

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**REGIONAL CENTER OF ORANGE COUNTY,**

**OAH No. 2019060852**

**DECISION**

This matter was heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on August 7 and September 13, 2019, in Santa Ana, California. Claimant was represented by his mother and authorized representative.<sup>1</sup> Regional Center of Orange County (Service Agency or RCOC) was represented by Keith R. Dobyms, Attorney at Law.

Oral and documentary evidence was received. The record was left open until October 2, 2019, to enable the parties to submit closing briefs. The briefs were timely submitted. Claimant's brief was marked for identification as Exhibit AA and the

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<sup>1</sup> Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and his family.

Regional Center's brief was marked for identification as Exhibit 12. The record was closed, and the matter was submitted for decision on October 2, 2019.

## **ISSUE**

Must the Service Agency provide funds to modify Claimant's home to pay for the cost to purchase and install a Wessex In-Home Wheelchair Lift (Elevator)?

## **EVIDENCE**

Documentary: Exhibits 1-11 and A-Z.

Testimonial: Brenda Munguia, RCOC Service Coordinator; Jennifer Montanez, RCOC Area Manager; Amy Argabright-Bruno, RCOC Nurse Consultant; Nisha Pagan, P.T.; Charlotte Feichtmann, PT; Karen L. Owens, P.T.; and Claimant's mother.

## **FACTUAL FINDINGS**

1. Claimant is a 20-year-old male client of RCOC who lives with his mother (Mother) and father (Father). He has two adult sisters who reside outside of the family home. Claimant is eligible for, and receives services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

2. Claimant has Spastic Diplegia Cerebral Palsy,<sup>2</sup> Pelizaeus-Marzbacher disease<sup>3</sup> (PMD), and moderate intellectual disability. He uses a wheelchair, is non-verbal, and requires assistance with all basic daily living needs, including eating, brushing his teeth, toileting, dressing, and bathing. Claimant is unable to bear any weight on his own.

3. Claimant's parents must assist him with getting in and out of bed, diapering, bathing, transferring him in and out of his wheelchair, and to other durable medical equipment (DME) in the home. As Claimant has gotten older, larger and heavier, his spasticity has increased. He now requires two people to meet his daily living needs. This has taken a heavy toll on his parents' physical well-being. Mother has fallen and sustained injuries trying to assist Claimant and Father suffers from severe back pain.

4. Claimant receives respite care and case management services from RCOC. He also receives In-Home Supportive Services (IHSS) provided by his mother. His maternal grandmother is his respite provider. Claimant receives special education services through the Orange Unified School District.

5. Claimant resides in a two-story home in Anaheim Hills with his Mother and Father who purchased the house in 2016 when Claimant was 17 years old. The

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<sup>2</sup> Spastic diplegia cerebral palsy permanently affects muscle control and coordination. Affected people have increased muscle tone which leads to spasticity (stiff or tight muscles and exaggerated reflexes) in the legs.

<sup>3</sup> Pelizaeus–Merzbacher disease is a rare genetic, central nervous system disorder in which coordination, motor abilities, and intellectual function are impacted.

home has four levels because there are multiple levels on the first floor, and the backyard has terraced levels and slopes. Claimant's bedroom, changing table, and restroom are on the second floor. Claimant's parents were aware of the access problems he would face in this house when they purchased the home. Claimant is unable to navigate the multiple staircases and steps located throughout the multi-level house, which also presents numerous ingress and egress challenges for Claimant.

6. Claimant and his family had lived in a two-story home in Anaheim Hills for many years when he was younger. In 2012, the family moved to a one-story house in a different town. Because of difficulties with a neighbor there, in 2017 the family moved back to Anaheim Hills, where they purchased their current multi-level home. They found that one-story homes in Anaheim Hills were hard to find and more expensive than this two-story home.

7. In his current home, Claimant cannot access the multiple levels without difficulty. Claimant enters from the garage into the family room. From there, there are steps up and down into the dining room and living room/kitchen. To access those rooms, Claimant must proceed outside to the backyard, be wheeled up an inclined yard to the dining room, and enter the house through double doors. From there, he requires the assistance of his parents to utilize a Hoyer lift to bring his wheelchair up a flight of stairs to the second story of his home where his bedroom, changing table, and bathroom are located.

### **SCALAMOBIL STAIRWAY ASSIST DEVICE**

8. RCOC funded the cost of a van modification in 2014. The family paid for a costly bathroom modification to meet Claimant's needs in 2017. When the family

first moved into this multi-level home, California Children's Services<sup>4</sup> (CCS) funded the purchase of a stairway assist device (Scalamobil) to transport Claimant up and down one flight of stairs so that he could access the second floor of the home. In 2017, Claimant's parents had to modify the Scalamobil. They attached a forklift style set of bars to the Scalamobil to lift Claimant's current custom manual wheelchair up at an angle to transport Claimant upstairs.

9. However, as Claimant has grown, the Scalamobil has become unsafe. Claimant's feet do not sufficiently clear the wall on turns, two caregivers are required to utilize it, and they must bend beyond ergonomically safe positions because the Scalamobil's arm control height cannot be adjusted. The Scalamobil is deteriorating in that the structural integrity of the lip riser is breaking down. As a result, Claimant's parents now seek RCOC funding to purchase and install an Elevator.

### **REQUEST TO RCOC FOR ELEVATOR FUNDING**

10. Mother asserted at hearing that the Elevator is the safest, most cost-effective solution for transporting Claimant up and down the stairs of his home. They wish to keep Claimant in the least restrictive, stable environment with access to the community and a family that loves him. Mother contends that other proposed solutions are not cost-effective and do not take into consideration Claimant's unique medical needs.

11. Mother advised Brenda Munguia, Claimant's RCOC Service Coordinator, that the family was having increased difficulty transporting Claimant safely up and

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<sup>4</sup> CCS is a state program which provides health care and services for children with certain diseases or health problems.

down the stairs of their home as the family had previously explained during the Individual Program Plan (IPP) meeting in January 2019. (Exhibit 6, p. 9.)

12. On March 6, 2019, Claimant's mother requested that RCOC put "on hold" the family's previous request for a custom shower curtain and new van modification. Mother requested RCOC's help with funding an Elevator lift to help them safely transport Claimant in the home, stating that Claimant's father's back had recently gone out again. Mother explained she could not safely use the Scalamobil device by herself to transport Claimant up and down the stairs.

13. In a follow-up conversation, Ms. Munguia advised Mother that Claimant would need to obtain various documents, denials, and assessments before RCOC would consider funding for the Elevator. Over the next several months, Mother worked to obtain all of the requested items. On several occasions, Mother reached out to RCOC expressing her frustration at her inability to obtain some of these documents. Mother asserts that no help was offered by RCOC to help her obtain these items, or to have one of their vendors perform an in-home assessment.

14. On May 6, 2019, a planning team meeting was held at Claimant's home with RCOC staff to go over the items still needed. During this meeting, Mother explained the difficulties she was having trying to get written denials for the Elevator from generic resources.

15. On May 20, 2019, Mother received a letter from RCOC summarizing the May 6, 2019 meeting. The letter stated that its purpose was to outline the plan agreed to at the Planning Team Meeting and that "... RCOC has not denied your requests ... " (Exhibit A, p. 2.)

## **MAY 19, 2019 HOME EVALUATION**

16. Claimant hired Karen L. Owens, P.T., a certified Aging in Place Specialist, to conduct a May 19, 2019 Home Accessibility Evaluation and Modification Plan for Claimant's home. In a report dated May 23, 2019, Ms. Owens identified seven access issues in the home, including Claimant's inability to exit in an emergency or access other areas of the house. The issues are: (1) access within a multi-level home; (2) a narrow path from the living room into the kitchen; (3) a fall or injury risk related to frequent lifting and changing of Claimant from his bed to the bathroom to the changing table to the downstairs area; (4) missing safety items such as handrails; (5) poor wheelchair emergency access from the upper patio; (6) impeded wheelchair access to the backyard lower patio; and (7) unsafe access due to missing handrails on outside steps. (Exhibit F-1.)

17. Ms. Owens suggested solutions for each problem she identified. Ms. Owens included a recommendation for an Elevator at the request of Claimant's family. She acknowledged that installing an Elevator would not, alone, solve all seven problems identified. In addition to the Elevator, Ms. Owens recommended that a hydraulic wall-mounted articulating swing lift and a threshold ramp be installed in order to solve the first of seven obstacles that the multi-story house presents to Claimant's ability to enter and exit the home, and to access all areas of the house.

18. RCOC notes that aside from partially addressing the access issue, the Elevator would not resolve the other six problems identified by Ms. Owens. The Elevator would not address the ongoing fall risks associated with Claimant's parents and grandmother serving as his respite and IHSS care providers. RCOC contends that the Elevator would not resolve the issue of other flights of stairs and steps in the

house, or the inclines and declines in the outside yard that Claimant would have to traverse to safely exit the home in an emergency.

### **NOTICE OF PROPOSED ACTION**

19. On May 29, 2019, another Planning Team Meeting was conducted by telephone where Mother was notified that RCOC would now be officially denying Claimant's request and that Mother would receive a denial letter in the mail.

20. Claimant received RCOC's Notice of Proposed Action (NOPA), dated June 5, 2019. (Exhibit 2.) The NOPA states that Ms. Munguia had had a May 23, 2019 conversation with CCS Supervisor Deborah Richardson. Ms. Richardson informed her that CCS had previously funded a Scalamobil to enable Claimant to access the second floor of his home, and Claimant's CCS case was closed in April 2010. Ms. Richardson told Ms. Munguia that CCS is not able to provide a denial letter for funding the Elevator because it is not a service or type of DME provided by CCS. Ms. Richardson advised RCOC that if Claimant requested that CCS reopen his case, CCS could fund a Physical Therapy Home Assessment. RCOC noted that further assessment and discussion with CCS could potentially identify other possible resources, services or DME to better support Claimant.

21. In the NOPA, RCOC concluded that the CCS-funded Scalamobil is the most cost-effective resource available to assist Claimant to access the second floor of his home; funding for purchase and installation of an Elevator would not be the most cost-effective use of public resources; and RCOC is prohibited from using regional center funds to supplant the budget of any agency which has the responsibility to serve all members of the general public and is receiving public funds for providing those services. As authority for its action, the Service Agency cited Welfare and



Institutions Code sections 4512, subdivision (e); 4646, subdivision (a); 4646.4; 4648, subdivision (a)(8); and 4659. RCOC also noted that installation of an Elevator would increase the home's value, resulting in a gift of state funds in violation of article XVI, section 6, of the California Constitution. On these grounds, RCOC denied Claimant's request to fund the purchase and installation of an Elevator.

22. Mother asserts that RCOC did not offer any assistance when Mother requested help, and that the Service Agency issued a denial before any formal assessment had been performed. Claimant filed a timely Fair Hearing Request and this matter ensued.

### **JULY 11, 2019 HOME EVALUATION**

23. At an informal meeting on June 27, 2019, RCOC agreed to fund a Physical Therapy Home Assessment to be completed by a RCOC-vendored physical therapist.

24. Charlotte Feichtmann, PT, testified at the hearing. She conducted a home visit on July 11, 2019, and prepared a report regarding Claimant's functional level and assessing whether the methods currently used to access his home are safe, appropriate, and meet his needs. (Exhibit 5.)

25. Ms. Feichtmann noted multiple access problems with the home. She discussed the pros and cons of another type of elevator (Stiltz elevator), which would entail higher construction costs. She noted that the Wessex Elevator provides access only from the main living area to Claimant's bedroom, changing table, and restroom on the second floor, but would not provide access from the level at which Claimant enters the home or to other areas of the home. The Elevator would cost \$32,500 (\$27,500 for the Elevator and \$5,000 for costs of construction.)

26a. Ms. Feichtmann evaluated other options available to Claimant to address the home's access problems, including a stair lift system. However, due to the very challenging layout of the multi-level home, she was unable to identify any equipment which would provide access to the entire home.

26b. Ms. Feichtmann and other RCOC witnesses suggested that providing support staff for Claimant at a 2:1 staffing level would be a possible solution. In addition to transporting Claimant downstairs in the morning, upstairs at bedtime, and upstairs and downstairs for diaper changes and for other needs, support staff could also assist Claimant with activities of daily living, such as transferring in and out of his wheelchair, bathing, changing his diaper, dressing, and feeding. In contrast, an Elevator would not provide access to the entire home, and would be of no assistance with activities of daily living. Mother expressed concern that support staff would be costly, might prove unreliable, and could not necessarily be counted on to show up as scheduled.

### **GENERIC RESOURCES**

27. Claimant has not yet obtained denial letters from Medi-Cal and from CCS. RCOC asserts that it is, therefore, legally prohibited from funding for the Elevator. Claimant's parents have dutifully attempted to obtain written denials, but have been unable to obtain them to date.

28. Claimant's health care is funded through a private insurer, Blue Shield of California, and Medi-Cal/Cal-Optima. Blue Shield of California provided a letter stating that it does not cover the cost of any home modifications, including elevators. Medi-Cal verbally told Claimant's parents that they do not provide funding for elevators, but would not issue a written denial.

29. Claimant's case was recently reopened for consideration by CCS. Claimant acknowledges that no final response has yet been received from CCS regarding funding for an Elevator. While the evidence presented suggests that CCS may ultimately issue a denial, it has not yet done so. Additionally, Claimant has not received written denials from generic resources to fund other DME which might address some of the access issues presented.

## **LEGAL CONCLUSIONS**

1. Claimant's appeal of the Service Agency's denial of funding for the Elevator is denied. (Factual Findings 1 through 29; Legal Conclusions 2 through 10.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding for an Elevator, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services or items not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for an Elevator, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet his needs. Claimant has failed to meet his burden.

4. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

5. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

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.

6(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t 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(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

7. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he 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. . . .

8. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan

developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

9. Claimant has not yet obtained denials from generic resources to fund the Elevator or to fund other DME which might address some of the access issues presented. However, RCOC can provide assistance to Claimant in navigating this process with Medi-Cal and CCS through vendors in its Parent to Parent Mentor

Program. Moreover, Claimant has not presented sufficient evidence to establish that funding the cost to purchase and install the Elevator would be a cost-effective use of public resources, and would not constitute a gift of public funds.

10. Given the foregoing, the Service Agency's denial of funding for the Elevator was appropriate.

## **ORDER**

1. Claimant's appeal is denied. Regional Center of Orange County's denial of funding for a Wessex Wheelchair Lift is upheld.

2. Upon Claimant's request, Regional Center of Orange County shall fund participation in the Parent to Parent Mentor Program to assist Claimant's family in navigating and accessing generic resources.

DATE:

LAURIE R. PEARLMAN

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 90 days.