

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021100544**

**DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 14, 2021, by video conference.

Jacob Romero, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant's mother (Mother), his conservator, represented Claimant, who did not appear.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 14, 2021.

## **ISSUE PRESENTED**

Should the Service Agency be required to pay for the purchase and installation of a walk-in tub and shower in the Claimant's residence?

## **EVIDENCE RELIED UPON**

Claimant's exhibits A through T; Service Agency's exhibits 1 through 23; testimony of Mother, Service Coordinator Josafina Ramirez-Waugh, and her supervisor, Veronica Valenzuela.

## **FACUAL FINDINGS**

### **The Parties and Jurisdiction**

1. Claimant is a 24-year-old-man who receives services from ELARC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act or the Act), California Welfare and Institutions Code, section 4500 et seq. (All statutory references are to the Welfare and Institutions Code, unless otherwise noted.) He is eligible for services because he has Autism Spectrum Disorder (ASD), an eligible condition under the Act.

2. On September 7, 2021, ELARC issued a Notice of Proposed Action (NOPA) denying funding for the purchase of a walk-in bathtub in the home where Claimant lives with his parents and sister. The NOPA stated, as the reason for denial, was that "per clinical team, there is no documented medical necessity for a walk-in tub. There are many cost-effective options that can be explored that are safe and

within community standard (sic).” (Ex. 1, p. 4.) (The page citations are to the internal pagination of the exhibits, and not the page assigned by Caselines, the document management system used in the hearing.)

3. On October 1, 2021, Mother submitted a Fair Hearing Request (FHR), seeking a hearing on the denial of the request for the walk-in bathtub.

4. All jurisdictional requirements have been met.

### **Claimant’s Background**

5. Claimant lives with his parents and his older sister within the Service Agency’s catchment area. His sister is also a consumer of ELARC’s services. Claimant’s father works full time outside of the home, and his mother is a full-time homemaker. Both of Claimant’s parents have health issues, Mother’s apparently having more impact on her day-to-day activities. Mother is Claimant’s primary caretaker and she reports that he needs help with all aspects of self care, including bathing, teeth brushing, toileting, dressing, feeding, and general hygiene. (Ex. 4, p. 41.)

6. Claimant has significant behavioral issues. According to Claimant’s most recent Individual Program Plan (IPP), generated in September 2021, he needs close supervision because he places himself in unsafe situations, and he will exhibit “explosive” behavioral challenges, placing himself and others in dangerous situations. (Ex. 3, p. 16.) (The IPP document was based on two IPP meetings held July 13 and July 27, 2021. Mother had not signed the document, but it sets out important information.) Claimant sometimes acts out with physical aggression, hitting walls hard enough to put holes in them. Mother also reported that he will scream, drop to the floor and bang his head on the floor, hit his head on walls, and bite himself and others, or pinch and hit people. (*Id.*, p. 22.)

7. Claimant “does not engage in any meaningful conversation and may be considered non Verbal using scripts, phrases and emotions to communicate.” (Ex. 3, p. 17, capitalization in original.) However, he may communicate with gestures, facial expressions, utterances and single words, and he uses an iPad communication device. During the most September 2021 IPP meeting, Mother requested services that would help Claimant express himself, and to communicate what he needs and how he is feeling.

8. An example of Claimant’s behavioral issues is provided by a description, in the September 2021 IPP, of visits to medical providers. Claimant must be strapped into his wheelchair, and accompanied by two people, typically a family member and an aide. When taken to the doctor, he will yell “get me out of here,” and he hits his head with his hand, or bites himself. He may also try to tip his wheelchair over. For dental exams, he must be placed under anesthesia. He takes seven or eight medications per day, for various issues including allergies, pre-diabetes, high blood pressure. One of his medications, Lamictal, is often prescribed for seizures.

9. Claimant has a stroller chair that is used during medical appointments and when out in the community. He received diapers from the family’s health insurer.

10. In 2016, Claimant’s school district performed a psycho-educational assessment of Claimant. The Adaptive Behavior Assessment System, Third Edition (ABAS-e) was administered. Claimant’s mother, his brother, and a teacher were reporters. Claimant’s general adaptive composite score placed him in less than the 0.1 percentile rank. The domain scores were all less than the first percentile, except a social domain score based on Mother’s report, which was at the first percentile. (Ex. T, p. 35.)

11. A physician at UCLA, who is helping to deal with anxiety and behavioral challenges recently diagnosed Claimant with Tourette Syndrome. That physician, Dr. Derrick Ott, is described in the IPP as a pharmaceutical psychiatric neurologist for special needs patients. Another psychiatrist, Dr. Gudapatti, sees Claimant every three months, and he prescribes and monitors sertraline, lorazepam, and Lamictal.

## **Services Provided to Claimant**

12. The Service Agency and generic sources provide a number of services and supports to Claimant. For example, Claimant receives 283 hours of In Home Supportive Services (IHSS); that is the maximum allowed under that county-administered program. More than half of those hours—168—are authorized as protective supervision hours. As noted previously, Claimant receives diapers through health insurance. He is provided 50 hours per month of DIR/FloorTime therapy by ELARC. He is authorized to receive 150 hours per month of personal aide support, and he is authorized to receive up to 90 hours per month of respite care. At the September 2021 IPP the Service Agency agreed to provide five hours per month of ASD counselling. A speech and language assessment was authorized at that time.

## **The Request for the Walk-In Tub**

13. According to the IPP document, Mother requested funding for a walk-in tub during one of the two meetings held in July 2021. The Service Agency ID Notes indicate the matter was raised at the earlier meeting. According to the IPP document, Mother shared her concerns that Claimant might fall and hurt himself due to seizure activity and balance issues. In this regard, her written “report” for the IPP, exhibit 4, stated Claimant struggled with his mobility due to dystonia, and she stated he has epilepsy and flat feet. Noting he had had seizures in the past, she wanted occupational

therapy to strengthen him, and a "specialized bathtub . . . so he can sit while we bath (sic) him instead of showering him . . . ." (Ex. 4, p. 41.) At one of the meetings, Mother provided documentation, including a denial by the health insurer, and medical information, along with photos from the bathroom in question, and some measurements. (It should be noted the house has only one bathroom, currently with a shower; the photos show the shower has two sliding glass doors.) The Service Coordinator submitted the request to the clinical team. Since those meetings, other documents have been provided in support of Claimant's request.

### **Documents Supporting Claimant's Request**

14. On July 16, 2021, Jana R. Wells, M.D., a pediatrician who treats Claimant, provided a prescription for a walk-in tub, on a standard prescription form whose letterhead identified her practice as "Heart to Heart Pediatrics." (Ex. 9, p. 102.) On that form she wrote that Claimant had a "Dx," or diagnosis, of autism, gross motor delay, and recurrent falls. (*Id.*)

15. On July 15, 2021, Allied Pacific California notified Claimant, on behalf of his health insurer, that a walk-in tub would not be provided because it was not covered under the insurance. Prior to October 25, 2021, Mother submitted a grievance to Anthem Blue Cross.

16. Claimant underwent a physical therapy initial evaluation on July 30, 2021, by Jonathan R. Montez, P.T. During that evaluation, Mother expressed concerns about Claimant's balance and weakness that seemed to be increasing at that time. In his report (exhibit H), Montez noted that Claimant was unable to follow simple commands, and he kept saying, in a loud voice, "get me out of here." Montez noted increased fall risk with ambulation and that Claimant needed stand by assistance with

ambulation. However, it cannot be discerned from the report how much these issues were a function of Claimant's desire to avoid the evaluation, and how much was a physical issue. Montez noted that Claimant's rehab potential was poor. It is not clear that this report was provided to ELARC during the IPP meetings.

17. On August 13, 2021, Dr. Wells wrote a letter stating that Claimant had "Autistic Disorder, Intellectual Disability and Epilepsy." (Ex. 9, p. 103.) The letter went on to state that Claimant's "seizures are poorly controlled and he has gross motor deficits that predispose him to falls. I recommend a walk in tub for him as well as constant supervision at all times." (*Id.*)

18. After the NOPA was issued in early September 2021, Lise Phan, M.D., a neurologist, wrote a letter dated October 11, 2021, recommending a walk-in tub. She stated that Claimant had a history of epilepsy with unsteady gait and she stated he would "benefit from a walk in bath tub with hand rails, grab bars and safety seating. Having this bathtub would ensure his safety with his family while showering, reduce risk of falls and help promote better hygiene." (Ex. E, p. 1.)

19. Dr. Wells again weighed in, after the NOPA was issued. In a letter dated October 8, 2021, she stated that Claimant was diagnosed with epilepsy. She stated that "his seizures are poorly controlled and he has gross motor deficits that predispose him to falls. He has poor balance and dystonia. [Claimant] has focal seizures that last 1-2 minutes. His seizures cause collapse, unresponsiveness, facial and upper extremity twitching." (Ex. 17, p. 164.) After discussing Claimant's anxiety, and how medical treatments had not managed it, Dr. Wells went onto say that hydrotherapy was a feature of the bathtub Mother was requesting, and that recent literature supported the use of hydrotherapy to decrease anxiety and to improve mood and attention in persons suffering from autism.

20. Long before the request for the walk-in tub, Claimant was evaluated by John Faber, M.D., of Amen Clinics. On January 15, 2018, in an evaluation report Dr Faber reported a history of three “complex partial seizures.” (Ex 14, p. 122.) One was at age 11, one at 14, and one at age 16. The report was to the effect that Claimant transitioned from standing up straight to standing in a contorted position, with mouth drooping, muscle rigidity, and problems with his gait. The first seizure lasted for an hour, the other two for about 15 minutes. Mother reported that Claimant had a tendency to stare off approximately one time per day, for 15 to 30 seconds at a time. Mother reported her concern that this was a seizure activity.

### **Service Agency Efforts at Evaluation of the Request**

21. As noted above, the request was sent to the Clinical Team. Angela Espinoza-Puopolo (Espinoza), an occupational therapist on the Service Agency staff was tasked with reviewing the request. She wrote a “Consultant Review” which spoke to the request for the walk in tub. It appears this document was shared with ELARC staff and with Mother. Espinoza noted that she has a walk in tub in her home, and she raised issues that perhaps the family had not considered, including that such tubs were very confining, and that Claimant, with his anxiety, might not tolerate the confinement well. She pointed out that once the tub his filled, one cannot simply open the door; the water holds the door closed and if forced open would dump water on the floor. She pointed out that the tubs are slow to fill and slow to drain, which might present issues for Claimant.

22. In early August 2021, Espinoza told the Service Coordinator that she would like to visit the family home, to look at the bathroom and to meet Claimant. She had a phone conversation with Mother on or about August 4, which Espinoza reported to the Service Coordinator on August 9, 2021. Mother also spoke to the Service



Coordinator about the phone call, expressing her displeasure with Espinoza. Mother sent a long email to the coordinator on August 10, 2021, complaining about the interaction with Espinoza. No home visit was conducted by Espinoza.

23. On August 25, 2021, Espinoza wrote a second Consultant Review, after she had reviewed two bids for tubs and their installation costs. She noted that while Claimant received medication for seizure disorder there were no reports of frequent falls or inability to ambulate around the home. She opined that Claimant did not have any physical limitations or disabilities that required a number of the features on one of the two tubs. Those features included leg massage, hydromassage, heated seat, bidet jet, and others.

24. An ELARC physician reviewed the matter and wrote a report on November 8, 2021. That physician heavily discounted the literature that Dr. Wells had relied on (and forwarded to ELARC) in October 2021, noting that the study had involved a pool, and a physiotherapist; it did not make recommendations about walk-in tubs. The ELARC physician recommended that a neurologist and psychiatrist should provide documentation as to how a walk-in tub was medically necessary, and that Claimant could tolerate and safely use the proposed bathtub.

## **Estimates for the Tub Installation**

25. Mother provided one estimate for installation of the tub, provided by Old Towne Plumbing. The estimate was for \$8,060, with a possible increase of \$1,200 if the City required a certain type of room fan. This estimate, found at exhibit 22, appears to be an estimate for labor; while it refers to installing the tub per manufacturer's specifications, it does not describe a particular type of tub. From Mother's August 24,

2021 email regarding the second estimate, it appears that a separate shower would have to be purchases.

26. A second estimate is found in exhibit E, generated by American Tubs. It is lacking in detail, but had a price of \$15,510. Mother, however, gave details of the tub to ELARC in an email dated August 24, 2021. It is clear that this bid encompassed a tub and installation. The tub had a number of features, including a "hurry drain," a five piece fast fill faucet set, a hydro-massage 10-jet water system, a 20-jet air massage; ozone sanitation system, heated chair and backrest, and a chromatography light system, leg only massage, and bidet jet. (Ex. 13, p. 115.)

## **The Westview Grant Proposal**

27. In early November 2021, Ms. Valenzuela communicated with Mother about applying to the Westview grant program. In her testimony, Valenzuela stated that Westview can meet unmet needs. In an email to Mother dated November 5, 2021, Valenzuela suggested Mother apply to the Westview program, and she attached a brochure to the email, along with a simple application form.

28. The brochure states that the program can help pay qualified unmet medical and dental needs for Lanterman-qualified persons. The services funded were described as exigent needs tending to require one-time procedures, such as hearing aids, cataract surgery, eyeglasses, tooth extraction, or crowns for teeth. (See ex. 19, p. 206.)

29. Mother declined to apply for such a grant. There was evidence Mother did so because Westview would not pay all of the cost associated with the walk-in tub. The Service Agency asserted that refusal as a ground to not provide the tub, after an

informal meeting between Mother and ELARC's representative. It essentially reiterated that position at the hearing.

## **Purchase of Service Guidelines**

30. ELARC has developed Purchase of Service Guidelines. The guideline cited in this case pertains to purchase of medical equipment (Guideline), which equipment is defined as items such as wheelchairs, lifts, medical machines, and they must be prescribed by an appropriately licensed professional.

31. The Guideline further provides that ELARC may assist consumers with the purchase of medical equipment related to the developmental disability when it is deemed necessary to maintain the consumer's health and physical status, or to allow the consumer greater independence. Purchase of equipment must follow appropriate evaluations, and after alternative funding has been exhausted. The purchase of equipment must be preceded by denial of purchase or provision by Medi-Cal, private insurance or health care service plan, and ELARC must determine that an appeal of such denial does not have merit. In cases where a third party might pay some of the cost, there are provisions in the Guideline for helping the consumer or their family to pay co-payments; there are various criteria for such payments, which are not relevant to this matter.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

## **General Rules Applicable to Resolving Service Disputes**

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

3. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.)

4. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

5. Regional centers must develop and implement IPP's, which shall identify services and supports "on the basis of the needs and preferences of the consumer or, where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the

consumer's participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1), (2).) The IPP must be updated at least every three years. (§4646.5, subd. (b).)

6. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible for the consumer. (§ 4646; *ARC v. DDS, supra*, 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646; 4646.5, subd. (a)(1), (2) and (4), 4512, subd. (b); and 4648, subd. (a)(6)(E).)

7. Section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" broadly, as meaning

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 habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life.

8. Section 4512, subdivision (b) provides a list of services that may be provided, in appropriate circumstances, to a consumer of regional center services. The services and supports that may be provided are not limited to those set out in the statute. The list is extensive, running the gamut from diagnosis to advocacy to

supported and sheltered employment to paid roommates. "Adaptive equipment and supplies" are services recognized by section 4512, subdivision (b).

9. Other statutes, and regulations, may impinge upon the provision of the services set out in section 4512, subdivision (b). One rule that can limit the obligation of a regional center to provide these services is the general rule that the regional centers may not supply services and supports available from generic services.

10. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many people and families.

11. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the disabled individual or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

12. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where

appropriate.” Further, services and supports are to assist disabled consumers in “achieving the greatest amount of self-sufficiency possible . . . .” In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

13. In developing or modifying an IPP, a regional center is obligated to have a process that ensures compliance with applicable laws and regulations, and when purchasing services and supports, a regional center is to ensure that it is acting in conformity with its approved policies, that generic resources are being utilized where appropriate, and there must be compliance with section 4659, which requires regional centers to pursue generic resources.

14. The planning process includes the gathering of information about the consumer and “conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals . . . . Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies.” (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer’s needs, it is plain that assessments must be made so that services can be provided in a cost-efficient manner.

15. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer’s particular needs must be met. (See, e.g., §§ 4501, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The

Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (2), 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, subdivision (a), each regional center is to assist consumers and families with services and supports that "maximize opportunities and choices for living, working, learning, and recreating in the community."

16. Reliance on a fixed policy "is inconsistent with the Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities. (§ 4501.)" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer are to be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at 388.)

17. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), 4791).

18. Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those 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." (Subd. (b)(1).) There is also a right to dignity, privacy and humane care. (Subd. (b)(2).)

19. The regional centers are to pursue generic services as part of service coordination. The core rule has long resided in section 4648, subdivision (a)(8), which



provides that "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." Traditionally, generic services or agencies were defined as those described above, agencies using public funds to serve members of the general public. Hence, public schools were and are generic sources.

20. Section 4659 has long provided that the regional centers shall identify and pursue all possible sources of funding for consumers receiving services. Section 4659 underwent substantial revision in 2009. The statute retained its mandate for the regional centers to pursue sources of funding for their consumers, such as generic resources (school systems, Medi-Cal, etc.). The statute now provides that the regional centers shall not purchase services that could be obtained by the consumer from traditional generic resources, as well as "private insurance, or a health care service plan when a consumer or family meets criteria of this coverage but chooses not to pursue that coverage." (§ 4659, subd. (c).) Absent from the list of sources that must be pursued before a regional center must provide funding as payor of last resort are charities and non-profit organizations.

## **Dispositive Legal Conclusions**

21. Under the Service Agency's Guideline, the walk-in tub is medical equipment. The walk-in tub is a piece of adaptive equipment within the meaning of section 4512, subdivision (b). It can be "directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life." It may be deemed adaptive equipment in the sense it is assistive technology, because it

can assist in participation in an activity of everyday life despite Claimant's significant disability.

22. The Service Agency would give the broadest possible reading to section 4659, subdivision (a), and the provision that the regional center shall identify and pursue "all possible" sources of funding for consumers receiving regional center services. That is too broad a reading; by that reasoning, consumers would have to pursue obscure charities, nonprofit entities, a religious organization that the family was affiliated with, or even one that the family was not affiliated with. Such efforts could take months or years to exhaust, while a consumer's needs went unmet. This is not a fair reading of the statute on its own, or when read with the entire Lanterman Act.

23. Notwithstanding the reasoning in Legal Conclusion 22, the Westview program was designed to assist "Lanterman-qualified persons." (Factual Finding 28.) Thus, it was akin to a traditional generic resource; the Service Agency was not asking Claimant's family to contact every church in their community to see if there was help available. That Westview would not pay the entire cost was not a reason to ignore the opportunity; there was nothing to lose. If, for example, it would pay \$5,000 toward the cost of the tub, then the Service Agency's burden would be reduced by that much, preserving its resources for other consumers. (See Legal Conclusion 10.) Thus, the failure to pursue a grant from Westview was a failure to pursue a source of potential funding within the meaning of section 4659. Likewise, it was a failure to pursue a service in a cost-effective manner.

24. On this record, the Service Agency was within its purview to seek further information showing a need for an expensive device that would be affixed permanently to the family home. It sought medical justification for the device, based on its reading of its purchase Guidelines. While some medical justification was

forthcoming from Claimant's long-time pediatrician, the record indicates three significant seizures over a period of years. The questions raised by the ELARC occupational therapist and physician were reasonable questions.

26. It was not established that a shower tub with all the features describe by Mother in her email to the Service Agency (Factual Finding 26) were needed to allow Claimant to take a bath rather than a shower. That is an additional reason to deny the request. Arguably, a typical shower-bathtub combination would be sufficient to allow Claimant to take a bath rather than to shower. On this record, adequate need has not been established.

27. Claimant's appeal will be denied, without prejudice to him pursuing the provision of this equipment at a later date, if a showing can be made that a shower tub is necessary to alleviate some of his conditions, that it is cost-effective, and if other sources of funding are not available.

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## **ORDER**

Claimant's appeal is denied, without prejudice to his seeking the provision of a walk-in tub in the future.

DATE:

JOSEPH D. MONTOYA

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.