 2019, ACRC sent claimant's mother correspondence "denying your request to reimburse you for the cost of the toilet you purchased from The Home Depot for use in your home after you refused to permit ACRC's vendored contractor to complete environmental accessibility modifications to a bathroom in the home for [claimant's] benefit." The correspondence included a Notice of Proposed Action outlining the factual and legal bases for ACRC's denial, and advised claimant of his appeal rights.

2. Claimant's mother timely filed a Fair Hearing Request on his behalf. She explained the basis of her request as follows:

We refused to have contractor Steve Weaver finish contract work in our home due to the fact he left us with no toilet and was not coming back until a certificate of home was clear of mold, asbestos, lead (May 2018). Vilated the HEPA for giving our name address to 3rd party Joni & Friends without permission. Wanted to leave home to another special needs family.

"Reimbursement for toilet and install."

(Grammar and spelling original.)

CLAIMANT'S BACKGROUND

3. Claimant is a 33-year-old man determined to be eligible for ACRC services based on diagnoses of cerebral palsy, intellectual delay, and cortical blindness (total or partial loss of vision caused by damage to the brain's occipital cortex), secondary to

anoxic encephalopathy (brain damage due to a lack of oxygen). His disabilities are substantially handicapping conditions with major impairment on communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

4. Claimant lives with his mother and a younger sibling in the family home in Sacramento, California. His mother is his primary caretaker, IHSS worker, and court-appointed conservator. At hearing, claimant's mother described herself as "very lucky to be his mom."

5. Claimant requires "total care" with his bathing, dressing, GT feedings and care (he is fed through a gastrostomy tube that goes directly into his stomach through a stoma), transfers (a ceiling track/lift system is installed in the home), tracheotomy care and suctioning, and suprapubic catheter. He is wheelchair-bound, and cannot use a toilet.

6. Claimant enjoys a close relationship with his mother, the sibling with whom he lives, and another sibling who does not live in the family home. His mother takes him into the community as often as she can, and he enjoys watching basketball, baseball, going to the swimming pool, playing on his keyboard, and listening to music. The band Van Halen and music from the 1950s appear to be his favorite types of music.

THE FAMILY HOME

7. In May 2017, claimant's mother entered into escrow for the purchase of the family's current home. ACRC funded an occupational therapy assessment of the new home, and ultimately agreed to fund modifications to the home to make it more accessible for claimant. The modifications included: 1) installing a wheelchair ramp outside the home; 2) widening interior hallways to accommodate claimant's wheelchair; 3) installing a ceiling track/lift system to assist with transferring claimant in and out of his wheelchair, a bath chair, and bed; and 4) remodeling the home's only bathroom.

ACRC approved an estimate provided by general building contractor Steve Weaver, owner of Eagle Accessibility Solutions & Equipment (EASE), to construct the modifications.

8. Prior to commencing construction, Mr. Weaver discussed the loss of the home's only bathroom during construction with claimant's mother, and it was decided that he would request ACRC funding for a chemical toilet to be installed in the garage during construction. The request for funding was denied, and claimant's mother decided to purchase a chemical toilet with her own funds. Mr. Weaver agreed to do his best to limit the work on the bathroom to only one day.

9. Mr. Weaver and one of his employees arrived at the family home on February 12, 2018, to commence construction. During the demolition of the bathroom, Mr. Weaver "demolished" the toilet, and discovered a dark stain on the ground and did not know whether it was toxic mold. He and his employee immediately stopped work, informed claimant's mother of the discovery, told her it was not safe for them to continue working without knowing whether the stain was toxic mold, and recommended that she and her family move into a hotel until it was determined what caused the staining. He advised he would not return to finish the work until claimant's mother obtained a certification that the home was free from mold, asbestos, and lead.

10. Claimant's mother contacted her homeowners' insurance, and a subsequent investigation determined that the staining Mr. Weaver found was caused by water damage. It was also determined that there was no toxic mold, asbestos, or lead in the home.

11. For reasons wholly irrelevant to this appeal, there was a breakdown in the relationship between Mr. Weaver and claimant's mother, and ACRC agreed to pay another general building contractor to complete the modifications to the family home

at claimant's mother's request. In the meantime, claimant's mother purchased a toilet from The Home Depot on February 25, 2018, and paid to have it installed.

HEARING TESTIMONY

Leslie Barton

12. Ms. Barton has been claimant's service coordinator since 2012. She explained at hearing that her understanding of the scope of Mr. Weaver's work on the bathroom was that he would remove the toilet prior to demolition, complete demolition, and reinstall the same toilet in the normal course of remodeling the bathroom. She further explained that it was her understanding that he removed the toilet and started demolition, but discovered the staining before completing the remodel and reinstalling the toilet. So while she knew Mr. Weaver had not reinstalled the toilet before leaving the project, she did not know it had been "demolished" until hearing.

13. Ms. Barton stated that claimant's mother first requested reimbursement for purchasing and installing a new toilet at the end of January 2019. Consumer I.D. Notes confirmed that Ms. Barton received a copy of claimant's mother's The Home Depot credit card statement showing the purchase of the toilet and request for reimbursement on January 22, 2019.

14. Ms. Barton explained that ACRC denied claimant's mother's request for reimbursement for the toilet because the purchase was made "outside the planning team process." When asked whether the planning team would have approved a request for a new toilet, she explained she did not know because claimant does not use a toilet.

Claimant's Mother

15. Claimant's mother explained at hearing that she knew she and her daughter would not be able to use the home's only toilet during construction, and that

was why she decided to purchase a chemical toilet. However, it was always her understanding that the toilet would be removed prior to demolition, and then reinstalled at the appropriate time during the remodel. She never discussed Mr. Weaver "demolishing" the toilet with him, and she does not know why he did that. All she knows is that she saw him carrying the toilet out of her home "in pieces" during demolition of the bathroom.

16. Claimant's mother was adamant that ACRC knew Mr. Weaver demolished her toilet prior to hearing, and explained she requested reimbursement for the new toilet but was denied. She introduced a copy of Ms. Barton's March 14, 2018 email, in which she inquired of claimant's mother, "so what is the state of your bathroom currently? Working toilet but no shower?"

17. Claimant's mother responded the following day, "a heads up on what was going to happen would have been greatly appreciated. I was left without a toilet for six days so I ordered one from Home depot and to install." (Spelling original.) On May 8, 2018, claimant's mother sent an email to Ms. Barton's supervisor, in which she wrote: "I also sent another e-mail and one to Leslie Barton to prove we did have a water leak from the toilet per my insurance claim, but Mr. Steve Weaver demolished it so my insurance will not reimburse us."

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DISCUSSION

18. It was undisputed that both parties anticipated that Mr. Weaver would reinstall the same toilet he removed prior to demolition sometime during the remodeling process. No one was under the misimpression that Mr. Weaver's remodel would include a new toilet. While claimant's mother initially argued at hearing that the

cost of Mr. Weaver's estimate included a new toilet, she later conceded that her argument was based on a misreading of the estimate, which clearly stated "Remove & Replace Toilet." Besides, the point of her argument was not that she was supposed to receive a new toilet, but that she acted reasonably in choosing the toilet she purchased because it was less than Mr. Weaver's estimate.

19. Mr. Weaver "demolished" the only toilet in the family home for reasons not established at hearing. Claimant's mother did not offer any explanation at hearing why she believed it was necessary to purchase the replacement toilet outside the planning team process. Her decision to do so is of particular concern because she admitted at hearing claimant does not have the upper body strength to use a toilet, so it was not purchased for his benefit. While claimant's mother and one of her daughters also live in the home and needed access to a working toilet, claimant's mother did not explain why she waited 13 days to replace the toilet. Nor did she explain why she waited an additional 17 days after that to notify Ms. Barton that she replaced the toilet, or almost two months after notifying Ms. Barton to explain why she replaced the toilet.

LEGAL CONCLUSIONS

APPLICABLE BURDEN/STANDARD OF PROOF

1. Claimant has the burden of proving by a preponderance of the evidence that his mother is entitled to reimbursement for the cost of purchasing and installing a new toilet in the family home's sole bathroom. (*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 [the 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 must prove it is more likely than not that his mother is entitled to reimbursement. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

APPLICABLE LAW

2. Under the Lanterman Act, 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.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations].” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. 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, § 4620; *Williams v. California* (9th Cir. 2014) 764 F.3d 1002, 1004.) “Regional centers are responsible for locating developmentally disabled persons, assessing their needs, and – on an individual basis – selecting and providing services to meet such needs. [Citations.]” (*Williams v. California, supra*, 764 F.3d at pp. 1004-1005.) “Any person believed to have a developmental disability ... shall be eligible for initial intake and assessment services in the regional centers.” (Welf. & Inst. Code, § 4642, subd. (a)(1); Cal. Code Regs., tit. 17, § 54010, subd. (a).) After initial intake and assessment, eligibility for ongoing services is dependent on a finding “that the person has a developmental

disability that constitutes a substantial disability as defined in Article 1 of this subchapter.” (Cal. Code Regs., tit. 17, § 54010, subd. (b).)

4. Once a consumer has been determined to be eligible for regional center services, the regional center serving the area in which the consumer resides determines how to serve the consumer by conducting 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*, *supra*, 38 Cal.3d 384, 389.) Welfare and Institutions Code section 4646 provides, in relevant part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual

with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

(c) An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment. At the time of intake, the regional center shall inform the consumer and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, of the services available through the local area board and the protection and advocacy agency designated by the Governor pursuant to federal law, and shall provide the address and telephone numbers of those agencies.

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

5. Once the regional center and individual consumer have gone through the planning process and developed an IPP, the regional center must obtain the services and supports necessary for implementing the IPP. Welfare and Institutions Code section 4647, subdivision (a), provides:

Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

And Welfare and Institutions Code section 4648 provides, in pertinent part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in

achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and support shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

[¶] ... [¶]

(6) The regional center and the consumer, or if appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following

when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) If appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

(E) The consumer's choice of providers, or, if appropriate, the consumer's parent's, legal guardian's, authorized representative's, or conservator's choice of providers.

[¶] ... [¶]

(8) Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

6. Regional centers are required to "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).) Additionally, they are required to adopt internal policies regarding the purchase of services for consumers. (Welf. & Inst. Code, § 4646.4, subd. (a).) But regional centers may not deny necessary services based on the application of a rigid, inflexible policy. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232.) "Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646." (Welf. & Inst. Code, § 4646.4, subd. (b).)

7. 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.) They are specifically prohibited from funding services that are available through another publicly funded agency. (Welf. & Inst. Code, § 4659, subd. (c).) This prohibition is often referred to as "supplanting generic resources." However, if the service specified in a consumer's IPP is not provided by a generic

agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d 384, 390.)

RELEVANT POLICIES

8. ACRC's Service Policy Manual contains the following General Standards for the Purchase of Services and Supports:

Alta California Regional Center (ACRC) assists consumers and their families in the identification of needs associated with the developmental disability. ACRC assists consumers and their families in the development of an individualized plan for the use of community resources to meet the identified needs. Upon determining that no public or private resource is available to meet the identified need, ACRC shall provide payment for services and supports in keeping with the following:

- The service shall conform to the Lanterman Act
- The service meets a need related to the developmental disability of the consumer
- The service or support must achieve goals or objectives that are clearly stated and defined by measurable outcomes
- The service is supported by research as effective and not harmful
- The service or support shall not duplicate one already being provided through natural supports, generic services or purchases by the regional center
- The service or support encourages independence, productivity, age appropriate skills and inclusion rather than segregation or isolation

- The service must be provided by an “authorized” service provider. The written commitment for payment must be available to the service provider prior to beginning the service
- The service is cost effective.

Management shall prepare a set of procedures to assure a consistent application of these principles. These procedures shall be reviewed and updated as needed, but no less than annually, to reflect changes in statute and regulation and the creation of new services not available today.

The ACRC Executive Director may review and authorize an exception(s) if warranted by individual circumstances.

CONCLUSION

9. Claimant did not meet his burden of establishing by a preponderance of the evidence that his mother is entitled to reimbursement for purchasing and installing a new toilet in the family home’s sole bathroom. He did not establish good cause for his mother to make the purchase outside the planning team process, as set forth in the statutes and policies identified in Legal Conclusions 4 through 8. Therefore, claimant’s appeal is denied.

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ORDER

Claimant's appeal from Alta California Regional Center's decision to deny his mother's request for reimbursement for the cost of purchasing and installing a new toilet in the family home's sole bathroom is DENIED.

DATED: May 21, 2019

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.