

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

**In the Matter of the Fair Hearing of:**

**CLAIMANT**

**v.**

**WESTSIDE REGIONAL CENTER, Service Agency**

**OAH No. 2020061028**

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and teleconference on August 25, 2020.

Candace Hein, Fair Hearing Specialist, appeared on behalf of Westside Regional Center (WRC or Service Agency).

Claimant's father and conservator appeared on behalf of claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 25, 2020.

## **ISSUE**

Is the Service Agency is required to fund the remodeling of claimant's bathroom?

## **EVIDENCE RELIED UPON**

Documents: Service Agency's exhibits 1 through 7.

Testimony: Candace Heim; claimant's father.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant, a 28-year-old conserved woman, is an eligible consumer of WRC based on her diagnoses of profound intellectual disability (ID) and controlled seizure disorder.

2. Sometime after claimant's most recent Individual Program Plan (IPP)<sup>1</sup> meeting on November 26, 2019, her parents requested that WRC fund the remodeling of the bathroom in the family's apartment in order to remove the existing bathtub and install a walk-in bathtub.

---

<sup>1</sup> For each regional center client, the Lanterman Act requires a person-centered "individual program plan," or "IPP." (Welf. & Inst. Code, § 4646.)

3. By a notice of proposed action letter dated May 22, 2020, Heather Abbott, claimant's service coordinator, notified claimant's parents that the Service Agency declined to fund the remodel. Ms. Abbott wrote that because the bathroom remodel, in the apartment that claimant's family rents, "would constitute permanent changes to a residence/building over which neither the family nor the regional center has any control, funding these changes may expose WRC to liability beyond what would normally be anticipated." (Ex. 2, p. 13.) Ms. Abbott cited as authority, in support of the denial of funding, Welfare and Institutions Code sections 4648, which "requires that regional centers be held fiscally liable when funding projects." (Ex. 2, p. 13.)

4. Claimant's father filed a Fair Hearing Request dated June 8, 2020. He wrote:

1. We have been living in this apartment for 20 years;
2. The owner gave permission with no conditions attached;
3. [Claimant] has grown, she weighs 110 pounds, she has had surgery on her spine and it is difficult to carry her;
4. We, her parents, have gotten older (years ago we did not need anything like this).

(Ex. 2, pp. 10, 11.)

### **Claimant's IPP**

5. According to claimant's most recent IPP, claimant resides at home with her parents and an older brother; an older married sister visits weekly. Claimant is non-

verbal and "is on a daily routine so her parents know what she wants according to time and also by the sounds she makes. She will turn her head toward her parents' voices when they speak and will often smile in return." (Ex. 6, p. 23.) "She communicates using facial expressions . . . and sounds. She will yell and scream when she is in pain or upset. The family is very attuned to [claimant] and can read her signals." (*Id.* at pp. 26-27.)

6. According to the IPP, claimant is non-ambulatory.

She utilizes a manual wheelchair which is pushed by a caregiver. She can sit on the couch with support. She requires assistance to transfer to and from her wheelchair in all settings. [She] requires assistance to reposition her body. She is able to hold her head up when supported. She can move her left arm freely and her right arm slightly. [She] mostly moves her arms when agitated or to bump the tube when feeding, etc. She does not have use of her hands. [¶] [She] is not fed orally. She takes all nutrients via g-tube. [She] requires total assistance for all self-care needs including bathing, dressing, toileting and all hygiene needs. She is unable to make helpful movements. [She] is not toilet trained. She is unable to indicate when she is wet or soiled. She wears a diaper both day and night.

(*Id.* at pp. 23-24.) Claimant takes medication for seizures and spasticity. She was hospitalized for 10 days in 2019 for pneumonia.

7. WRC currently funds 20 hours of monthly respite for claimant and at least 184 hours of monthly personal assistance, both provided by Maxim Healthcare

Services. Claimant receives Medi-Cal funding for necessary medical care, as well as \$600 per month from Supplemental Security Income, and 188 hours per month from In-Home Supportive Services.

8. The first desired outcome in the "Desired Outcomes" section of the IPP is that claimant "will reside in a safe and supportive environment." (Ex. 6, p. 32.) The plan to achieve that outcome: "Parents will continue to provide a safe, loving, and supportive environment for [claimant]." (*Ibid.*)

### **The Requested Remodel**

9. Claimant's parents are aging and cannot easily place claimant in the bathtub in order to bathe her. They obtained an estimate from a licensed contractor, Gamburd, to perform a bathroom remodel of their first-floor apartment. Gamburd's written estimate is for \$14,500, which includes "demo and haul away tub, shower walls, and floor," installing a "barrier free shower," and an accessory package comprising a stainless steel safety bar, padded seat with legs, hand held shower, curtain rod kit, and other items, as well as framing and expanding the bathroom door to 32 inches, moving a thermostat, installing tile and grout in the bathroom floor, and patching and painting the bathroom and the wall where the door is widened.

10. The estimate provides that, "if existing plumbing is galvanized, additional fees may apply." (Ex. 4, p. 18.) It further provides, in a section headed "Change Orders," that a change order is any change to the original plans or specifications. "Change orders will be done for the following reasons only: 1. Subsurface conditions; 2. Hidden Conditions." (*Id.* at p. 19.) "Any alteration or deviation from the above specifications involving additional material and/or labor costs will be the responsibility of the homeowner." (*Ibid.*)

11. On April 2, 2020, claimant's parents obtained from Chick Kenney, the manager of claimant's landlord, Chavanne Properties, a written authorization to complete the work described in Gamburd's written estimate. Mr. Kenney added, "I understand the remodel to be of no cost to Chavanne Properties." (Ex. 5.)

12. Ms. Heim testified that WRC would agree to fund the remodel were it not for the possibility of the necessity of change orders. She testified that there is a "clear need" for modifying the bathroom, and agrees the Gamburd estimate is reasonable. But in the process of remodeling the bathroom, it is possible that conditions, such as flooring or piping problems not visible when Gamburd made its estimate, will be discovered, requiring extra work for a substantially larger amount of money. That presents open-ended liability for WRC if it commits to funding the project. The landlord has not committed to paying for any expenses. Ms. Heim testified that the situation is a very serious concern for WRC and for claimant's family. Both WRC and the family agree that claimant needs a remodeled bathroom to be able to continue to live in the family home. No evidence was offered as to the cost of placing claimant outside the home.

13. Claimant's father testified that claimant, who cannot move at all on her own, had back surgery, making it difficult to transport her. A walk-in bathtub would enable her parents to bathe her more easily. Claimant's parents are aging; her mother has a bad back, and claimant's father has only one arm, so he can only help his wife and the respite provider, who helps them, with one of claimant's legs when they attempt to put her in the bathtub. Claimant's father testified that the family is unable to afford the remodel, and that any additional costs would be very difficult for claimant's family to pay. Claimant's father has only a part-time job.

## LEGAL CONCLUSIONS

### Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of her request for funding the remodeling of her bathroom. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, she bears the burden of proving she is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove her case by a preponderance of the evidence. (Evid. Code, § 115.)

### The Lanterman Act

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional

---

<sup>2</sup> Further statutory references are to the Welfare and Institutions Code.

centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (§§ 4502, subd. (a), 4640.7.)

6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or "generic resource." Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd.



(a.) The IPP process “shall ensure . . . [u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a)(2).)

7. But if a service specified in a client’s IPP is not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.) The California Supreme Court has stated that, while “regional centers have ‘wide discretion’ in determining *how* to implement the IPP [citations], they have no discretion at all in determining *whether* to implement it: they must do so [citation].” (*Assn. for Retarded Citizens v. DDS* (1985) 38 Cal.3d 384, 390, original italics.) Regional centers must refer consumers to available generic sources of payment, and assist consumers in their attempts to obtain funding to which they are entitled, but regional centers must act as payers of last resort where such funding cannot be obtained. (§ 4659 et seq.; see also 4659.10 (regional centers “shall continue to be the payers of last resort” in cases involving third-party liability).)

8. If a regional center does not act to provide a consumer with funding for a needed service when generic sources of funding prove intractable, the regional center must provide the services. Failing to do so violates the central purpose of the Lanterman Act: to provide needed services to persons with developmental disabilities. (§§ 4502, subd. (a), 4646, subd. (a), & 4648, subd. (a).) If it chooses to do so, a regional center may pursue reimbursement from other potential sources of funding (§ 4659) or initiate legal action to pursue a funding source for consumers receiving services. (73 Ops.Cal.Atty.Gen. 156, 157 (1990).) The Legislature’s insistence on having the needs of persons with developmental disabilities met by the provision of services is so significant that the Legislature directs DDS itself to provide services directly to consumers in cases where there appear to be “gaps in the system of services and

supports or where there are identified consumers for whom no provider will provide services and supports contained in [his] individual program plan.” (§ 4648, subd. (g).)

### **Services for Claimant**

9. The Lanterman Act defines “services and supports” to include adaptive equipment and supplies and other relevant services and supports. (§ 4512, subd. (b).)

10. The Service Agency denied funding based on the potential that it might have to fund expenses not currently known, rendering the service cost-inefficient. (Factual Findings 2, 3, 9-12.)

11. Claimant established that, under the current IPP, WRC must fund the bathroom remodeling project. Both parties agree that, without the remodel, claimant will not be able to continue to reside in the family home. That would frustrate the plan for achieving claimant’s goals as set forth in her current IPP, as well as the goals of the Lanterman Act.

//

//

//

//

//

//

//

## **ORDER**

Claimant's appeal is granted. The Service Agency is required under the Lanterman Act and claimant's current IPP to provide funding to remodel claimant's bathroom so she may remain in the family home.

DATE:

HOWARD W. COHEN  
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.