

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH NO. 2020080831

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on January 15, 2021.

Candice Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or service agency). Mother, who also serves as Claimant's conservator, represented Claimant, who did not present at the hearing.¹

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

¹ To preserve their privacy, Claimant and Mother are not identified by their names.

ISSUE

Whether the service agency should fund Claimant's purchase of five soundproofing blankets at a cost of \$450.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 29, 2020, in response to neighbors' complaints about Claimant's screaming outbursts in the middle of the night, Mother, acting on Claimant's behalf, requested funding from WRC for five soundproofing blankets.
2. By Notice of Proposed Action letter dated August 25, 2020, WRC denied funding for soundproofing blankets.
3. On August 25, 2020, Mother filed a timely Fair Hearing Request.
4. All jurisdiction requirements are met.

Claimant's Background

5. Claimant is a 30-year-old consumer of WRC due to his qualifying diagnosis of Autism. Since birth, he has resided with Mother in one of 18 townhouses located in a six-story complex.
6. Claimant presents with problematic and aggressive behaviors. As set forth in his most recent Individual Program Plan (IPP) dated November 14, 2018, "His tantrums include major property destruction, self-injurious abuse and aggressive acting out towards others. In the past year, [Claimant's] overall behaviors continue to

be problematic and unstable despite various supports.” (Exh. 8 at p. 43.) A September 24, 2020 Annual Progress Report (Progress Report) documents “multiple episodes of escalated behavioral issues.” (Exh. 7 at p. 32.) The Progress Report documents Claimant’s aggression has resulted in injuries to himself and Mother as well as property destruction.

[Claimant’s] behavioral issues remains [sic] the main challenge which hinders [him] from enjoying a good life. Over the past year, there have been multiple episodes of escalated behavioral issues of aggressive act[s] towards staff, aggressive act[s] towards family causing multiple injuries to his mother, aggressive act[s] towards self, property damage and disrobing which always result . . . in crisis support and administration of . . . medication for mood stabilizer.

(Ibid.)

7. The supports WRC currently funds for Claimant include applied behavior analysis services, specialized therapeutic services, social skills training, behavior respite services, and an adult day program. Due to the COVID-19 pandemic, implementation of those supports has been virtual, and when not possible or impracticable implementation has been paused. Out of an abundance of caution, Mother does not want third persons, including behavioral therapists, entering her home.

WRC’s Position Against Funding for Sound-Proofing Blankets

8. WRC does not dispute Claimant presents with “significant autism” and “struggles with aggressive behaviors that are difficult to manage and control.” WRC

recognizes Claimant makes a lot of noise when he is upset, and his neighbors complain. WRC additionally recognizes Claimant's behaviors present a risk of harm to Mother and on numerous occasions have required Mother to isolate herself from Claimant to avoid injury.

9. The \$450 cost for the blankets is not an issue for WRC. WRC maintains the blankets are for sound absorption—the reduction of echoes and reverberations—and are not for sound blocking. WRC additionally maintains the blankets amount to “a band aid” and are not appropriate to redress Claimant's aggression and frequent outbursts. WRC recommends placing Claimant in a behavioral residential facility equipped to administer a comprehensive behavior program and protocols for meeting Claimant's needs and securing his safety.

Claimant's Position in Support of Funding Sound Proofing Blankets

10. Mother is not averse to a residential facility placement for Claimant. But Mother is fearful about transferring Claimant from his home to a residential facility setting during the COVID-19 pandemic. Mother understands the blankets “are not the remedy” for Claimant's behaviors; however, she maintains they are “a remedy for now until he makes a move.” Mother explained, “Many elderly people are in the building. There are numerous complaints. They blame me for their medical conditions. . . . I am 64 with lupus. I can't have a relationship with my neighbors. They all have an attitude. Anything would help at this time, even if short term.”

11. Mother intends to install the blankets in Claimant's room on the walls where he always bangs and punches holes.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) "Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance. . . . Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

2. Services and supports for persons with developmental disabilities are defined as "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 rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports relevant to this matter include "adaptive equipment and supplies." (*Id.*)

3. The Lanterman Act mandates "the cost-effective use of public resources" and the "[u]tilization of generic services and supports when appropriate" in connection with the provision of services and supports to individuals with developmental disabilities. (Welf. & Inst. Code, § 4646, subd. (a).)

4. An individualized program planning process, considering the needs and preferences of the individual and, where appropriate, the family, is required to determine the services and supports to be funded. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

5. The COVID-19 pandemic has disrupted implementation of the supports consisting of applied behavior analysis services, specialized therapeutic services, social skills training, behavior respite services, and an adult day program provided for in Claimant's IPP. Claimant's aggressive behaviors nonetheless persist. Unabated, Claimant's aggression threatens to undermine his personal and social habilitation. His aggression adversely impacts the lives of his mother and neighbors. Although not ideal, in a pandemic the blankets are a cost-effective adaptation of a generic support to alleviate the effects of Claimant's developmental disability.

6. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has met his burden.

7. By reason of Factual Findings 5 through 11 and Legal Conclusions 1 through 6, cause exists to grant Claimant's appeal.

ORDER

1. Claimant's appeal is granted.

2. Westside Regional Center shall fund Claimant's purchase of soundproofing blankets in the amount of \$450.

DATE:

JENNIFER M. RUSSELL

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.