

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

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

**CLAIMANT**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021100101**

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and teleconference on June 8 and 9, 2022.

Stella Dorian, Contract Officer, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Valerie Vanaman and Sophia Bliziotis, Attorneys at Law, represented Claimant, who was not present. Claimant's parents, who are his conservators, were present. The names of claimant and his family members are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 8, 2022.

## **ISSUES**

Does the Lanterman Act require the Service Agency to increase funding by the following amounts, through claimant's SDP budget, for the following home modifications designed to provide claimant with the least restrictive environment:

1. By \$45,700 for exterior modifications, chiefly to the front entryway and driveway, the side patio entryway, and a pathway connecting them; and
2. By \$44,800 for interior modifications, chiefly to the kitchen and an interior doorway.

(The parties reached agreement, prior to the start of this hearing, on questions of funding for other modifications.)

## **EVIDENCE RELIED UPON**

Documentary: Service Agency's exhibits 1 through 17; claimant's exhibits A through D, I through M, O, P, R, T, X, Z, AA through EE, and GG.

Witnesses: Emmanuel Gutierrez, Juan Carlos Herrera, and Dianne Lotivio for Service Agency; Melissa Braucht, Rafael Eduardo Ramirez, Suzanne Goya, and claimant's mother for claimant.

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## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant, a 28-year-old conserved man, is an eligible consumer of NLACRC based on his diagnoses of cerebral palsy and mild intellectual disability. He lives in his family home with his parents and a younger sister who attends college.

2. Through claimant's IPP process in 2020 and 2021, claimant's parents requested NLACRC funding for modifications to claimant's house to address certain access and safety issues.

3. In a Notice of Proposed Action (NOPA) and letter dated September 23, 2021, NLACRC denied claimant's request for the home modifications at issue here. "NLACRC is not in agreement with these modifications as [claimant] can access the home and has been able to prior to this request. Determination of whether the modification is based on need and it is believed that [claimant]'s needs are being met currently." (Ex. 6, p. A52.) NLACRC cited as authority for its denial Welfare and Institutions Code sections 4659, subdivisions (a), (c), and (d), and 4648, subdivision (a)(8).

4. On September 30, 2021, claimant's mother filed a Fair Hearing Request. This hearing ensued.

### **Background**

#### **CLAIMANT'S NOVEMBER 2020 IPP**

5. Claimant's November 23, 2020 IPP notes that claimant must be closely monitored at all times for safety. He receives 281 hours per month in IHSS; his mother

is the provider, mostly during the nighttime hours, sleeping near claimant and repositioning him. Both parents lift and transfer claimant during morning care. Claimant is incontinent of bladder and bowel. An afternoon caregiver helps claimant's mother on outings; any outing activities, and lifting and transferring, require two people for safety. Claimant has no significant behavior issues. "He is generally happy and likes to be part of conversations and involved in activities." (Ex. 2, p. A8.) He paints and wishes to sell his art, and he wants to participate in social activities.

6. The 2020 IPP provides for vocational training and NLACRC supports for claimant in the form of funding for nursing services, personal assistance services in the afternoons and evenings to assist with outings, bathing, feeding, and transferring, and respite care, among other services, with Medi-Cal to fund IHSS and other services.

7. The 2020 IPP provides that NLACRC was to fund Accredited Home Health Services (Accredited HHS) in-home physical therapy (PT) and occupational therapy (OT) evaluations "for a total assessment of home modification." (Ex. 2, p. A18.) The 2020 IPP notes claimant's interest in learning to cook on his own and his inability to access the kitchen because the pathway around an island was too narrow. The front door of claimant's house was not accessible with claimant's new, wider power wheelchair, and would require modification. The side patio door was inaccessible because there was no ramp from the patio to the ground and no safe pathway from the patio to the front of the house.

8. The 2020 IPP noted that "[d]uring [the] IPP [it] was agreed to begin assessment for potential environmental modification when [claimant] will transition to SDP, in middle of January 2021 IDT team will meet again to assess the needs." (Ex. 2, p. A7.)

9. The 2020 IPP notes that claimant will transition to the SDP effective December 1, 2020; the parties discussed claimant continuing to live with his family and discussed Supported Living Services as a future option. So claimant can “learn and practice skills that will enable him to be more independent in his every day life,” claimant was to schedule an ILS assessment with NLACRC’s vendor, Creative Minds, with a report due to NLACRC upon completion. (Ex. 2, p. A19.) Claimant’s mother anticipated SDP would allow claimant to participate in education and vocational skills training and social and recreational activities with a greater degree of independence.

### **CLAIMANT’S NOVEMBER 2020 SDP BUDGET**

10. On November 30, 2020, NLACRC approved claimant’s SDP budget, which totaled \$206,169.83 and included respite and various nursing services and health supports, and identified a new service need, Independent Living Services (ILS).

### **CREATIVE MINDS’ 2020 ILS ASSESSMENT AND PLAN**

11. As provided in claimant’s 2020 IPP, NLACRC’s ILS vendor, Creative Minds, assessed claimant and prepared an Individual Service Plan (ISP) dated October 14, 2020. Its purpose was to develop program planning to establish services in such independent living skills areas as meal preparation, socialization, and community integration. Creative Minds wrote in its ISP,

[Claimant] enjoys the cooking classes he currently participates in and is excited to learn new recipes to make at home. [Claimant] requires hand over hand assistance to complete any cooking tasks, and physical assistance is required to ensure safety, especially with the stove and other kitchen appliances. [Claimant] uses a standing

wheelchair; however, he still cannot maneuver throughout the kitchen to prepare certain meals or operate certain appliances. He would like to explore options to allow him full access to his kitchen. . . . Goal 3: [Claimant] will receive ILS support to learn new recipes to cook at home. ILS Instructor will assist [claimant] in identifying new recipes for meals he would like to learn to prepare. ILS Instructor will assist [claimant] in obtaining the ingredients required to prepare the recipe he has chosen. ILS Instructor will read the recipe with [claimant] to ensure the steps can be followed. ILS and [claimant] will prepare the recipe in [claimant]'s kitchen.

(Ex. 5, p. A48.)

## **FEBRUARY 2021 HOME MODIFICATION ASSESSMENT BY ACCREDITED HOME HEALTH SERVICES**

12. In accordance with claimant's 2020 IPP, on February 9, 2021, Sharon Jackola, a physical therapist with Accredited Home Health Services (Accredited HHS), an NLACRC vendor, performed a PT assessment of claimant. Ms. Jackola wrote that claimant:

is non-ambulatory, using motorized wheelchair with assistance, dependent on caregivers for repositioning in bed, dependent for transfers with 2-person lift or using mechanical lift/Hoyer lift, power lift on modified van. . . . Client participates in programs at Casa Colina and other

specialized interventions. Current programs are primarily via Zoom. Patient is currently limited to common area off of kitchen to engage in all interventions due to increased space needed for wheelchair and supplies. Bedroom is used only for changing of incontinence products and sleep/rest in specialized bed. Client enjoys frequent visits out of home within community, to attend interventions/classes and for acute and routine health care and needs improved access to enter/exit home. Current equipment: new power wheelchair with stander includes tray/lateral trunk supports/head support for positioning . . . .

(Ex. P, p. B68.)

13. Ms. Jackola noted claimant's family lives in a fire zone and, for safety, claimant needs easy egress from the house. She described the narrow aluminum ramp from the driveway to a step and from the step to the threshold of the front door, the steep lope of the driveway, the difficulty of managing the wheelchair down the incline, the lack of wheelchair access from the side patio to the front of the house, and the lack of wheelchair access to the kitchen due to the narrow pathway into the kitchen. She recommended modifying the front entrance, installing a concrete ramp from the house to the end of the driveway, modifying the patio exit "to include assess to front yard ramp," and reconfiguring the kitchen to provide a wide entry pathway. (*Id.* at p. B69.)

14. On February 12, 2021, three days after Ms. Jackola performed her assessment, Robin Healy, an occupational therapist with Accredited HHS, performed an OT assessment of claimant. Ms. Healy wrote that claimant:

is non-ambulatory, using both a manual and motorized wheelchair. Client's motorized chair has an option for hand [sic] control, however he is not currently using it due to the home environment setup as described below. The client's wheelchairs have lateral support and core straps to maintain upright posture. [Claimant] uses a manual wheelchair with total assist for ramps outside, due to its slightly smaller size and safer to control on narrow ramps. [Claimant]'s mother states she is getting older and is having a harder time pushing his chair up and down slanted driveway, in small spaces throughout the home, and on the uneven floor tiling. She is also concerned about the safety of the chair tilting on flooring, outside uneven walk way, and the exit routes in an emergency. [Claimant] is limited to the area off the kitchen, his bedroom, and master bathroom due to no limited wheelchair accessibility. The motorized wheelchair measures 32 inches wide including lap tray and mount, and 54 inches long. Kitchen walkway measures 30-inch wide entryway . . . .

(Ex. O, p. B65.)

15. Ms. Healy wrote that claimant is hypotonic and lacks active muscle strength; claimant's mother manages dressing tasks and assists in hand-over-hand for many ADL tasks, "including weekly cooking and painting classes." (Ex. O, B65.) "Client has good attention to task, able to remain engaged in a task for 2-3 hours at a time



per mothers report. Prior to the pandemic, patient was attending activities outside the home from sometimes 6AM-4PM daily without showing fatigue.” (*Id.* at p. B66.)

16. Ms. Healy recommended opening the kitchen to wheelchair access by removing the island dividing the kitchen from the dining area. She wrote,

With current setup, client is not able to enter the kitchen.  
Client cannot be an active participant in picking out food items, observe daily cooking tasks, or participate in current cooking class beyond preparation. Due to client's large wheelchair, opening the kitchen up will allow for him to enter with head control or without physical struggle when getting assistance. This will increase client's quality of life.  
Make kitchen sink wheelchair accessible with underneath cutout, and lower sink at wheelchair level or accessible with wheelchair lift.

(Ex. O at p. B66.)

17. Ms. Healy also recommended exterior modifications, including a wider ramp to the front entrance and, for fire safety reasons, making a second, rear entrance wheelchair accessible.

18. Accredited HHS provided the modification assessment to NLACRC on February 19, 2021. (Ex. DD, p. B291.)

### **JULY 2021 IPP ADDENDUM**

19. A July 21, 2021 addendum to the 2020 IPP noted a new outcome: claimant was to receive a person centered plan (PCP), as well as supports to help him

navigate the SDP. (Ex. M.) The addendum noted that Empower had already completed a PCP for claimant.

20. The PCP prepared by Empower, dated July 9, 2020, identified claimant's family members, friends, and circles of support, his characteristics, activities, goals, hopes, and dreams, an action plan for claimant's artwork, his supports, and plans for increasing his independence and social activities. It recites that claimant's house "is not accessible" and identified the following unmet needs, among others: an accessible kitchen, remodeling the entry ramp to the front door, remodeling the side patio exit and adding a pathway from the patio to the front driveway. "[O]nce his kitchen is remodeled he will be able to cook, access the refrigerator and wash dishes. He enjoys cooking and would benefit from these services." (Ex. T, p. B126.)

### **CLAIMANT'S OCTOBER 2021 IPP**

21. According to claimant's most recent Individual Program Plan (IPP), dated October 27, 2021, claimant can verbalize a few words, but is able to express his wants and needs through a dynavox, an augmentive communication device, and an iPad with a modified stylus.

22. The 2021 IPP acknowledged and referred to claimant's PCP, prepared by Empower. It noted claimant's transition to SDP and his plans to use the SDP funds for personal assistants; ILS; day programs for social, self-help, and vocational skills; transportation, and starting and maintaining a business to sell his art. The IP referred to an SDP Spending Plan and identified GT Independence as the Financial Management Service and Sandra McElwee as the independent facilitator for the spending plan. Claimant's budget year was projected to end on November 31, 2021, and his family was to contact NLACRC to renew the budget in advance. Claimant was

also to receive a PCP for the period of December 2021 to December 2022. Claimant's parents are no longer receiving respite services.

23. The 2021 IPP acknowledged claimant's desire for greater independence, including his desire to cook, thwarted because "physical barriers have prevented him from entering the kitchen with his wheelchair." (Ex. 3, p. A25.) NLACRC committed to assess claimant receiving training in basic cooking skills and other independent living skills.

24. The 2021 IPP acknowledges claimant's mother's claim that the house is not accessible to claimant, requiring modifications to the front entry, side patio entry and pathway, and kitchen, and poses a threat to claimant's health and safety.

25. The 2021 IPP states that a PT and OT assessment for modifications to claimant's home, through the NLACRC vendor, Accredited HHS, as required by claimant's 2020 IPP, has been completed. "NLACRC is currently reviewing this request." (Ex. 3, p. A40.)

## **NLACRC'S Review of the Accredited HHS Home Modifications Assessment**

26. In accordance with claimant's 2020 IPP, NLACRC vendor Accredited HHS sent an occupational therapist and a physical therapist to assess claimant's needs and make recommendations for home modifications. NLACRC received those recommendations in February 2021. As noted in claimant's 2021 IPP, as of October 2021, 10 months later, the assessment was still under review. (Factual Findings 12-18, 25.)

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27. NLACRC did not create a budget for or provide funding for the recommended modifications prior to claimant's transition to the SDP, or through claimant's initial SDP budget, or at claimant's 2021 IPP meeting.

### **May 2022 Home Modification Assessment by Casa Colina**

28. In 2022, in reviewing claimant's request for additional SDP budget funding for the exterior and kitchen modifications (as well as for the modifications no longer at issue), NLACRC chose not to rely on the Accredited HHS OT and PT reports and recommendations it had obtained in 2021. (Factual Finding 26.)

29. Instead, NLACRC retained the services of two other OT and PT consultants, both of whom work for Casa Colina Hospital and Centers for Healthcare (Casa Colina) in Pomona. Casa Colina is a community-based rehabilitation center focused on rehabilitation for spinal cord and traumatic brain injury (TBI) clients, including activities of daily living (ADL), functional mobility, and instrumental ADL (e.g., housecleaning, meal preparation). Casa Colina provides healthcare services to claimant.

30. One of the two Casa Colina consultants, Melissa Braucht, is a physical therapist licensed in California for 10 years. She also works for Rehab Without Walls, a program to improve daily living in the home and community. Ms. Braucht is certified as a neurological specialist through the National Board of Physical Therapy, for working with people with neurological disorders, and as an assistive technology professional through Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), for providing technology and adaptive equipment to patients. She worked in the Casa Colina Transitional Living Center for five years, assessing and

making recommendations for safe transitions from hospital to home for quadriplegic, paraplegic, and hemiplegic patients.

31. The other consultant, Suzanne Goya, is an occupational therapist licensed in California for 31 years. She has worked for Casa Colina for 16 years; before that, she was an occupational therapist at Long Beach Memorial Medical Center (LBMMC), working with patients with neurological disorders and spinal cord injury. She has performed evaluations for home modifications both for LBMMC and Casa Colina. Ms. Goya regularly works with quadriplegic clients, paraplegic clients, and clients with TBI and neurological disorders. She regularly addresses issues of accessibility for quadriplegic patients. When performing an assessment, she looks for accessibility in all the rooms in the home, safety concerns inside, and ingress and egress with two different entrances. In the home, a primary goal is to maintain inclusiveness and access to the entire home.

32. Ms. Braucht and Ms. Goya know claimant, who has been a patient at Casa Colina and helped him obtain appropriate assistive technology, including a power wheelchair, access to an iPad, and an augmentive assistive communication device. The power wheelchair is critical to claimant's ability to participate in his mobility, with switch controls at his head. It allows claimant to engage in the world the way he desires, to interact with his environment in as normal a way as possible, and to expand his world. Ms. Braucht and Ms. Goya also implemented a mobile arm support system for claimant, who cannot lift his arms without assistance. The system, installed on claimant's power wheelchair, allows claimant the functional ability to lift his arms and move them sideways sufficiently to use a tabletop in front of him while in his wheelchair.

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33. Once NLACRC retained Ms. Braucht and Ms. Goya to assess claimant's home for accessibility and safety in response to claimant's funding request, the two consultants spent about four hours with claimant, in his home and at their clinic, and a comparable time writing a Therapeutic Home Evaluation report, dated May 28, 2022.

34. The two therapists observed claimant's mobility within his home, including barriers to his mobility, a process they considered critical to assessing and developing recommendations for modifications. They measured doorways, entrances, and exits, and analyzed claimant's movement throughout the house while he performed all of his ADL, such as getting out of bed and going to have breakfast. They noted claimant's power wheelchair is 51 inches long and 26 inches wide; allowing for a caregiver working with claimant requires additional space to the rear, front, or side of the wheelchair.

35. The Service Agency consultants submitted their Therapeutic Home Evaluation report to NLACRC on February 19, 2021. In their report, they made the following recommendations for modifications to the house exterior and to the kitchen. (Ex. C.)

### **CASA COLINA'S RECOMMENDATIONS FOR MODIFICATIONS TO EXTERIOR**

36. The Casa Colina consultants found the front entrance unsafe for claimant. The aluminum ramp from the front doorway was too narrow for the power wheelchair. A 90-degree turn at the end of the ramp was difficult to manage in the power wheelchair, which is 51 inches long, requiring claimant to repeatedly operate the controls located near his head to change direction. The entryway landing, just outside the door, is only four feet deep; claimant's chair is too long to fit on the landing. When a caregiver maneuvers the wheelchair from behind, this lengthens the space required

by the wheelchair even more. Casa Colina recommended a front landing six feet deep with a five-foot long concrete ramp to allow claimant a sufficient turning radius.

37. Casa Colina recommended a straight concrete path three feet wide down the driveway to claimant's van, which would no longer have to park on the street and block the driveway. This would eliminate claimant's need to make numerous turns with his head controls to access the van. When turning, the chair's wheels spin; without sufficient space, claimant must execute a difficult and time-consuming 10-point turn.

38. Casa Colina recommended that a planter bed in front of the house be replaced with a six-foot pathway for access to the side of the house. The side door patio is cracked and uneven, and it is difficult to maneuver a power wheelchair on an uneven surface. Casa Colina recommended replacing the patio so it is flush with the doorway threshold for smooth entry and exit, and creating a concrete ramp from the new patio to a new path to the front of the house. Currently, adjacent to the patio is dirt grade. The transition to dirt is dangerous. And the consultants recommended that claimant's access not be on dirt; their patients have gotten stuck in the mud using heavy wheelchairs. Having a continuous path to the front will allow claimant to access more of his yard and his house and decrease his social isolation.

### **CONSULTANTS' RECOMMENDATIONS FOR MODIFICATIONS TO KITCHEN**

39. A peninsula or island separates the kitchen from the dining area. Claimant cannot access the kitchen in his wheelchair, and cannot use the refrigerator, the cooking space, or the sink.

40. Casa Colina recommended modifying the sink to make it wheelchair-accessible so claimant can wash his hands, and shortening the island so claimant can enter the kitchen. This would still leave room to cook. It would also allow claimant to

see into the refrigerator. Claimant has a vision impairment; he uses peripheral vision to distinguish items, to which he must be in close proximity. He cannot focus on items in the refrigerator from outside the kitchen. It is not dangerous for claimant to access the stovetop; his caregiver will assist as needed and make the setup safe.

41. In their Therapeutic Home Evaluation report, Casa Colina recommended consultation with a skilled contractor specializing in ADA requirements who is familiar with city building codes.

## **Construction Bids for Recommended Home Modifications**

### **GAMBURD BID**

42. NLACRC retained the services of one of its vendors, Gamburd, Inc., in Granada Hills, to provide a bid for the work recommended by NLACRC's consultants, Ms. Braucht and Ms. Goya, in their Therapeutic Home Evaluation report.

43. Israel Gamburd, "Accessibility Consultant," prepared an estimate for that work, an "Accessible Construction Quote," that encompassed the recommended exterior and kitchen modifications as well as other home modifications not at issue here (Gamburd bid). (Ex. GG, pp. B315-B316.) The total bid was \$147,850; the bid does not specify an amount for each modification.

44. Mr. Gamburd submitted the Gamburd bid to NLACRC.

### **TREEIUM BID**

45. Rafael Ramirez, pre-construction director at Treeium, prepared a bid for modifications to claimant's house, including proposed designs and scope of work,



consistent with the findings and recommendations in the Therapeutic Home Evaluation report the NLACRC consultants had prepared.

46. Mr. Ramirez visited claimant's home and spent time with claimant as he maneuvered through the house. Mr. Ramirez also maneuvered the wheelchair through the house himself, using a joystick, and found obstacles that confirmed the conclusions and recommendations in the Therapeutic Home Evaluation report.

### **Exterior Modifications**

47. Treeium's bid included a ramp from the sidewalk to the front door, and a concrete pathway from the driveway along the front of the house and around the side to the side patio entrance. The front landing would be expanded to six feet to allow claimant an adequate turning radius. The side patio, cracked and uneven, would be replaced with a patio level from the sliding door threshold, making it easier for claimant and his caregivers. There would be a ramp from the patio down to a cement walkway, which connects with the walkway in front of the house.

48. The bid for all exterior work was \$45,700. Claimant's family would provide plumbing fixtures, decorative items, doors, windows, countertop, fences with a gate, and entry door installation. Treeium's bid includes installing a fence and gate, not purchasing it.

### **Kitchen Modifications**

49. Treeium's bid included removing the peninsula blocking claimant's access to the kitchen, providing access to the kitchen sink, and widening a doorway into the dining area from the rest of the house so claimant can use it.

50. The bid for the kitchen modification was \$44,800. Claimant's family would provide countertop material, plumbing fixtures, and other items.

## **NLACRC'S Response to the Accessibility Assessments and Bids for Home Modification**

51. After NLACRC's Casa Colina consultants produced their Therapeutic Home Evaluation report, and NLACRC received the Gamburd bid prepared by its vendor, claimant's mother reasonably concluded NLACRC was taking the steps necessary to implement the SDP budget increase for the requested modifications.

52. But when NLACRC's staffing committee met to reassess the necessity for the modifications and attendant SDP budget increase, the committee decided to reject the Gamburd bid and the recommendations in the Therapeutic Home Evaluation report. The committee comprised Emmanuel Gutierrez, a consumer services manager, and others to whom Mr. Gutierrez referred at hearing as "directors," namely Marine Topushyan, Jazmine Zimmerman, and Gabriela Eshrati, Consumer Services Director.

53. In the September 2021 NOPA letter, NLACRC acknowledged its receipt of claimant's September 1, 2020 PCP, the home modification request, and contractors' bids. But NLACRC wrote that it rejected the Gamburd bid in part because the bid reflected work on a side patio exit and safety codes do not require a second exit. At hearing, the Service Agency acknowledged a second exit is necessary for claimant's safety and is an appropriate modification for the house.

54. The NOPA letter stated that claimant's mother had not submitted an assessment for the power wheelchair, without which "NLACRC is unable to determine the need related to [claimant's] usage of a wheelchair for which the house is not accessible." (Ex. 6, pp. A51-A52.) Claimant's mother informed NLACRC of claimant's

acquisition of the power wheelchair on June 15, 2018. (Ex. DD, B211-212.) NLACRC has since obtained a copy of the wheelchair assessment, dated May 9, 2018.

55. Mr. Gutierrez testified NLACRC rejected the recommendations of its consultants, first those of Accredited HHS and then those of Casa Colina, because the consumer must first pursue generic sources of funding, which Mr. Gutierrez identified as private health insurance and Medi-Cal. He claims to have told claimant's mother this in August 2021. Claimant's mother denied having such a conversation with Mr. Gutierrez. She never received anything in writing from NLACRC saying it would not proceed until she produced such a refusal. Claimant has no private health insurance. The September 2021 NOPA letter issued the following month and set forth all bases for denying the funding request; it said nothing about the lack of a funding denial from Medi-Cal being a basis for NLACRC's refusal to approve the changes to claimant's SDP budget at issue in this case.

56. Mr. Gutierrez twice visited claimant's home after the NOPA issued to assess the modifications claimant was requesting. Mr. Gutierrez has never worked in the fields of OT or PT. He has never provided direct services to anyone with quadriplegia or worked in a facility providing one-to-one care to a quadriplegic client. He has never worked with anyone who uses a power wheelchair. Mr. Gutierrez never reviewed claimant's PCP.

57. On his first visit to claimant's home, Mr. Gutierrez examined the areas claimant's mother sought to modify, including the kitchen, the front entry and driveway, and the side patio exit and pathway.

58. Aside from greeting claimant on his visit inside the home, Mr. Gutierrez did not speak with claimant. Nor did he observe claimant navigate through the house

while performing his usual ADL and other activities. According to claimant's mother, neither Mr. Gutierrez, nor Ms. Dorian, who accompanied him, showed any interest in how claimant accesses the interior portions of the house. Claimant was in bed during the entire visit. Nor did Mr. Gutierrez attempt to pilot the power wheelchair through the house, as Mr. Ramirez of Treeium did. But claimant's mother demonstrated to Mr. Gutierrez that claimant's power wheelchair could not safely go up or down the aluminum ramp to the front door because the wheelchair is about as wide as the ramp.

59. After that first visit, an internal team at NLACRC met around February 2022 to discuss what funding might be provided.

a. Front entry and driveway: The team decided claimant's mother was right, that a wider aluminum ramp to the front entry was not a viable option. The team decided to reject claimant's mother's request for a driveway modification. Claimant exits the side of his van on a ramp; as the driveway is currently configured, the van must park in the street, blocking the driveway, and claimant must exit and enter the van there. The van cannot park in the driveway because there is not enough space in the driveway for claimant to exit the van and then turn toward the house.

b. Side patio entry and pathway to front driveway: NLACRC contacted claimant's local fire station and was told there is no Americans With Disabilities Act requirement for a second exit from a single family residence. NLACRC contacted the power wheelchair manufacturer for information about the type of terrain the chair can traverse. The team decided to provide claimant with a ramp from side exit patio to a dirt area on the side of the house as a means of safe egress.

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c. Kitchen: The team decided to reject the request for funding to modify the kitchen to allow claimant to enter. Contrary to Creative Minds' ILS assessment that claimant's cooking goals would include preparing recipes in the kitchen (Factual Findings 9 & 11), NLACRC decided not to have claimant participate in cooking activities in the kitchen.

60. The team, including Ms. Dorian, selected another vendor, Call Before You Fall (CBYF), to review and bid for modifications to the front door access and the side patio door access and other matters not relevant here, but not for all the modifications for which claimant sought funding. CBYF operates under a Class-B general contracting license.

61. Juan Carlos Herrera, a CBYF project manager who is not himself a licensed contractor, and Don Little, another CBYF employee, accompanied Mr. Gutierrez on the second visit to claimant's home. They met claimant, his mother, and a caregiver. Mr. Herrera did not try to move claimant's wheelchair or maneuver it inside the house or out the front or side patio door with claimant in it.

62. After the site visit, CBYF submitted a bid to NLACRC. For the front entry, CBYF proposed breaking the concrete steps and pathway to pour a new seven-foot concrete ramp from the door threshold to the entry pathway. Mr. Herrera acknowledged this would entail pouring new concrete over some old concrete. The bid does not specify the width of the ramp, which would be decided at the time of construction and would be subject to NLACRC approval. For the side patio entry, CBYF proposed installing rubber threshold ramps to allow the wheelchair to cross the sliding glass door threshold, a seven-foot concrete ramp down from the exterior patio slab to dirt grade, and removing a gate between the side yard and the front of the house. The patio slab is cracked, but Mr. Herrera testified it "seems stable;" he was not asked to

bid on removing the patio. Nor did NLACRC ask Mr. Herrera to bid on a pathway from the side patio to the front driveway, just for a means to get claimant from the side patio to the dirt. (Exs. 12, GG, B329-330.)

63. As for claimant's access to the kitchen, NLACRC proposed claimant use an adaptive tabletop on the far side of the island separating the kitchen from the dining area. Mr. Gutierrez testified NLACRC was concerned about allowing claimant access to the stovetop for safety reasons; this contradicts finding by NLACRC's vendored ILS provider.

64. Mr. Gutierrez asserted that claimant will not have to enter the kitchen to see into the refrigerator; the ILS instructor can open the refrigerator door to allow claimant to see ingredients within. The basis for this assertion was Mr. Gutierrez's ability, during the home visit, to see into the refrigerator from next to the island. However appropriate Mr. Gutierrez's qualifications may be for his ordinary job duties at NLACRC, this epitomizes Mr. Gutierrez's lack of qualification to perform a home accessibility assessment and exposes just how appalling was NLACRC's decision to have him do so. Mr. Gutierrez did not ask claimant's mother or claimant about claimant's vision and was ignorant of the fact that claimant is visually impaired, as his mother testified and as confirmed in at least one IPP, dated August 2017 (Ex. AA, B164) and by Casa Colina (Factual Finding 40). Claimant's mother testified claimant will not be able to see items in the open refrigerator from outside the kitchen.

### **Casa Colina and Treeium's Review of NLACRC's Proposal**

65. Ms. Braucht and Ms. Goya, of Casa Colina, reviewed the recommendations of Mr. Gutierrez and CBYF and found them inadequate at best and dangerous at worst.

66. A seven-foot ramp from the front doorway threshold to the concrete path leading to the driveway, without a stop on a landing, is not safe. Claimant needs a landing so the chair can sit flat while waiting for door to open. Without a landing, claimant will be unable to stop or turn around as he descends the ramp. He would have to go all the way down, turn around, and go back up. But worse, as the chair's front casters go over the threshold, they will start dropping. Claimant has a chest strap and no trunk control; this incline will pitch his head forward, off the headrest, so he will not be able to use the chair's head controls.

67. On the other hand, a six-foot deep and five-foot long landing from the threshold will allow claimant to safely exit or enter the house before using a concrete ramp from the landing to the concrete path.

68. Ms. Braucht and Ms. Goya also recommended a straight three-foot wide path up the driveway from the sidewalk so claimant will not have to make many turns using his head controls to enter or exit the van. Currently he must make multiple adjustments left and right because, when the chair is turning, the wheels spin, requiring claimant to make a 10-point turn with the head switches, which is unreasonable. The proposed modification will lessen these unnecessary difficulties, increase claimant's access, and enhance his safety.

69. Replacing a planter bed with a six-foot concrete pathway to the side patio is necessary to allow claimant to use the second exit from the house and get to the front of the house safely. CBYF's bid, constrained by NLACRC's instructions, recommends leaving the existing side patio as is, with a ramp from the patio to the dirt grade in the side yard. Ms. Braucht and Ms. Goya testified this would be unsafe. The power wheelchair is very heavy. It requires a flat surface to operate safely, and it will do poorly on dirt or grass, especially after it rains, when the chair may get stuck,

regardless of whether claimant is accompanied by a caregiver. NLACRC's solution would not improve claimant's safety or quality of life. Also, whenever claimant must transition across different surfaces, he will experience a jarring sensation that can move him, because he lacks trunk control, laterally or forward. This is dangerous for claimant because the control switches are near his head.

70. Mr. Ramirez, of Treeium, reviewed the CBYF bid. He confirmed the danger to claimant that would result from the absence of a landing at the front doorway. He also testified that CBYF does not intend to remove the part of the concrete landing that would be under the newly poured concrete ramp; CBYF plans to pour concrete over concrete. According to Mr. Ramirez, any existing cracks would eventually move into the new concrete, so the new ramp would be temporary. And two inches of new concrete would be required for the pour to be effective, heightening the ramp to a level above the door's threshold.

### **The SDP Process at NLACRC**

71. Mr. Gutierrez testified the regional center applies its service standards to SDP budget requests. The standards are approved by the Department of Developmental Services (DDS), the state agency responsible charged with implementing the Lanterman Act. Mr. Gutierrez could not identify what service standards apply in this case.

72. Dianne Lotivio, an SDP specialist at NLACRC since June 2020, testified that SDP Service Definitions provide that a participant can use SDP funding for home modifications to enable greater independent functioning, so long as another entity is not responsible for the funding and the adaptations are not of general utility rather



than of remedial benefit to the consumer. The SDP participant may obtain services agreed upon in the IPP, may use non-vendor agencies, and may negotiate rates.

73. Ms. Lotivio testified that, once in the SDP, the consumer's family creates a PCP. The IPP team reviews the PCP to identify services and supports for which the regional center is responsible. The Lanterman Act requires the use of generic resources, if available. The regional center typically requests assessments or depends on its vendor consultants about the services and supports. The family and the regional center come to an agreement as to the services and the money to be budgeted, and the agreed-upon terms are made part of the consumer's IPP. If work is put out for bid, the regional center selects the most cost-effective bid, one that meets the goals established in the IPP.

74. In this case, NLACRC had multiple vendors perform multiple assessments that recommended certain modifications to claimant's house. Ms. Lotivio testified that, if the claimant's family and the regional center could not agree on the modifications, the modifications could not become part of the IPP. That is why the regional center issued a NOPA.

## **Additional Evidence**

75. Claimant's mother testified that claimant comprehends everything, but he has limited powers of expression and is able to say only one or two words at a time. Claimant can use a switch, an iPad, and cards to communicate. He enjoys communicating with his family and initiates speech through words, gestures, and eye gaze. Claimant also enjoys creating art. He has mobile arm lifts, which allow him to paint and use his hands. Claimant is also interested in community activities, cooking,

music, art, and exercise. He likes to be with other people; he has always been included in family activities and he lights up when he is around people.

76. Claimant's PCP states that claimant's house is not accessible and accurately describes the barriers claimant faces. (Ex. T, pp. B123-B124.) The front entry, side patio exit, and kitchen must be remodeled to allow patient safe access to his environment. The PCP became part of claimant's records at NLACRC.

77. Claimant's mother believes her request for home modifications was consistent with claimant's the needs identified in the PCP. It was also consistent with the recommendations of NLACRC's vendors, Accredited HHS and Casa Colina.

78. Claimant's mother wants to make the kitchen and the kitchen sink accessible to claimant. "We all deserve to be in the kitchen," she testified. Claimant is interested in cooking, washing dishes, and helping prep meals. He really loves the process; he picks the menu, goes shopping for ingredients with his mother, and they do food preparation. He wants to select items from the refrigerator or cabinet to prepare meals, but he currently cannot do so, nor can he access the sink to wash his hands and dishes, or cook with his mother. Being included in these activities will increase his self-esteem. NLACRC's denial is excluding claimant from participating with his family in a major life activity. Claimant's mother believes the Service Agency should advocate for the family and the consumer. According to claimant's mother, during their visit to claimant's home, Mr. Gutierrez and Ms. Dorian never discussed with her claimant's ability to make choices and his quality of life and access issues.

79. Claimant's mother confirmed that a ramp directly from the front door to the driveway would be dangerous, because when claimant crosses the door threshold he tilts forward and cannot use his head control array. Mr. Herrera did not test this

when visiting for the CBYF bid. And the driveway slope is steep and difficult for claimant to manage using his head controls because he falls forward in the chair. CBYF's suggestions for the side patio entry will not increase access for claimant, and a ramp to the dirt is not viable; there is no turnaround on a ramp. Claimant needs a solid pathway from the front to the side of the house for safety, access, and independence, and it would give claimant the freedom to make his own decisions about going outside.

80. Claimant's mother testified that no one from NLACRC has ever told her why they are refusing to consider the kitchen modifications, or why a ramp to the dirt is all that is necessary for claimant's safe access to the side patio entrance.

81. Claimant's mother was diagnosed with ovarian cancer in 2021. She underwent chemotherapy from June to November 2021. She is no longer in remission and will resume treatment. She is anxious to have the home modifications put in place, given her illness and exhaustion. She is claimant's SDP supports supervisor, responsible for all his caregivers, and the billing and transportation.

82. Claimant's mother is trying to be cost-effective. The Treeium bid identifies items claimant's family will pay for and supply, items that are excluded from the bid. Claimant's mother said she instructed Treeium to exclude them because she did not think it appropriate for NLACRC to pay for them. Treeium's total bid, including items to which the parties have agreed and that are not the subject of this hearing, is \$132,400. That is less than the Gamburd bid of \$147,850 that NLACRC had solicited a year earlier.

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## **DISCUSSION**

83. Evidence supporting the need for NLACRC funding for the modifications at issue here, through claimant's SDP budget, is overwhelming. NLACRC's qualified consultants from Accredited HHS and from Casa Colina performed thorough evaluations of Claimant's services and supports needs. Their detailed findings, especially the findings of Casa Colina after spending significant time observing claimant in and around his home environment, were entirely convincing.

84. NLACRC decided to ignore the consistent findings of its own consultants and instead suggest home modifications that would be less costly but ineffective at helping claimant achieve the goals stated in his IPP's and recognized by the Service Agency and its vendors.

85. For example, requiring claimant to peer over the island into the refrigerator to identify ingredients for cooking is entirely ill-suited for claimant, whose vision is impaired. Relying on the ability of Mr. Gutierrez, whose vision is not impaired, to see into the refrigerator from outside the kitchen as a basis for denying the kitchen modifications flouted the core principles of the Lanterman Act. Similarly, funding a ramp from the back patio to the dirt side yard may provide some measure of egress for claimant, but it will trap him and his heavy powered wheelchair in the mud whenever the dirt gets wet. Suggesting a ramp modification that will take claimant tipping over his front-door threshold straight down to the driveway with imperfect control of his wheelchair is shocking.

86. NLACRC shall honor the Treeium bid, which comports with the recommendations of the Casa Colina consultants as to the items at issue in this case.

## LEGAL CONCLUSIONS

### Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) (Further statutory references are to the Welfare and Institutions Code.) 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 his request that his SDP budget be increased to include \$45,700 for house exterior modifications and \$44,800 for kitchen modifications and an interior doorway widening. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, he bears the burden of proving he 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 his case by a preponderance of the evidence, which requires him to present evidence that has more convincing force than that opposed to it. (Evid. Code, § 115; *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### 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 DDS, is authorized to contract with regional centers to provide developmentally disabled

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

4. 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.)

5. 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, address the cost-effectiveness of the services and supports, 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)(D) & (E).)

6. As of July 16, 2021, the Lanterman Act requires DDS to implement a statewide SDP available in every regional center "to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP." (§ 4685.8, subd. (a).) The SDP is "a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist

the participant to achieve personally defined outcomes in community settings that promote inclusion.” (§ 4685.8, subd. (c)(6).)

7. For consumers participating in an SDP, the regional center’s IPP team must use a PCP process in the development of the participant’s IPP. Also, the IPP team must determine the individual budget available each year to the SDP participant to purchase services and supports necessary to implement the IPP. (§ 4685.8, subd. (c)(3).)

8. Consumers in an SDP may only purchase services and supports necessary to implement their IPP. The services and supports must be eligible for federal financial participation. Participants may use services and supports available within the SDP only when generic services and supports are not available, and shall manage SDP services and supports within their individual budget. (§ 4685.8, subds. (c)(6), (d)(3)(A-F), (e).)

9. SDP participants may purchase services and supports from regional center vendors as well as from non-vendors. (4685.8, subds. (b)(2)(B), (t).)

10. A copy of a spending plan, not to exceed the individual budget, detailing how funds will be used to purchase services and supports identified in the IPP, shall be attached to the participant’s IPP. (§ 4685.8, subd. (c)(7).) An Independent Facilitator (IF), chosen by the participant, shall help the participant implement the participant’s IPP and advocate for the participant in the PCP and IPP processes. (§ 4685.8, subd. (c)(2).)

11. The individual budget may be adjusted (a) if the regional center’s IPP team determines an adjustment is needed due to a change in the participant’s needs or if prior needs were not addressed in the IPP, and (b) the IPP team documents the reason for the adjustment in the IPP and certifies that adjustments would have occurred *regardless of SDP participation*. (§ 4685.8, subd. (m)(1)(A)(i), (ii)(~~l~~), italics added.) This latter provision explicitly makes applicable the general IPP requirement

that services and supports for a consumer be cost-effective. (§§ 4640.7, subd. (b), 4646, subd. (a), 4648, subd. (a)(6)(D).)

12. Regional centers must ensure continuation of services and supports while the consumer transitions to an SDP, certify individual budgets, and train all service coordinators and fair hearing specialist regarding SDP. (§ 4685.8, subd. (r)(9).) They must review spending plans to verify that all goods and services are eligible for federal financial participation and are not available through a generic resource. (§ 4685.8, subd. (r)(6).)

## **Services for Claimant**

### **FUNDING FOR SDP BUDGET FOR MODIFICATIONS TO HOUSE EXTERIOR**

13. Claimant established that NLACRC must increase claimant's SDP budget funding in the amount of \$45,700 to modify claimant's house's exterior, chiefly the front entryway and driveway, the side patio entryway, and a pathway connecting them, in a manner consistent with the Therapeutic Home Evaluation report, dated May 28, 2022, and as reflected in the Treeium bid, as set forth in Factual Findings 35 to 38, 45 to 48, and 83 to 86.

### **FUNDING FOR SDP BUDGET FOR MODIFICATIONS TO KITCHEN**

14. Claimant established that NLACRC must increase claimant's SDP budget funding in the amount of \$44,800 to modify claimant's house's kitchen and an interior doorway in a manner consistent with the Therapeutic Home Evaluation report, dated May 28, 2022, and as reflected in the Treeium bid, as set forth in Factual Findings 35, 39 to 41, 49, 50, and 83 to 86.

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## **ORDER**

Claimant's appeal from the Service Agency's denial of increasing the SDP budget in the amount of \$45,700 to fund home exterior modifications and \$44,800 to fund kitchen modifications is granted.

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.