

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

In the Matter of:

CLAIMANT

v.

GOLDEN GATE REGIONAL CENTER, Service Agency.

OAH No. 2021090581

DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference on October 28, 2021.

Claimant was represented by his one of his parents.

Lisa Rosene, Director of Regional Center Services, represented Golden Gate Regional Center (GGRC), the service agency.

The matter was submitted for decision on October 28, 2021.

ISSUE

Is claimant entitled to service agency funding under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for artificial cushioning turf in his backyard?

FACTUAL FINDINGS

1. Claimant is eligible for and receives services from GGRC due to an intellectual disability. Claimant is a medically fragile eight-year-old boy who has also been diagnosed with Phelan McDermid syndrome, trisomy 19, cerebral palsy, hypotonia, dysphagia, chronic aspirations, hypertrophy of the tonsils and adenoids, bilateral ptosis, microcephaly, and insomnia. He requires total assistance with all of his care needs.

2. Claimant, as well as his two sisters, currently live together with one of their parents¹ at a time, by a 50-50 shared custody agreement. The parents live next door to each other, but rarely communicate. The parent at hearing has never been in the other parent's house or backyard.

3. Claimant's annual Individual Program Plan (IPP) dated February 9, 2021, stated that claimant was "able to crawl and his parents have a wheelchair for him when he is outside of the family home." Claimant could "stand and walk a few steps with

¹ References to the parent or a singular parent mean the representative parent at hearing.

support at baseline” at that time while wearing ankle and foot orthoses (AFO’s) on both legs. One of claimant’s IPP objectives was to walk with support. An addendum to claimant’s IPP on June 2, 2021, stated that it was important for claimant to have opportunities for rest and recreation, and that claimant remain in good health.

4. Claimant wears a helmet and a gait belt to help him walk. Claimant has begun to walk with some independence and likes to play outside kicking a soccer ball on the nearby school playground that has a cushioned artificial turf. When he was not on cushioned artificial turf, he easily fell and fractured his legs. This occurred three times in 2020, and on October 5, 2021.

5. On August 28, 2021, the GGRC medical director, supervising social worker, and manager met with the parent to discuss her request for GGRC to fund the installation of cushioned artificial turf in her backyard, measuring about twenty-five by thirty feet. The GGRC team requested 15 days to obtain more information. During that time, no information was requested from the parent. The parent in the meantime obtained a rough estimate of \$10,000 for the cost based on the square footage.

6. GGRC determined it was not appropriate to fund the request, and issued a notice of proposed action on September 8, 2021. The denial of funding was based on two grounds. First, the installation would increase the value of the parent’s home in conflict with the California Constitution provision (in Article XVI, section 6) against making a gift of public money to an individual. Second, the school playground is a generic resource that claimant could access. The parent appealed and requested a fair hearing. This proceeding followed.

7. The parent reasonably and credibly testified that she thought the installation of cushioned turf in the backyard would decrease the home’s value and

would have to be removed prior to selling the property. GGRC presented no evidence showing that a home with cushioned artificial turf in the backyard had a greater value than a home that did not have it. The parent credibly testified that the backyard currently has dirt, sticks and rocks, all of which claimant has tried to eat, and that turf could not easily be pulled up.

8. Claimant's representative credibly testified that the nearby elementary school is six-tenths of a mile away, too far a distance for claimant to walk or to be taken by wheelchair. The maximum distance claimant could walk with assistance is two-tenths of a mile. Claimant is not able to use the school playground due to the limited time it is available when it is not in use by others, especially now that the school has re-opened and daylight hours are diminishing. There are no other playgrounds nearby that have a cushioned artificial turf play area.

9. On October 5, 2021, Stephen Santucci, M.D., claimant's pediatrician, wrote a prescription for claimant to have cushioned artificial turf in his backyard. Dr. Santucci's corresponding letter explained the medical reasons for his prescription. These included claimant's risk for fractures, and his risk at highly trafficked elementary school play structures for more severe lung disease if he were to be infected by the coronavirus causing COVID-19.

10. Dr. Santucci confirmed that claimant could not walk the distance to the school playground due to claimant's mobility limitations. Dr. Santucci concluded that it was medically necessary that claimant "be provided a home accommodation that allows [claimant] to access the outdoors safely." He added that claimant's chewing sticks and leaves causes an immediate risk to his health.

LEGAL CONCLUSIONS

1. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.)² the State of California accepts responsibility for persons with developmental disabilities. (§ 4501.) The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. It contracts with regional centers that are charged with the responsibility of providing access to services and supports best suited for individuals with a developmental disability. (§ 4620, subd. (a).)

2. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (*Id.*, §§ 4501, 4502, subd. (b)(3); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646, subd. (c).) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

² Statutory references are to the Welfare and Institutions Code.

4. It is the intent of the Legislature that services and supports assist individuals with developmental disabilities to achieve the greatest self-sufficiency possible and to exercise personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP, and within the context of the IPP. The planning team shall give highest preference to those services and supports that would allow minors with developmental disabilities to live with their families, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

5. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) When determining whether to fund a requested service, regional centers must identify and pursue all possible alternative sources of funding, including utilization of generic services when appropriate. (§§ 4659, subd. (a) & 4646.4, subd. (a)(2).)

6. Article XVI, section 6, of the California Constitution, prohibits making a gift of public money to an individual.

7. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government-funded services. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, § 500.) Claimant has met his burden in this matter.

8. Claimant has shown by unrebutted testimony that installation of cushioned artificial turf in his backyard would not increase the value of the parent's home in conflict with the California Constitution. (Finding 7.) GGRC provided no credible evidence to rebut or contradict this testimony. (Finding 7.)

9. Claimant has shown that the school playground six-tenths of a mile from his home is a not generic resource for its area of cushioned artificial turf because claimant could not access it easily or, on most occasions, at all. (Findings 8 through 10.)

10. Cause exists for GGRC to fund installation of cushioned artificial turf in claimant's representative's backyard.

ORDER

Claimant's appeal is granted. Claimant is entitled to have Golden Gate Regional Center fund artificial cushioning turf in his representative's backyard.

DATE:

BARBARA O'HEARN
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.