

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

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2022060062

DECISION

Administrative Law Judge Jessica Wall, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on July 25, 2022, from Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's parents represented claimant, who was not present at hearing.

Evidence was received and the record remained open to allow claimant to submit a video exhibit played during testimony (Exhibit B). ACRC did not object, and the video was admitted on the record at hearing. On July 26, 2022, the video was submitted, the record closed, and the matter submitted for decision.

ISSUE

Is ACRC required to provide an additional wheelchair ramp for claimant?

FACTUAL FINDINGS

Background

1. Claimant is an 11-year-old girl with diagnoses of 1p36 deletion syndrome, Lennox-Gastaut syndrome, Left Ventricular Noncompaction, and Polymicrogyria. She qualifies for regional center services based on intellectual disability and epilepsy. She lives at home with her mother and 14-year-old brother. Her parents are divorced and share custody of claimant and her brother. She enjoys being around her family and going outside. Claimant previously enjoyed going on outings, such as vacations, shopping, going to movies, eating at restaurants, and attending children's parties. However, because of COVID-19 and claimant's risk factors, she is no longer able to go on outings.

2. Claimant requires total care for all activities of daily living. She is non-ambulatory and nonverbal. She needs assistance for body positioning, transfers, eating, toileting, and personal care. Her caretakers use an electrical lift ("Molift") to transfer claimant from her bed to wheelchair, from her wheelchair to her potty chair, and from her wheelchair to the ground for physical therapy (PT) activities. In 2021, claimant also began using a stander to help straighten her legs. She has a specialized wheelchair, which weighs about 68 pounds, and a Leggero Stroller, which weighs between 50 and 68 pounds.

3. Claimant attends a special day class at a local elementary school. Recently, she has attended in-person classes from 9:00 a.m. to 12:00 p.m. on Monday through Thursday. She receives nursing care during the hours she attends school, but only receives 40 hours of the 75 hours allotted each week because of staffing shortages. She is eligible for 155 hours of In-Home Supportive Services (IHSS) each month through Yolo County and receives respite care funded by ACRC. Additionally, claimant's family funds in-home music therapy and PT.

4. Claimant's latest Individual Program Plan (IPP) was completed on October 15, 2021. Her goals are (1) to have a free and appropriate education; (2) to remain healthy, with health care as needed; (3) to remain at home with supports as needed; and (4) to have her durable medical equipment needs met. The IPP encourages claimant's family to develop a safety/evacuation plan as part of the third goal. As of the IPP's drafting, claimant was 4 foot 5 inches tall and weighed 68 pounds.

Claimant's Request

5. In early March 2022, claimant's mother asked Deborah Born, claimant's Service Coordinator, about modifying her home to include an additional wheelchair ramp to the backyard. Ms. Born drafted a Uniform Referral Form regarding the request on March 7, 2022. On March 9, 2022, Ms. Born sent a letter to claimant's mother regarding permission to make a referral for home modification services. Claimant's mother returned a signed copy of the letter the same day.

6. On March 24, 2022, the request went to ACRC's Durable Medical Equipment Review Committee. The committee denied the request finding that the request was not necessary for claimant to function and remain in the home. The committee also added follow-up actions, such as determining whether there were

other means by which claimant could access the backyard and whether Medi-Cal could fund the ramp.

7. On May 9, 2022, ACRC drafted a Notice of Proposed Action denying claimant's request for an additional wheelchair ramp. In the Notice of Proposed Action, ACRC stated the reason for denial as follows:

There is no assessed need for the requested modification. [Claimant] is able to enter and exit the home in her wheelchair using the front door with the ramp ACRC previously funded for her. There is no information to suggest that you could not exit [claimant] out the back door separate from her wheelchair in the event of an emergency, nor that the requested modification would lead to [claimant's] greater independence.

Claimant's mother signed a Fair Hearing Request challenging the Notice of Proposed Action, and this hearing followed.

Claimant's Evidence

8. Claimant's mother testified at hearing about her request. When she purchased her home in 2004, it was not wheelchair accessible. ACRC paid to install a ramp to the front door, widen the doorframe of claimant's bedroom, and modify the bathroom in the primary bedroom to be accessible for claimant in August 2019. Five years earlier, in 2014, claimant's mother built a sunroom off the back of the house to store claimant's PT tools and provide claimant with additional windows through which to view the outdoors. A sliding glass door separates the home's living room from the sunroom. The sunroom floor is about a foot below the door. The door is too narrow to

accommodate claimant's wheelchair or her Leggero Stroller without significant jostling.

9. In March 2022, claimant's mother requested modifications to increase claimant's accessibility into the sunroom and the backyard. When claimant was younger, she was light enough that her mother could use an older stroller to transport claimant into the backyard. However, in the past two years, claimant underwent a growth spurt and now weighs about two-thirds as much as her mother. Recently, claimant's mother tried to lift claimant unassisted and was unable to do so. She relies entirely on claimant's Molift, wheelchair, and the Leggero Stroller to transfer and move claimant about the home. Without widening the doorway between the home and sunroom and installing ramps, claimant's mother is unable to transport claimant into the sunroom or the backyard. There are no other wheelchair or stroller accessible pathways from the home into the backyard.

10. At hearing, claimant's mother provided three reasons for seeking the modification. First, she needs a second exit from the home in the event of an emergency. The front door and its ramp are adjacent to the kitchen, which she believes is a high-risk area for fires. Claimant's mother worries about her ability to lift and transport claimant for several hundred feet if a fire were to block off the front door. Second, she would like claimant to spend more time in the backyard. Claimant's mother believes that the family's outdoor activities, such as grilling, gardening, and birdwatching, provide valuable stimulation for claimant. She does not want to leave claimant unattended inside while the family is outside. Third, claimant's mother would like to turn the sunroom into a dedicated space for claimant's PT. Making the sunroom accessible would allow her to move claimant's large PT floormats from the middle of the living room to the sunroom. This would mean that all of claimant's PT tools would

be in the same room as where she receives PT services and enable claimant's wheelchair to have greater access to the living room.

ACRC's Evidence

11. Ms. Born testified at hearing that she has been claimant's service coordinator since 2017. She recalled claimant's mother requesting modifications to her home in March 2022 so that she could bring claimant into the backyard. The modifications requested included widening the doorway from the living room into the sunroom and from the sunroom into the backyard, as well as eliminating the door's "lip" and installing ramps. Mr. Born did not visit the home, but claimant's mother sent her pictures of the areas. Ms. Born passed on the request to her manager and scheduled the request to be put before a committee.

12. Ms. Born was surprised that the committee recommended denying the request. She believes that claimant should not be left unattended and should be able to access the backyard. In her experience, ACRC typically finds home access to be important and an emergency exit to be critically important. She also understands that ACRC looks at the specific needs of each consumer and does impose a limit on the number of ramps that it will fund for a household. After the committee denied the request, Ms. Born informed claimant's mother. At that point, claimant's mother first told her about the need for an emergency exit, the reasoning upon which the Notice of Proposed Action was based.

13. Kenisha Hurd, Client Services Manager for ACRC also testified at hearing. She supervises Ms. Born and was involved in the decision to deny claimant's funding request. Ms. Hurd was not at the committee that denied the request, but she understands that committee approval is required for all requests for home

modification. She explained that ACRC only funds modifications that are necessary for a consumer's health and safety, or that would result in greater independence for the consumer within the home. In making modifications, ACRC must look to the least-costly services and generic resources before approving a request. Nevertheless, in her experience, ACRC has installed multiple ramps in a consumer's home when necessary.

14. ACRC provided its Procedures Manual and a list of service codes in support of its denial. The manual details ACRC's policies about providing environmental modifications. It states, "ACRC may provide environmental accessibility through adaptations to the client's home that can be provided to achieve an objective in the individual's [IPP]." The manual provides that ACRC resources shall not be used to supplant any other public or private resources, and that ACRC will purchase services from the least costly service provider that can meet a client's needs. The manual's list of key considerations includes that "[t]he desired adaptation is not duplicative of a currently available resource and is the most cost-effective/least-costly option available."

15. In the service code list, under service code 104 ("Environmental Accessibility"), the document provides how the regional center classifies vendors as providers of environmental accessibility services. It goes on to state, in relevant part, that:

Environmental Adaptations shall be deemed necessary to ensure the health, welfare, and safety of the consumer, and/or enable the consumer to function with greater independence in the home, without which the consumer would require institutionalization. Such adaptations may include the installation of ramps and grab bars, widening of

doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems necessary to accommodate the medical equipment and supplies necessary for the welfare of the consumer. Excluded are those adaptations or improvements to the home that are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, air conditioning, etc. Adaptations that add to the total square footage of the home are excluded from this benefit.

Analysis

16. The Legislature directs regional centers to support a family's decision-making, be flexible and creative in meeting the unique and individual needs of families, focus on the entire family, and promote the inclusion of children with disabilities in all aspects. More specifically, regional centers "shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home." (Welf. & Inst. Code, § 4685.)

17. Claimant's October 2021 IPP provides that her goals are to remain healthy and continue living at home with supports as needed. It further directs her parents to develop a safety/evacuation plan for emergencies. Claimant's mother realized that as claimant has grown, her accessibility needs have changed. Claimant's mother can no longer carry claimant without assistance, which poses a risk to claimant's safety in the event of an emergency and limits claimant's ability to access parts of her home, namely the sunroom and the backyard. The requested modification would allow claimant to access a part of the home that is currently inaccessible, provide her with the means to exit the home in the event of a kitchen fire, and offer an

opportunity for outdoor enrichment activities without the risk posed by public outings during a pandemic.

18. ACRC argues that claimant's mother's request violates the Lanterman Act and ACRC policy as a duplicative service or good since there is already a ramp to the front door. ACRC further assumes, without evidence, that claimant's mother could transport claimant without a wheelchair or stroller in the event of an emergency. Considering the testimony at hearing, ACRC's arguments are unpersuasive and inconsistent with the Lanterman Act.

19. ACRC must ensure that claimant has the necessary environmental accessibility modifications and equipment installed in her home to ensure her safety. Providing the funding for an additional ramp is consistent with ACRC policy, which looks at each consumer and her needs individually. Here, modifications to provide for an emergency exit and backyard access further claimant's safety and welfare interests. When all the evidence is considered, claimant's parents established that ACRC is required to fund the environmental accessibility modifications to provide claimant with an emergency exit and a means by which to access the backyard.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Claimant has the burden of proving by a preponderance of the evidence that ACRC is required to fund her request for an additional wheelchair ramp. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise

provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not that ACRC is required to fund her request for an additional wheelchair ramp. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” in order to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations].” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388 (*Association*)).

3. 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 lifestyle as possible. (Welf. & Inst. Code, § 4646; *Association, supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or her representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer’s developmental

needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), & (4); 4646.5, subd. (a); 4512, subd. (b); and 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).) After the IPP is completed, regional centers must coordinate service provision by purchasing or by obtaining from generic agencies or other resources, as well as monitoring implementation of IPP to ensure that objectives are fulfilled. (Welf. & Inst. Code, § 4647, subd. (a).)

4. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) They must consider conformance with regional center policies, generic resources, other funding sources like Medi-Cal, and the family's responsibility for providing services and supports when considering the purchase of supports and services. (Welf. & Inst. Code, § 4646.4.) Additionally, they must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).) Regional centers are not required to provide all the services a consumer may require but are required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.)

Conclusion

5. As set forth in the Factual Findings and Legal Conclusions as a whole, claimant's parents established that under the Lanterman Act, ACRC should fund the installation of an additional wheelchair ramp to provide claimant with an emergency exit and a means by which to access the backyard.

ORDER

Claimant's appeal from Alta California Regional Center's May 9, 2022 Notice of Proposed Action denying claimant's request for an additional wheelchair ramp is GRANTED.

DATE: August 1, 2022

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)