

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2019060739

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter on July 31, 2019, in Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

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

Evidence was received, and the record was held open until August 9, 2019, for submission of closing briefs. On August 4, 2019, ACRC filed a closing brief, marked as Exhibit 11. On August 7, 2019, claimant filed a closing brief, marked as Exhibit C. The case was submitted for decision on August 9, 2019.

ISSUE

Claimant is requesting ACRC to pay for environmental accessibility modifications and installation of equipment in his mother's home, in which he resides 50 percent of his time. The issue for determination is whether ACRC is required to fund claimant's request?

FACTUAL FINDINGS

Background

1. Claimant is a 22-year-old young man who was found eligible for regional center services based upon his diagnosis of severe intellectual disability with an etiology of Marinesco-Sjögren Syndrome. Claimant is non-ambulatory and is limited verbally. He requires a wheelchair for mobility and can only provide minimal assistance with physical transfers in and out of his wheelchair. Claimant is five feet, six inches tall and weighs 170 pounds. He requires assistance and supervision to complete activities of daily living, including showering, toileting, and moving in and out of bed.

2. In July 2011, claimant's parents divorced. Claimant's parents entered into a formal joint-custody arrangement in which they shared custody of claimant. Claimant lived with his father on Monday, Tuesday and every other Friday, Saturday and Sunday. Claimant lived with his mother on Wednesday, Thursday and every other Friday, Saturday and Sunday. Claimant's father lived in a home he owned. Claimant's mother rented a home.

3. In 2015, when claimant turned 18 years old, claimant's parents were appointed as co-conservators over claimant. His parents elected to maintain the same custody arrangement that has been in place since their divorce.

Claimant's Individual Program Plan

4. On August 30, 2017, claimant and his parents attended an annual Individual Program Plan (IPP) meeting with his ACRC service coordinator Jennifer Amaro. A written IPP document (August 2017 IPP) was prepared by Ms. Amaro, which claimant's parents signed. The IPP noted that claimant's parents share "50/50 custody" of claimant. The IPP also listed several goals, including that claimant continue to live at home with his family and to ensure that his durable medical equipment (DME) needs were met. In order to meet the goal of living at home with his family, the schedule of services and supports that claimant was to receive included 90 hours of in-home respite that claimant's parents split.

The IPP also noted that claimant "utilized various pieces of DME to function throughout the day." The equipment included his wheelchair, leg braces, a floor lift in his mother's home that was funded by Western Health Advantage, a bath chair in his mother's home that was funded by ACRC, a special bed in his mother's home funded by ACRC, and a van lift in his mother's vehicle also funded by ACRC. The IPP also stated that ACRC was "exploring funding for bathroom modifications, wheelchair ramps and modified door hinges" for claimant's father's home. In order to meet the goals of ensuring that claimant's DME needs were met, Ms. Amaro agreed to request ACRC funding for an occupational therapy (OT) evaluation of claimant's equipment needs. Thereafter, an OT evaluation report with recommendations would be submitted to ACRC, which would be provided to the planning team for funding.

5. On June 1, 2018, an addendum was prepared to claimant's August 2017 IPP. The addendum noted that claimant's father was having "increasing difficulty caring for [claimant] at home." Claimant's father requested "a bathroom modification, door widening, an access ramp, and a ceiling lift system in an effort to maintain [claimant] in his home." ACRC agreed to fund the request. The addendum included an amended objective: Claimant's DME "needs will be met, as appropriate, through" August 2018. Claimant's father signed the addendum.

6. On August 15, 2018, claimant and his parents attended an annual IPP meeting. Ms. Amaro was present and prepared a written IPP (August 2018 IPP). Ms. Amaro noted that claimant continued to live with both of his parents who shared custody. Claimant's goals were to continue to live at home and to "have access to appropriate medical equipment needed to ameliorate the physical impact of the developmental disability or to facilitate the maintenance of independent, productive normal lives." The IPP noted that ACRC agreed to fund a "bathroom modification, door widening, an access ramp and ceiling lift system" in claimant's father's home. The IPP also noted that claimant's DME needs would be met, as appropriate, through August 2019. Claimant's parents signed the August 2018 IPP.

Claimant's Request

7. In early April 2019, claimant's mother advised Ms. Amaro that she was purchasing a condominium. She requested ACRC to fund a wheelchair ramp and bathroom modifications in her home to improve claimant's accessibility. Ms. Amaro arranged for an environmental assessment to be conducted to determine whether there was a need for the requested modifications. The evaluator prepared an assessment report and made recommendations. On May 10, 2019, claimant's mother received the report. Shortly thereafter, Ms. Amaro informed claimant's mother that

ACRC would not fund the requested modifications and equipment, because claimant's father had previously been provided funding to make modifications to his home.

8. On May 30, 2019, ACRC sent claimant's parents a "Notice of Proposed Action" denying claimant's mother's request for funding of bathroom modifications and a wheelchair ramp, to improve claimant's environmental accessibility. ACRC explained the reason the action was that:

There is no assessed need for ACRC to complete additional environmental accessibility home modifications for [claimant] because [claimant's] need for environmental accessibility to his home has been met. Specifically, ACRC in 2018 purchased environmental accessibility home modifications (including a bathroom modification and installation of a wheelchair access ramp) for his home [father's address]. It is not a cost-effective use of public funds for the regional center to purchase duplicate services and support for [claimant] in a second home for the purpose of permitting him to live in more than one home.

Further, funding of services to permit [claimant] to reside in two houses part-time is not consistent with the intent of the Legislature that regional center services be provided in order to approximate the pattern of everyday living available to people without disabilities of the same age. It is not typical of someone [claimant's] same age peers, or any adult (whether or not he/she has a developmental disability), to reside part-time in multiple houses.

Finally, as [claimant's] co-conservators, [claimant's parents] have chosen that [claimant] reside part-time in multiple homes. While this is [their] prerogative, [their] choice does not legally obligate ACRC to finance this living situation. Rather, it is [claimant's parents] responsibility as [claimant's] co-conservators to privately pay for whatever [they] determine is needed for [claimant] to live in both houses, since that is [their] choice, in accordance with [their] choice.

9. On June 18, 2019, claimant's mother requested a Fair Hearing concerning the denial of the funding request for environmental accessibility modifications and equipment. On July 1, 2019, an informal meeting took place with Claimant's mother, Ms. Amaro and Ms. Black. Claimant's mother explained that she tried to pay for as many of the needed modifications as she could afford. She purchased the wheelchair ramp and was no longer requesting ACRC pay for that piece of equipment. However, she could not afford to pay for the bathroom modifications. On July 8, 2019, Ms. Black issued a written Informal Meeting Decision denying claimant's request.

ACRC's July 22, 2019 Procedure Manuel Additions

10. On July 22, 2019, ACRC updated its DME and DME Environmental Accessibility procedure manuals. Specifically, ACRC added the following provision to both procedure manuals:

ACRC acknowledges that on occasion a client may reside part-time in two or more homes. However, ACRC purchases services and supports for the client, and not the home. Therefore, ACRC shall not purchase duplicate services or

supports for use at a client's second or alternative residence. It is the responsibility of both parents of a minor client, or the conservators of an adult client, or of an unconserved adult client and his/her caregivers, to determine the one (1) residence in which ACRC-funded services or support will be used, or to make their own arrangements to share or split that service or support between the two homes where appropriate.

ACRC's Position

11. Ms. Amaro testified at hearing that she has been claimant's service coordinator for approximately eight years. She was involved in the decision to deny claimant's request to fund the environmental accessibility modifications and installation of equipment in his mother's condominium. Ms. Amaro explained that ACRC funded modifications and equipment for claimant's father's home in 2018, and that ACRC's policy is to only fund the cost of modifications and equipment for one home. Prior to the July 22, 2019 amendments to the DME and DME Environmental Accessibility procedure manuals, ACRC's policy was not in writing. There was also no procedure for notifying a parent or co-conservator of the policy.

12. Jasprett Mann, Client Services Manager for ACRC also testified at hearing. She supervises Ms. Amaro and was also involved in the decision to deny claimant's funding request. Ms. Mann also confirmed that ACRC's policy is to only fund environmental accessibility modifications and equipment in one home in which a client resides. She also explained that the policy was not put in writing until July 22, 2019, but it was "common practice" before the procedure manuals were updated. Ms. Mann explained that claimant's funding request was denied because paying for

modifications and equipment for claimant's mother's home would be duplicating services; ACRC already funded the modifications and equipment for his father's home. Claimant is not required to live part-time in both homes. Claimant's parents made the decision to share custody. As a result, they are responsible for deciding who should get the funding for the modifications and equipment. In this case, claimant's father made the request first and received the modifications and equipment.

13. ACRC contends its policy is consistent with other services and goods received by claimant. His parents equally split claimant's Social Security Insurance (SSI) benefits and In-Home Supportive Services (IHSS) hours. In addition, ACRC provides claimant 90 hours of respite per month, and incontinence supplies, which his parents also split. ACRC contends that claimant does not receive twice as much of these benefits because he lives in two homes. Likewise, he should not receive funding from ACRC for modifications and equipment for both of his parents' homes.

Claimant's Position

14. Claimant's mother testified at hearing and explained the reason for the request that ACRC fund environmental accessibility modifications and equipment in the condominium she purchased this year. After her divorce, she was unable to afford a home. She saved her money and rented a home. During that time, she has maintained joint custody of claimant with his father. She also serves as claimant's primary care giver and daycare provider when he is in her home. Claimant's mother works 70 percent of the time outside of the home. She arranged her schedule so that when she has custody of claimant she is home with him.

15. Claimant's mother explained that as claimant has gotten older, he is more difficult to care for and transport. She is 55 years old. Claimant weighs 170

pounds. Claimant's mother must get him in and out of bed and his wheelchair, place him on the toilet, and dress and shower him. When claimant's mother purchased her condominium in April 2019, she tried to use the shower chair she used in her rented home, to transfer claimant in and out of the shower. However, she cannot use the shower chair in the condominium, because there is a three-inch lip on the edge of the shower, and she must lift claimant in order to get him in and out of the shower. The situation is unsafe.

On one occasion, claimant's wheelchair tipped over as she and claimant's brother were trying to transfer claimant into the shower. Claimant almost fell out of his chair and landed head-first onto the tile floor. After this incident, claimant's mother asked ACRC to fund bathroom modifications so that she can safely care for claimant. She also began showering claimant on her back patio with a hose, because she is unable to safely move him in and out of the shower.

16. Claimant's mother explained that claimant greatly benefits from sharing his time between her and his father. He is active in both communities and enjoys being with both of his parents. Claimant's mother would like to keep claimant in her home as long as possible, but she can only do so if she has the appropriate modifications and equipment installed in her home. She paid for a ramp, a toilet, and for her dining room to be converted into a bedroom. However, she is not able to afford the cost of the bathroom modifications and equipment.

17. Claimant's aunt also testified at hearing. She noted that ACRC had no written policy precluding the funding of modifications and equipment in more than one home for a client that splits his time in two homes: moreover, the policy would unfairly impact claimants who reside with both parents, who live apart from one another. In addition, claimant's mother had no notice of the unwritten policy; and as a

result, she did not know the impact that ACRC's decision to fund the modifications and equipment for claimant's father's home would have on her request.

Discussion

18. The Legislature directs regional centers to support a family's decision-making, be flexible and creative in meeting the unique and individual needs of families, focus on the entire family, and promote the inclusion of children with disabilities in all aspects. More specifically, 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." (Welf. & Inst. Code, § 4685.)

19. Claimant's August 2018 IPP provides that his goals are to continue to live with his family and to have access to appropriate medical equipment needed to ameliorate the physical impact of the developmental disability or to facilitate the maintenance of independent, productive normal lives. For the last eight years, claimant has split his time between his divorced parents' homes. To meet claimant's needs for the 50 percent of his time he resided with his father, in 2018, ACRC funded environmental accessibility modifications and equipment in his father's home. At that time, ACRC never told claimant that future requests would be limited and/or ACRC would only modify one living environment for claimant.

20. In April 2019, claimant's mother also requested funding for environmental accessibility modifications and equipment in her home, in which claimant spends 50 percent of his time. This request was made after she purchased her condominium and realized that due to claimant's size, she was unable to safely care for him with the existing bathroom configuration.

21. ACRC argues that claimant's mother's request violates the Lanterman Act and ACRC policy, because it is for duplicative services or goods; claimant's father has already received monies to fund environmental accessibility modifications to a bathroom for claimant. ACRC alleges that claimant's parents were on notice of the preclusion of duplicative services or goods, because claimant's mother and father equally split claimant's SSI benefits, IHSS funding and respite care hours. Therefore, the same is true for funding bathroom modifications.

ACRC also points out that it is not typical for an adult to live in two homes and the Lanterman Act did not anticipate a situation in which an adult consumer would live in more than one home. Additionally, ACRC contends that claimant could reside safely in his father's home and that ACRC should not bear the burden of funding his parents' choice to maintain joint custody. Specifically, ACRC argues that public funds should not be spent to pay for the additional costs associated with claimant living in two homes. ACRC's arguments are unpersuasive and inconsistent with the Lanterman Act.

22. While claimant's living situation may not be typical of the consumers ACRC supports, the Lanterman Act requires ACRC to support claimant's parents' decision that claimant continue to live with his family. In claimant's case, he resides with his family in two homes, and has done so for many years. ACRC must ensure that claimant has the necessary environmental accessibility modifications and equipment installed in his mother's home to ensure his safety. Providing the funding for the mother's bathroom modifications is not a duplication of services or supports, because ACRC has not previously funded the modifications and equipment for her home; rather, ACRC has only funded half of the bathroom modifications necessary for claimant to continue to live with his family, by only funding the modifications and equipment for his father's home. Additionally, the modifications and equipment

claimant requires at each home are not of the nature that can be split between two homes, such as SSI benefits, IHSS payments or respite hours.

23. When all the evidence is considered, claimant's mother established that ACRC is required to fund the environmental accessibility modifications and installation of equipment in her condominium.

LEGAL CONCLUSIONS

1. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700 through 4716.) Claimant's mother requested a fair hearing to appeal ACRC's denial of her request for funding of environmental accessibility modifications and installation of equipment in her home. The burden is on claimant to establish entitlement to the funding. (*See Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

2. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability. . . ."

3. Through the Lanterman Act, the Legislature created a comprehensive scheme to provide "an array of services and supports . . . 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.” (Welf. & Inst. Code, § 4501.) The purpose of the provisions of the Lanterman Act are: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750-4751; see *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. “Services and supports for persons with developmental disabilities” means “specialized 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, and normal lives Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, domiciliary care, . . . adaptive equipment and supplies” (Welf. & Inst. Code, § 4512, subd. (b).)

5. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. Welfare and Institutions Code section 4646, subdivision (a) specifies:

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.

6. A regional center is required to secure the services and supports needed to satisfy a client's needs as determined in the IPP. (Welf. & Inst. Code, § 4648, subd. (a); *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 390.)

7. Welfare and Institutions Code section 4647, subdivision (a) states:

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.

8. Welfare and Institutions Code section 4648 provides, in 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:

- (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

9. Welfare and Institutions Code section 4685, subdivision (a) states, in relevant 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.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

(1) Respect and support the decisionmaking authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

(3) Recognize and build on family strengths, natural supports, and existing community resources.

(4) Be designed to meet the cultural preferences, values, and lifestyles of families.

(5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(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 . . . 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.

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. . . . When the regional center first becomes aware that a family may consider an out-of-home placement, or is in need of additional specialized services to assist in caring for the

child in the home, the regional center shall meet with the family to discuss the situation and the family's current needs, solicit from the family what supports would be necessary to maintain the child in the home, and utilize creative and innovative ways of meeting the family's needs and providing adequate supports to keep the family together, if possible.

10. The Legislature also "recognizes the ongoing contributions many parents and family members make to the support and well-being of their children and relatives with developmental disabilities. It is the intent of the Legislature that the important nature of these relationships be respected and fostered by regional centers and providers of direct services and supports." (Welf. & Inst. Code, § 4620.1.)

11. As set forth in Factual Findings 1 through 9 and 14 through 23, and Legal Conclusions as a whole, claimant's mother established that under the Lanterman Act, ACRC should fund the environmental accessibility modifications and installation of equipment in her home.

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ORDER

Claimant's appeal of the denial of his request for funding for environmental accessibility modifications and installation of equipment in his mother's home, is GRANTED.

DATE: August 19, 2019

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)