

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

In the Matter of:

CLAIMANT

vs.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency

OAH No. 2022080037

DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on September 9, 2022, from Sacramento, California.

Jason Toepel, Compliance Manager, represented Valley Mountain Regional Center (VMRC).

Claimant's mother, J.A., represented claimant, who was not present at the hearing.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on September 9, 2022.

ISSUE

Should VMRC be required to fund claimant's request for modification of a full-size sports utility vehicle (SUV), allowing the family additional room and the ability to tow a camping trailer?

FACTUAL FINDINGS

Background

1. Claimant is a nine-year-old female eligible for regional center services based on chronic medical conditions, cerebral palsy, and epilepsy. Claimant's November 23, 2020, Individual Program Plan (IPP) describes claimant as having weak muscle tone, delayed development and episodic seizures. Claimant's parents manage and direct all of her medical and dental requirements. Claimant's mother is her primary caregiver at home. Claimant is non-ambulatory, uses a manual wheelchair, leg braces, and a gait trainer for traveling.

2. In or about June 2021, claimant's mother requested that VMRC fund modifications to an SUV that the family was considering so they could accommodate additional family members and claimant's equipment, and have the ability to tow a camping trailer. Claimant enjoys the outdoors and camping, and has had less seizures, is happier and more engaged, and wants to be actively mobile. A modified SUV would allow claimant to be in the front seat, making it easier for claimant's mother to keep a closer watch on claimant while traveling, particularly when she is having seizures.

3. On June 29, 2021, Elizabeth Brushwyler, Physical Therapist, evaluated claimant, her current vehicle, and her desire for an All-Terrain Conversion (ATC) full-

size SUV that would accommodate additional seating for her family and tow capabilities for a camping trailer. Ms. Brushwyler memorialized her evaluation and recommendations in her evaluation report, dated May 18, 2022, and testified at hearing consistent with her report.

4. Claimant's mother reported to Ms. Brushwyler that the family often does not have enough room in their current minivan for claimant, her needed items, and her family. Grandparents and cousins also join family outings, and the family would like to utilize a full-size SUV with the ability to tow a camping trailer. She assessed claimant's needs and recommended the following:

[Claimant] currently has a 2018 Toyota Sienna [minivan] with an infloor ramp and retractable tie downs that [are] meeting her needs. The concern is that family feels this vehicle is too small and limits recreational opportunities as a family. Adding a transfer seat will allow them to keep 1-2 more seats compared with the ATC Conversion, but they would also need a wheelchair lift for her tilt in space manual wheelchair. But, the bigger concern is that family would have to lift [claimant] in and out of the seat – with the Turny seat¹ it is a level transfer rather than up into the SUV, but it is still a total lift. [Claimant] can bear weight briefly, but not consistently enough for stand pivot transfers.

¹ A Turny seat is a seat lift that moves the car seat completely outside of the vehicle and lowers it down to the desired level.

The ATC Conversion keeps [claimant] in her manual wheelchair, lifted up to the front passenger position. This will be a safer transfer compared with the transfer seat and it would allow her wheelchair to be inside the family vehicle. It does place her in the front row position which is not ideal. It would also require an Electronic Docking System – ez lock or q-strait, required for this type of lift [if modified as requested]. This will not give any more seating for the family, but it does have significantly more cargo space in the back, would allow a camping trailer to be towed, and would transfer [claimant] and her wheelchair safely into the vehicle.

5. On May 23, 2022, VMRC issued a Notice of Proposed Action denying claimant's request. VMRC is required to perform a needs assessment and assessment for services by qualified individuals. VMRC denied claimant's request because an occupational therapist previously performed an evaluation, determining that claimant's minivan meets her needs, and since her needs are met, there is no need for vehicle modifications to a second vehicle. VMRC determined claimant's desire to fit additional items or people, and to have the ability to tow a camping trailer are not needs related to claimant's disabilities. Furthermore, funding another vehicle modification when the current vehicle meets claimant's needs is not a cost-effective use of public resources. The need is already being met, and continued utilization of claimant's current vehicle is the least costly option.

6. On June 4, 2022, claimant's mother filed a request for a fair hearing. She also requested an informal meeting. Her request stated:

SUV is needed in order to continue family adventures, keeping [claimant] outdoors where she absolutely loves [it]. Reason for action for denial states " . . . would include a need to carry the wheelchair and the camper." This statement is untrue as this would be the primary vehicle for [claimant] and she would be where the lift is at all times. Our current vehicle doesn't allow for her to go camping without lifting her into her grandpa's truck . . .

7. At the informal meeting held on August 5, 2022, claimant's mother asserted that the family loves to frequently camp and uses a camper hauled behind claimant's grandfather's truck. The truck is not adapted for claimant and it is difficult to lift claimant in and out of the truck safely. This is why claimant seeks modification on an SUV capable of hauling the camper. Claimant's mother added that modifications to the family's van were completed when claimant had her previous wheelchair, and it is difficult to use the wheelchair "strap downs" with her current wheelchair. Further, it is difficult to fit claimant's equipment into the van, and an SUV would more easily accommodate her equipment. VMRC affirmed its denial of claimant's request for modification at the informal meeting, based on the reasons cited in its Notice of Proposed Action. However, VMRC suggested that an assessment of the minivan could be done with potential adjustments or modifications made to accommodate claimant's current wheelchair. VMRC reasoned that such modifications would be less than the cost of modifying a new vehicle, and that VMRC must utilize the least costly option.

8. On August 24, 2022, Lula Capuchino, Occupational Therapist and Certified Driver Rehabilitation Specialist, performed a new evaluation of claimant's 2018 Toyota Sienna minivan for a power docking station to secure her wheelchair

while in the vehicle. Ms. Capuchino authored an evaluation report, dated August 24, 2022, which was admitted into evidence. She noted that claimant's current wheelchair is compatible with a power docking station to secure claimant's wheelchair when being transported. Ms. Capuchino recommended the following:

[Claimant's] current vehicle meets the needs of the family for transporting into the community. Her current van can transport a total of [seven] people into the community. It has seating for up to [six] including the driver. This driver station (1), passenger station (1), the flip down attendant seat (1), and bench seating in the rear for [three] passengers. Then [claimant] is secured with manual retractable tie downs which makes it difficult for mom. Solution would be to install the power docking station to secure [claimant] when being transported. Her current chair is compatible to accept this modification.

Testimony of Brittany Colman

9. Brittany Colman is a Clinical Services Coordinator for VMRC. She makes referrals to vendors to perform assessments for vehicle modifications, among other things. According to Ms. Colman, when a consumer has transportation needs their current vehicle cannot meet, VMRC may modify the vehicle. For instance, if it is difficult or unsafe to lift a consumer into their vehicle, VMRC may fund modifications to meet the consumer's transportation needs. However, it is not common for VMRC to modify multiple vehicles for a consumer, or to modify a consumer's vehicle for the consumer's recreational desires. The assessment is "needs-based" in that it must be connected to a disability-related need that is unmet.

Testimony of Elizabeth Brushwyler

10. Elizabeth Brushwyler has been a licensed physical therapist since 1996. She has performed evaluations for VMRC since 2008. She evaluated claimant's Toyota Sienna minivan in June 2021. Ms. Brushwyler made recommendations in her report, concluding that claimant's minivan met her transportation needs. Ms. Brushwyler has recommended SUV conversions for regional centers in the past, and added that turning seats, gait trainers, and external carriers are good modification options for claimant. She opined that claimant's minivan does not currently have a tow hitch or turning seat but they can be added, as the cost is less than modifying another vehicle. However, she conceded she would have to obtain quotes to confirm the actual costs. She concluded her testimony by stating that an ATC conversion is more expensive than installing a turning seat and tow hitch to claimant's minivan, and therefore is not the least costly method to address claimant's stated needs.

Testimony of Claimant's Mother

11. Claimant's mother is extremely grateful for VMRC's help. She and claimant's father are divorced, and claimant's father lives in North Dakota. Claimant's mother, as sole caretaker, must take care of claimant's transportation and recreational needs by herself. She wants to ensure that claimant has safe transportation when the family travels to campgrounds. Claimant eats more [lately], wants to walk, enjoys nature, and thrives outdoors. Modifications to an SUV would allow claimant to continue to explore the outdoors and thrive.

12. Claimant's current minivan cannot fit any of her equipment because none of the seats can move. The family uses claimant's grandfather's truck when they go camping to meet their needs. The truck accommodates claimant's equipment, but

claimant's mother has to lift claimant, who weighs 65 pounds, into the truck. This is difficult for claimant's mother because she has a bad back. In addition, claimant's mother asserted it is better for claimant to sit in the front passenger seat if modified, so she can see and assist claimant. Claimant's mother believes it is best to have a vehicle that allows claimant sit next to her, has space for claimant's equipment, and has a tow hitch.

Analysis

13. Claimant has a 2018 Toyota Sienna minivan equipped with an in-floor manual ramp and retractable tie-downs for claimant's wheelchair. The modifications were provided with VMRC funding. The minivan serves as the family's primary vehicle. However, the family would like to utilize a full size SUV with requested modifications that provides extra room to accommodate claimant's equipment and additional family members, who often join the family on camping trips. Claimant enjoys the outdoors and campground visits with family, where she "thrives" surrounded by nature.

14. VMRC's denial of claimant's funding request was based on VMRC's position that modification of a second vehicle is a duplication of services at odds with VMRC's mandate to make cost-effective use of public funds. Further, occupational therapist Lula Capuchino's report stated that claimant's minivan met the needs of the family for transporting up to seven people into the community, including the driver. Ms. Capuchino acknowledged that the current tie-downs were difficult for claimant's mother to use, and suggested the installation of a power docking station for claimant's wheelchair.

15. Ms. Brushwyler, the physical therapist, also concluded that claimant's minivan met her transportation needs. Ms. Brushwyler compared the pros and cons of

adding a transfer seat to claimant's minivan versus providing an ATC Conversion, or modification to an SUV, for added cargo space and placement of claimant in the front seat in her wheelchair.

16. Ms. Brushwyler has recommended ATC or SUV conversions in the past for regional centers, but the cost in her experience outweighs other similarly effective modification options such as outfitting claimant's minivan with turning seats, gait trainers, and external carriers. In addition, a tow hitch could be added to claimant's minivan, which is less than the cost of modifying another vehicle. Ms. Brushwyler did not obtain quotes to support her testimony, but her experience in recommending ATC or SUV conversions in the past for regional centers is persuasive evidence to support her testimony.

17. Ms. Colman, VMRC's Clinical Services Coordinator, testified persuasively that claimant's transportation needs are being met, and it is uncommon for VMRC to fund modifications to another vehicle for a consumer, or to modify a consumer's vehicle to suit her recreational desires.

18. Based upon VRMC's needs assessments of claimant's vehicle by qualified individuals, their determination that claimant's transportation needs are being met, and funding modifications to another vehicle for claimant's recreational needs is not needs-based and not a cost-effective use of public resources, VMRC's denial was appropriate. Should claimant no longer continue to use the family's 2018 Toyota Sienna minivan as her primary vehicle, her request may be reconsidered.

LEGAL CONCLUSIONS

1. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, §§ 4700 through 4716.) E.F. requested a fair hearing to appeal ACRC’s denial of her request for funding of a specialized car seat. The burden is on claimant to establish entitlement to the funding. (*See Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

2. Pursuant to the Lanterman Act, regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as “a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability. . . .”

3. Through the Lanterman Act, the Legislature created a comprehensive scheme 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.” (Welf. & Inst. Code, § 4501.) The purpose of the provisions of the Lanterman Act are: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the

community. (Welf. & Inst. Code, §§ 4501, 4750-4751; see *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

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 Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, domiciliary care, . . . adaptive equipment and supplies" (Welf. & Inst. Code, § 4512, subd. (b).)

5. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. Welfare and Institutions Code section 4646, in part, provides:

(a) 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.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in development of the plan.

6. A regional center is required to secure the services and supports needed to satisfy a client's needs as determined in the IPP. (Welf. & Inst. Code, § 4648, subd. (a); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.) Welfare and Institutions Code section 4646.5 provides, in pertinent part:

(a) The planning process of the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments . . . Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, the consumer's parents and other family members, the consumer's friends, advocates, authorized representative, if applicable, providers of services and supports, and other

agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the family.

7. Welfare and Institutions Code section 4648, subdivision (a)(6)(D) states:

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 the needed services and supports.

[1]. . . [1]

(6) The regional center and the consumer, or if appropriate, the consumer's parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

[1]. . . [1]

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's

individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

8. Claimant failed to establish by a preponderance of the evidence cause to grant her appeal of VMRC's denial of her request for funding the modification of an SUV for her accessibility. This would be a duplication of services, claimant's transportation needs are currently being met, and modification of an SUV is not a cost-effective use of public funds at this time.

ORDER

Claimant's appeal of Valley Mountain Regional Center's denial of funding for modifications to a full-size SUV is DENIED.

DATE: September 20, 2022

DANETTE C. BROWN
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.