

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

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

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021110645**

**DECISION**

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings, State of California, heard this matter on January 7, 2022 and January 12, 2022 by videoconference.

Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant's mother (Mother), represented Claimant, who was not present. (Claimant and Mother are identified by title to protect their privacy.)

## **ISSUE**

Shall the Service Agency fund home modifications requested by Mother?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is 15 years old and an eligible consumer of ELARC based on his diagnoses of cerebral palsy and intellectual disability. Multiple shunts inserted in his head to reduce intracranial pressure leave him vulnerable to brain bleeds if he sustains any injury to his head.

2. Mother, an engineer by training, is a single parent. She gave up her career to devote herself to caring for Claimant and is his In-Home Supportive Services (IHHS) care provider. Mother has sustained back injuries caring for Claimant and has difficulty moving him. Her general health has also suffered. As Claimant has grown older, he is not only heavier, but also more resistant to being pushed and pulled into place while being moved, cleaned, and otherwise cared for.

3. Claimant and Mother live in a two-story town house. Mother owns the property, something that only occurred after a massive effort on her part and the assistance of others in her community. Mother's main objective in purchasing her home was to allow it to be modified to meet Claimant's needs. Mother maintains that ELARC personnel told her such modifications cannot be even considered unless she owns her home.

4. As Claimant has grown and become heavier and harder to control, neither she nor his nurses and other care providers have been able to regularly transport him to the upstairs level of the home. Thus, Claimant and Mother have been sleeping on air mattresses in the living room and Claimant is bathed in an inflatable pool also kept downstairs.

### **Care Providers and their Limitations**

5. The parties agree that Claimant requires constant supervision and assistance with all self-care tasks. Due to the extent of his disabilities, Claimant is eligible for multiple services, both from ELARC and from generic resources: 40 hours of nursing funded by Medi-Cal; an additional 24 hours of nursing during the weekends funded by ELARC, and 250 hours per month of personal assistant services, also funded by ELARC. (See Exh. 4.)

6. For the past several years, Mother and ELARC have disagreed about the quality, availability, and capacity of care providers to assist Claimant effectively. Mother maintains care providers failed Claimant repeatedly, by dropping him, neglecting him, improperly using his equipment, leaving the bulk of the work caring for him to her, or simply failing to show up. Mother further maintained that, in 2016, due to one of the many "no shows," Claimant sustained a head injury, resulting in the placement of the most recent shunt, greatly increasing his disability.

7. According to Mother, care providers are unable or unwilling to lift Claimant. She stated many of agencies sending care providers limit them to lifting no more than 25 pounds. She introduced a pamphlet from one agency, Home Instead, which states the personal care provided does not include lifting clients at all. (Exh. B, p. B14.)

Claimant currently weighs 82 pounds, and equipment he wears, such as leg braces, weighs an additional 10 pounds. As noted above, Claimant also frequently struggles and resists efforts to move, clean, or dress him, further adding to the effort involved in assisting him.

8. ELARC maintains that care providers left assignments with Claimant because Mother was difficult to work with, making unreasonable demands on them and imposing restrictions such as requiring them to use an upstairs bathroom. It disputed that there is a 25-pound limit on assistants lifting clients, stating that any lifting limitation apply to housework, not patient or client care. Further, ELARC's overall position is that, with Mother's cooperation, the assistance from Claimant's care providers would be sufficient for his care and comfort without many of the home modifications Mother requested.

ELARC introduced a letter from a recent caregiver vendor and a letter from one of the care providers describing the difficulties of working with Mother. The letters are detailed and explain persuasively that Mother can be uncooperative and sometimes discourteous with the people trying to help her son. Notably, the care providers' observations also illustrate the difficulties involved with lifting and moving Claimant, confirming the very issues Mother hopes to minimize with the requested home modifications:

[Mother] was very disrespectful many times by telling me for most of the two days that I worked with [Claimant], to just do things without explanation. For example, to guide [Claimant] up the stairs with no gait belt and that he would crawl up the stairs even though [Claimant] cannot do that at all; he kept on sliding down the stairs and then when

[Claimant] started throwing a fit she just told me I had to pick him up and take him up the stairs myself, in a complete[ly] unsafe manner for [Claimant] and myself. Another example is: having to [lift] the client by myself from his wheelchair to the toilet so he could use it. He always threw a tantrum and always held on to the wheelchair meaning I needed another pair of hands to help me lift him.

(Exh. 18, p. 84.)

9. In responding to ELARC's assertions regarding Mother's treatment of care providers, Mother also pointed out additional logistical problems in relying completely on care providers to assist Claimant. For instance, she agreed that she has directed staff to use the upstairs bathroom but that is because the door on the first-floor bathroom had to be removed to allow Claimant to be rolled partially into it in his wheelchair. As most care providers assigned to Claimant are male, Mother is uncomfortable having the care providers use the toilet in clear view of her and so, requests they use the upstairs bathroom, which still has its door.

## **Claimant's IPP Process and the Parties' Disputes over Home Modifications**

10. To establish appropriate services for a consumer, regional centers are responsible for conducting a planning process to establish an individual program plan (IPP). The IPP sets out the services and supports the planning team. The planning team include family members as necessary. Mother is a member of Claimant's planning team.

11. The last IPP meeting was held on September 17, 2021. The resulting IPP were introduced into evidence. It provides funding for respite services, nurses, personal assistants, and counseling. Regarding home modifications, the IPP states: "Mother and Regional Center are working together to provide home modifications to [Claimant's] home to allow [Claimant] to access his home. The home modifications are still in the process of being approved." (Exh. 4 at p. a15.) Because the parties have not come to an agreement regarding the home modifications, Mother refused to sign the IPP for 2021.

12. The IPP provides detail about Claimant's physical and mental health. Of note, it provides significant detail about behavioral issues. According to the IPP, Claimant is "resistive," having near daily tantrums and emotional outburst, violent behavior, particularly toward Mother, as well as self-injurious behavior. Throughout the document, there are numerous statements about Claimant's complete incapacity to ever be alone. He has very limited language capability, can walk but with extreme difficulty and resists trying. Further, Claimant demonstrates poor judgment, he plays with his feces if not carefully supervised and has tried to elope from a moving vehicle. (Exh. 4, p. A17.) Physically, Claimant has multiple serious physical conditions. He is considered vision impaired and is prone to seizures. Although he can eat cookies, other foods must be "mechanically softened." Unless strictly supervised, Claimant will overfill his mouth while eating and has difficulty clearing food from his mouth. (*Id.* at p. 15.)

13. ELARC has Purchase of Service Guidelines (PSG) approved by the Department for dispensing each type of service and support. Home modifications fall under the PSG for medical equipment. Pursuant to this PSG, among other

requirements, ELARC must appoint a consultant to study medical equipment requests. (Exh. 5, p. A34.)

To assist with the home modification review as provided in the IPP and to comply with its own PSG, ELARC appointed Angela Espinoza Puopolo, an experienced occupational therapist. Ms Espinoza Puopolo inspected Claimant and Mother's home with ELARC supervisor, Veronica Valenzuela, and David Hernandez, an employee at Gamburd Construction, which specializes in modification to accommodate disabled clients. After the inspection, Ms. Espinoza-Puopolo made her recommendations. Based on them, ELARC made its decision, set out in its Notice of Proposed Action (NOPA) agreeing to some, proposing less expensive alternatives to others, and denying yet others.

14. The modifications Mother requested and ELARC has agreed to fund are: an electric stair lift to allow Claimant to access the second floor of his house and installation of a small threshold ramp between between a sliding glass door next to the kitchen and the backyard to which it leads.

The modifications denied by ELARC are: (i) widening the interior door leading from the garage to the laundry room from 29' to 36'; (ii) relocating the washer and dryer from the laundry room to the garage; (iii) adding a second exit to the side of the house; (iv) adding a street access ramp at the end of the driveway; (v) reducing the size of the kitchen island or moving it from the center of the room to the side away from the refrigerator; and (vi) installing ceiling tracks from the family room to the first-floor bathroom and on the upstairs floor of the house beginning from the top of the stairs to two bedrooms Claimant uses and the upstairs bathroom

Several other modifications ELARC has agreed to fund: expanding a hallway area by “rounding” one of the surrounding walls, widening the first-floor bathroom door to 36 inches and re-installing it to have it swing out; and carving a doorway between the second-floor bathroom and an adjacent bedroom were proposed as substitutes for modifications mother requested.

15. As required, ELARC applied relevant provisions of the Lanterman Act (Welf. & Inst. Code, §§ 4400-4906) (further statutory references are to the Welfare and Institutions Code unless otherwise designated), the statutory scheme which gives regional centers their authority to fund services and supports to their consumers. ELARC listed many Lanterman Act sections; the ones cited which appear to have direct relevance to its decision to deny or recommend substitutes to the requested home modifications are: section 4512, subdivision (b) which requires regional centers to determine supports and services which both meet the needs of the consumer and are cost-effective; section 4659, subdivision (a) which requires the regional center to “identify and pursue” other sources of funding for consumers; section 4646.3 which requires regional centers to establish an internal purchasing process consistent with state and federal law and approved by the department and sets limits on regional centers use of funds for consumers including requiring they exhaust available generic services and take into account a family’s usual responsibility for providing services and supports to nondisabled minor children.

16. Mother appealed the NOPA findings and requested a fair hearing. In her response to the NOPA and in subsequent communications to ELARC prior to the hearing (see Exh. 3), Mother explained a full modification would also include further kitchen renovations (described and discussed as part of all requested kitchen modifications in subheading (v) below) and removing the bathroom vanity in the



second bathroom and replacing it with a single wheelchair-accessible sink and re-centering the toilet to give room to Claimant's assistant to stand while helping Claimant use the toilet in that bathroom. At the hearing, ELARC agreed to address these additional items as part of the instant matter.

## **Analysis of the Disputed Home Modifications**

### **(I) WIDENING THE DOOR LEADING FROM THE GARAGE TO THE LAUNDRY ROOM.**

17. The door leading from the garage to the home's interior leads to the laundry room. Mother has requested that the door frame there be expanded from 29 to 36 inches to accommodate the largest of Claimant's wheelchairs, a power chair weighing several hundred pounds, with large wheels to prevent it from overturning and with controls extending out one side. Ms. Espinoza-Puopolo stated that, rather than widening the door frame, additional space needed to allow clearance for Claimant's wheelchairs to pass through could be achieved by installing expandable door hinges on the existing chair. The expandable door hinge would add one inch of clearance to the door frame, as opposed to the seven inches Mother is requesting.

Mother disagreed the one-inch increased clearance the expanded hinges would provide would be sufficient. The wheelchair most often used is bulky, and Claimant often leans to the side, leaving him vulnerable to strike his head on the door frame unless there is several inches' clearance. At the hearing, Mother demonstrated Claimant's needs with photographs showing the size of his largest chair and depicting Claimant as he leaned out the sides of his chair.

Mother's argument is more persuasive. As depicted in the photographs, Claimant's power wheelchair, the one most often used for outings, is extremely large

with controls extending to the sides. Claimant is seen leaning or slouching outside the wheelchair's parameters and it is clear that he is subject to injuring himself this way by brushing or hitting the door frame. Especially because of Claimant's vulnerability to brain bleeds were his head to suffer any blows, this modification is important to his health and well-being.

## **(II) RELOCATING THE WASHER AND DRYER FROM THE LAUNDRY ROOM TO THE GARAGE.**

18. Mother maintains that the washer and dryer in the laundry room prevent the wheelchair from making the sharp right turn necessary to reach a hallway leading out of the laundry room and into the rest of the house. She has already moved the dryer into the garage; however, it is plugged into an electrical outlet with an extension cord, which is likely a safety hazard. Based on her own measurements, Ms. Espinoza-Puopolo disagreed that the appliances needed to be moved to allow Claimant's wheelchair to make the turn to enter the rest of the house. She stated that, even if the dryer is returned to the laundry room, the wheelchair can be maneuvered into the rest of the house.

Mother disagreed and demonstrated with a diagram of the laundry area the radius needed to make the turn. The diagram showed that, to clear the turn, the four wheels of the wheelchair need a wider radius than would be possible if both appliances are in place. Moreover, Mother stated that keeping the dryer in the garage and connecting it to an electrical outlet was a temporary, potentially dangerous solution which does not meet building code standards. Because of the safety hazards, she fears running the dryer in its current condition could start a fire and will only use it if she stands watch over in the garage. Because Claimant soils multiple sets of clothes and at least one set of bed sheets daily, there is a constant need to do laundry and

thus, hours a week must be devoted to watching the dryer instead of caring for Claimant alone or with assistance.

Ms. Espinoza-Puopolo proposed a second, less costly method to increase the space where the wheelchair is maneuvered from the laundry room to the rest of the house. Under the second proposal, the wall opposite the area where the washer and dryer are supposed to be housed, currently a right-angle corner, would be rounded. Mother agreed that rounding the corner would expand the opening on the side of the wall where the laundry room is. On the other side, is the small first floor bathroom. Rounding it would necessarily decrease the area between that wall and the sink in the that bathroom which, as is, barely has clearance to allow an adult to stand before it.

Based on demonstrative evidence at the hearing consisting of her charts and photographs of Claimant in his wheelchair as he is maneuvered into the house, Mother's argument that the dryer must be moved is persuasive. She equally countered reasons for not rounding the wall and thus further narrowing the bathroom on its other side. Clearly too, the current system of utilizing the dryer by connecting it to an electrical outlet by an extension cord poses unacceptable safety hazards. Mother, however, did not provide a rationale related to Claimant's needs for moving both the washer and dryer. While it may be optimal for maintaining the convenience of a home washer and dryer to have both in the same location, it does not appear necessary to do so to allow Claimant's wheelchair to maneuver into the rest of the house.

### **(III) INCREASING BACK AND SIDE YARD ACCESS**

19. As noted above, the parties agree Claimant needs to pass through the sliding glass door next to the kitchen and this can be accomplished by placing a portable ramp across the door's threshold. However, Mother wants Claimant to be

able not just to access the backyard, she wants Claimant to be able to maneuver in his wheelchair through the backyard, to the side yard running alongside the house and out toward the street. Her reason for this is that she fears a fire or other significant emergency will require evacuating Claimant quickly. Currently, there is a large gas meter housed in the middle of the side yard preventing the wheelchair from passing. Mother wants the gas meter removed and relocated

Ms. Espinoza-Puopolo stated she had no familiarity with moving utility meters and did not know if that was even possible. On the subject of safe evacuation, in the event of an emergency such as a fire, Ms. Espinoza-Puopolo stated that should be addressed in other ways such as staying behind closed doors in a room away from the fire until emergency responders arrived or sliding Claimant down the stairs in a blanket and carrying him out through the front door. Mother strenuously disagreed. Neither party contacted the local fire department to request a safety analysis nor did they contact the gas department to ask about the possibility of repositioning the gas meter.

Mother's concern about safe egress for Claimant is understandable but without more information and specialized consultations, any home modification request for this issue is premature. Mother, as the homeowner and presumably the account holder for all home utilities, should contact the gas company and request additional information about whether it is possible to move the meter and if so, what is involved. If she is not able to get more information, ELARC, consistent with its duty to help consumers access generic resources, should assist.

#### **(IV) ADDING A STREET ACCESS RAMP AT THE END OF THE DRIVEWAY**

20. A stream of water runs in front of each of the houses in the complex. Mother wants a ramp installed to allow Claimant to maneuver his wheelchair over the stream and across the street where the housing complex's recreational facilities are. Mother believes the complex's homeowner's association (HOA) must be convinced to allow the ramp to be built as the curb-to-street area where the ramp would be installed is in the HOA's jurisdiction.

Ms. Espinoza-Puopolo does not believe it is necessary for Claimant to be able to cross the street in his wheelchair, stating he can be driven anywhere further than the end of the house's driveway. Mother disagrees. She argued that maneuvering around his immediate neighborhood is a necessary form of recreation and the effort and time involved in loading him and his wheelchair in and out of their van just to cross the street is inefficient for her and not an option for any care providers working alone with Claimant as they are not allowed to drive with him.

Mother's position is more persuasive as well as consistent with the Lanterman Act's objective of integrating regional center consumers into community life. Claimant should be able to maneuver around and about his neighborhood as long as that can be accomplished safely. As with the gas meter issue addressed above, Mother's request is, however, premature. She, as the homeowner, should initiate contact with the HOA and discuss alternatives with its officers. ELARC should assist with communications with the HOA. Together, they should explore options for a small overpass, similar to the threshold ramp, to allow Claimant's wheelchair to roll over the stream.

**(V) REDUCING THE SIZE OF THE KITCHEN ISLAND OR MOVING IT FROM THE CENTER OF THE ROOM TO THE SIDE AWAY FROM THE REFRIGERATOR; RE-CONFIGURING THE KITCHEN SINK TO MAKE IT WHEELCHAIR-COMPATIBLE**

21. For the kitchen, Mother requests that its island, currently attached to the floor, be moved to one side or out of the kitchen altogether, that a cabinet currently housing the microwave and conventional ovens be removed and the appliances and relocated to the garage, that both the kitchen and the first-floor sinks have the cabinets beneath them be removed so that they can accommodate Claimant's wheelchair and allow him to approach the sinks close enough to access the faucets.

Ms. Espinoza-Puopolo believes that the refrigerator in the kitchen can be made wheelchair accessible by rehinging its door from one side to the other and doing the same with the refrigerator handle. She disagrees that the cabinet housing the ovens prevents wheelchair access to the refrigerator. Ms. Espinoza-Puopola also stated Claimant could access the kitchen sink by using the standing function of his power wheelchair and, in any event, there's no need to make both the first floor and the kitchen sinks wheelchair accessible (Mother's request to have the first-floor sink wheelchair accessible is addressed at subheading viii below) as they are in close proximity to each other.

Mother disagrees that re-configuring the kitchen door will make it more accessible or that the wheelchair can navigate around the kitchen island and the cabinet housing the ovens. At the hearing, she drew diagrams on photographs of the areas demonstrating the lack of clearance. Regarding the standing function of the power wheelchair, Mother noted that it is not and, for stability, cannot hold Claimant straight up and down. Instead, it is set on a backward tilt of approximately 20 degrees. Were it pitched further forward, it would topple forward with the weight of Claimant.

Finally, Mother argued that making both sinks on the first floor wheelchair accessible is important because they serve different functions. Claimant washes his hands at the bathroom sink after toileting; he could rinse fruit or perform other simple tasks for meal preparation at the kitchen sink.

Mother's proposed modifications to the kitchen amount to virtually dismantling it to allow Claimant unfettered access there. Her primary objective so he can reach the refrigerator and the kitchen sink. Mother stated at the hearing Claimant is often left thirsty because care takers forget to provide him with water. She believes he may be able to get his own water from the refrigerator and rinse a piece of fruit as a snack at the sink. Mother's desire to encourage Claimant's independence is understandable and laudable. His capacity to do so is not supported by the evidence, including the uncontroverted descriptions of his extensive disability in the IPP. On the contrary, Claimant's access to the contents of a refrigerator pose potential safety hazards, especially given his propensity to overfill his mouth. There are other ways to make water or other safe foods available to him without the extreme renovations involved in dismantling the kitchen, such as leaving out a few bottles of water and nonperishable snacks in a currently accessible location, which would allow Claimant to have some agency over when he drinks or eats. Similarly, there is insufficient evidence that Claimant could assist with meal preparation if the kitchen sink were made more accessible.

**(VI) INSTALLING CEILING TRACKS FROM THE FAMILY ROOM TO THE FIRST-FLOOR BATHROOM AND ON THE UPSTAIRS FLOOR OF THE HOUSE BEGINNING FROM THE TOP OF THE STAIRS TO TWO BEDROOMS CLAIMANT USES AND THE UPSTAIRS BATHROOM**

22. Though they differ on the ultimate cause, both parties agree that Claimant is very difficult to move within and outside the house and this has been a major cause of frequent complaints and turnover of staff care providers. Mother herself has experienced injuries trying to maneuver Complainant who is quickly approaching full-adult size and is resistant to the hands-on care he requires. While ELARC has focused more on the difficult dynamic between Mother and care providers, Mother has pointed to obstacles within the home and the inherent limitations from relying almost exclusively on human effort to lift and care for Claimant. Her training as an engineer lends itself to considering a more mechanized or at least machine-assisted approach.

To that end, Mother requested that a ceiling track be installed between the family room and the first-floor bathroom and, on the second floor, from the top of the stairs to the three rooms Claimant utilizes there: two bedrooms, one which houses a hospital bed and another bedroom where Claimant has a table for crafts, where he takes his school lessons, and where his clothes and equipment are stored; and a bathroom. The ceiling tracks would allow for both standing and sitting harnesses to be attached. Once helped into the harness, Claimant could be glided from room to room as far as the tracks allow. The system would also allow him to maneuver into small spaces such as the first-floor bathroom and to access his belongings or be put to bed without being ensconced in a wheelchair. Mother argued that such a system would



substantially reduce the effort currently involved in moving him from place to place, making the job of any caregiver, including Mother, easier.

Ms. Espinoza-Puopolo does not believe ceiling tracks and a harness system are required and raised the possibility that, due to the placement of ducts for the home's air-conditioning and heating system, they may not be installable at all on the second floor. She did not take any steps to confirm whether there are structural impediments to installing ceiling tracks there. Ms. Espinoza-Puopolo also stated that the harness system may undermine a disabled person's dignity as could be left suspended for periods of time. Regarding the proposed bathroom modifications, she believes they are not necessary as, according to her measurements, the bathroom can accommodate Claimant in his chair and whomever is assisting him.

Mother's arguments for the ceiling track system are persuasive. Although there is some indication Mother has not been as courteous and respectful as she should be to staff assisting Claimant, it is also clear the sheer effort involved in caring for him is a chronic problem unrelated to Mother's behavior. If anything, it might be exacerbating it as Mother herself has been injured from the work involved. The ceiling tracks and harness system could substantially cut down on the lifts and other transitions required and make Claimant's "footprint" the size of his body, allowing additional freedom within the house to move from place to place.

Ms. Espinoza-Puopolo's concerns about Claimant's dignity are important but, as it stands, Claimant is, in many ways, trapped in the equipment he currently uses. What he needs are conscientious care givers who will avoid "parking" him whether in a chair, a harness, or any other equipment. Easing the physical burden of caring for him may encourage care givers to stay with him for long enough periods to develop the sort of bond likely to encourage compassionate care.

Regarding whether there are structural impediments to installing the ceiling tracks, something Mother disputes as well, the only evidence offered at the hearing were Ms. Espinoza-Puopolo's conjectures. Her background as an occupational therapist does not make her qualified to make such determinations. Without more, this is not a reason not to pursue utilizing this technology.

## **(VII) REMOVING THE SECOND FLOOR BATHROOM VANITY**

23. The second-floor bathroom currently has a vanity housing two sinks with cabinets underneath. Mother requests removing the vanity and replacing it with a single, wheelchair-accessible sink. She also requests that the toilet be moved to be more centered in the room as there is only a small space – Mother estimates 22 inches – around the toilet as it stands.

Ms. Espinoza-Puopolo did not directly address this request at hearing or in her report; however, she generally disagrees that the bathrooms in Claimant's house are too small to prevent Claimant from being toileted or showered with his care givers' assistance.

Mother's argument are somewhat persuasive, but she did not address whether the ceiling track and harness system would alleviate the limitations of the second-floor bathroom. Presumably the harness's ability to reduce Claimant's space requirement would allow him to enter and use the sink, toilet and shower without renovating the bathroom. In any event, in the interest of avoiding unnecessary or duplicative modifications, delaying further construction until the ceiling track and harness systems are installed (or possibly determined to be structurally not installable) is warranted.

## **Additional Evidence from Claimant**

24. Mother sought coverage for the home modifications she seeks from Claimant's insurance providers, and they denied the claims. Claimant's health care providers, however, agree that Claimant requires at least some of the home modifications for his medical condition. In a December 2021 letter, Physician Assistant Nicholas Marigliano of University of Southern California Children's Hospital wrote in part:

[Claimant] is a 16-year-old male with autism and cerebral palsy followed by our orthopedic team for his neuromuscular weakness, spasticity, varus feet, and hip, knee, and ankle contractures. [¶] . . . [¶]

I have reviewed photos of the home which show that [Claimant's] wheelchair cannot fit through the doorway and the bathrooms are too small for two people to fit and safely lift or transfer [Claimant].

Based on the pictures, my knowledge of [Claimant's] condition, and the history [Mother] has provided, he is clearly in need of an in-home lift system allowing him to safely traverse the stairs and travel from the stairs to the bathroom to complete hygiene and other [activities of daily living]. [Claimant] has a history of significant regression after a ground-level fall and we recommend utilizing a lift system when inside small spaces in the home to reduce risks of injury. He is also in need of modifications to allow

wheelchair access into the home as this is his primary means of mobility in the home. Without these modifications, [Claimant] is at increased risk for falls and potential injury to himself and his caregivers.

(Exh. B, pp. B19-B20.)

25. Mary and Eileen Falvey are sisters, both extensively experienced with disabled children, who are family friends of Claimant and his mother. Both testified at the hearing. Mary Falvey is a retired professor and former dean at California State University, Los Angeles (CSULA). At CSULA, she taught classes in special education in the university's teaching program. Since her retirement in 2013, Dr. Falvey consults about, and advocates for, disabled children. She also teaches a Sunday school class Claimant attended before the pandemic. Dr. Falvey has attended all of Claimant's IPP meetings and is versed in the services provided by ELARC as well as the controversies between the parties.

Dr. Falvey stated that the services ELARC has agreed to fund over the years were never fully provided because of the difficulty of finding and retaining qualified care providers. Moreover, the problem only increases as Claimant grows heavier and more combative. Having observed him at home and in her class, Dr. Falvey believes Claimant is frustrated by the limitations and indignities of being constantly pushed and pulled or lifted from one setting to another. Dr. Falvey stated that increased wheelchair access in and around his home would greatly increase his sense of agency.

At the hearing, Mother showed a recent video of Claimant operating his power chair independently.

26. Eileen Falvey operated group homes for disabled children for 20 years and was employed as a service coordinator at the Westside Regional Center for 19

years. She too is a friend of Mother and has spent time with Claimant. At the hearing, she stated that the modifications, particularly the ceiling track and harness system to move Claimant from room to room and into small spaces such as bathrooms would be very effective and helpful. She also stated that it has been her professional experience that such equipment was within the types of supports regional centers can and have funded.

## **Discussion**

27. Considering the evidence as a whole, including Claimant's particular vulnerability from any head injuries, the input from Claimant's medical providers and their support for the types of modifications Mother seeks, and from knowledgeable family friends, evidence from both parties establishing that, for various reasons, relying exclusively or mostly on human effort to move and care for Claimant has become unsustainably difficult, Mother has successfully demonstrated the need for certain home modifications. Those are: widening the door leading from the garage to the laundry room, relocating the dryer to the garage and providing a power supply and any other necessary support for it there, and, assuming there are no unavoidable structural impediments, installing the ceiling track and harness system from the family room to the first-floor bathroom and from the top of the stairs to and into the two upstairs bathrooms Claimant utilizes and the upstairs bathroom.

Mother has not established the necessity of undertaking other modifications, addressed at Factual Findings 18 through 21 and 23, and in one instance – the kitchen modifications addressed at Factual Finding 21- there is evidence that the modifications are expressly not necessary in light of Claimant's limitations and safety concerns.

28. ELARC has responsibility to Claimant for the home modifications established to be necessary in accordance with applicable law as addressed in the Legal Conclusions below.

## **LEGAL CONCLUSIONS**

### **Scope and Purpose of the Lanterman Act**

1. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families.

2. The main objectives of the Lanterman Act are to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4685), and to enable developmentally disabled persons to approximate the pattern of living of similarly aged nondisabled persons and to lead more independent and productive lives in the community. (§§ 4501, 4750, and 4751; see also, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To meet its objectives, the Lanterman Act is designed to provide "an array of services and supports . . . sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.)

4. "Services and supports for persons with developmental disabilities" means "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 independent, productive, and normal lives . . . ." (§ 4512, subd. (b).) Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, domiciliary care, . . . [and] adaptive equipment and supplies . . . ." (*Ibid.*)

## **The Role of Regional Centers**

5. The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them. (§ 4520.)

6. To determine how an individual consumer is to be served, regional centers conduct a planning process that results in an Individual Program Plan for the consumer. Section 4646, subdivision (a) specifies:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the

goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Section 4647, subdivision (a) states:

Service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

8. Section 4648 provides, in part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to:

(a) Securing needed services and supports.



(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families . . .

9. Section 4885, subdivision (a) states, in relevant part:

(a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement.

## **Fair Hearings**

10. An administrative fair hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act (§§ 4700-4716) when claimants or their representatives disagree with regional center decisions. As this matter was

initiated by Mother, on behalf of Claimant, to appeal ELARC's denial of her request for funding home modifications, the burden is hers to establish entitlement to the funding. (*Lindsay v. San Diego Retirement Board* (1964) 231, Cal.App.2d 156,161.) The standard of proof is preponderance. (Evid. Code, §115.)

11. As established in Factual Finding 27, through persuasive evidence, Mother supported Claimant's need and some, not all of the modification requested. The IPP in place provides for necessary, cost-effective home modifications and other applicable provisions of the Lanterman Act, set out in Legal Conclusions 1 through 9, support the finding that ELARC must provide funding for these modifications and the necessary assistance to secure service providers to perform them, consistent with the order below.

## **ORDER**

Claimant's appeal is granted in part and denied in part.

ELARC will fund and contract with an appropriate vendor to perform the following home modifications at Claimant's home:

1. Widen the doorway from the garage to the laundry room to 36 inches. Install a permanent ramp customized to the size of the new door frame.
3. Adjust electrical system and make other necessary utility changes to accommodate a dryer in an appropriate area within the garage. Move the dryer to the area and connect it to new outlets.
4. Install a threshold ramp for sliding door near kitchen leading to the yard.

5. Install ceiling tracks and sitting and standing harnesses from the family room into the first-floor bathroom and from the top of the stairs into each of the two bedrooms claimant uses and into the second-floor bathroom.

DATE:

DEENA R. GHALY

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.