

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No. CS0012204

OAH No. 2024020174

DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 19, 2024, at North Los Angeles County Regional Center (Service Agency) in Lancaster.

Cristina Aguirre, Due Process Officer, represented Service Agency.

Claimant's mother (Mother) represented claimant, who was present during the hearing. Names are omitted to protect the privacy of claimant and his family.

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision at the close of the hearing.

ISSUE

Is Service Agency required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to fund an electrostatic air cleaning system for claimant's home?

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 11, claimant's exhibits A through D and F through L, and the testimony of the following witnesses: Service Coordinator Candace Carrillo; Service Agency Medical Services Manager Margaret Swaine, M.D.; and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 26 years old and lives with Mother, who is his conservator. He is eligible for regional center services based on his diagnoses of Autism Spectrum Disorder (ASD), intellectual disability, and cerebral palsy.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

3. On January 12, 2024, Service Agency sent Mother a Notice of Proposed Action denying claimant's request for regional center funding for an electrostatic air

cleaning system because the air cleaning system was not related to claimant's developmental disabilities.

4. In a Request for Fair Hearing dated January 31, 2024, Mother stated she disagreed with Service Agency's denial of funding for the air cleaning system.

Claimant's Request for Funding

5. Claimant's most recent Individual Program Plan (IPP), dated November 13, 2023, included a goal for claimant to maintain his health at an optimal level. The IPP noted claimant suffers from bronchopulmonary dysplasia and takes medication for asthma and allergies. The IPP called for Medi-Cal to fund all necessary medical services for claimant.

6. On January 18, 2023, Mother requested funding for several home modifications for claimant: (1) a walk-in bathtub, (2) a plexiglass barrier in the home's loft; and (3) a whole-home electrostatic air cleaning system. In support of her request for an air cleaning system, Mother explained claimant has a history of bronchial pulmonary dysplasia, asthma, and allergies. The air cleaning system would alleviate claimant's breathing difficulties triggered by dust and allergens in the air. Smaller air cleaners were ineffective in alleviating claimant's symptoms.

7. On March 21, 2023, Medi-Cal denied claimant's request to fund a whole-home electrostatic air cleaning system because Medi-Cal does not cover "any changes to your home." (Ex. 4.) Mother provided the denial letter to Service Agency.

8. At Service Agency's request, Mother submitted medical records related to her request for an air cleaning system. The medical records demonstrated claimant's history of asthma and other breathing difficulties and a prior referral to a

pulmonologist to treat those difficulties. The medical records did not refer to an air cleaning system.

9. On August 24, 2023, Physical Therapist Ryan Klumpp conducted a physical therapy assessment of claimant. The assessment identified concerns around claimant's mobility, balance, coordination, and gait. The assessment report did not reference an air cleaning system. In an undated letter, Mr. Klumpp stated claimant has difficulty with ambulation and balance and "has difficulty getting adequate breaths at times and has been undergoing methods to train his diaphragm." He added claimant would "highly benefit" from home modifications, but he did not specifically reference an air cleaning system. (Ex. D, p. B20.)

10. On December 6, 2023, a Service Agency interdisciplinary clinical team met to consider claimant's three requests. The team determined the walk-in bathtub, and the plexiglass wall were necessary and appropriate home modifications, based on a review of medical records and the physical therapy assessment. The team found an air cleaning system was unrelated to claimant's developmental disabilities and therefore did not recommend Service Agency provide funding for its installation at claimant's home.

11. Dr. Swaine, who was present at the December 2023 interdisciplinary clinical team meeting, is a pediatrician who specializes in evaluation and treatment of children and adolescents with developmental disabilities. She has worked at Service Agency for 15 years. Dr. Swaine testified an air cleaning system is not within the standard of care for treating cerebral palsy, ASD, or intellectual disability because it would not alleviate symptoms of those developmental disabilities. Asthma and bronchial pulmonary dysplasia, conditions potentially treated by an air cleaning system, are not qualifying disabilities for regional center funding. Dr. Swaine further

testified she has never seen a physician recommend a whole-home air cleaning system as treatment for allergies and asthma because the standard of care for those conditions is to maximize the use of medication to alleviate symptoms.

12. Mother testified claimant's developmental disabilities prevent claimant from wiping his nose or clearing his throat, both of which are necessary for self-care for a person who suffers from asthma and allergies. She asserted an air cleaning system would allow claimant to be more comfortable within his own home. She prefers an air cleaning system to regular medication use because the effects of long-term use of the medication may be unknown. Mother testified credibly about the challenges she faces in caring for claimant and her desire to provide him with the highest possible quality of life.

13. Mother also expressed frustration with Service Agency's handling of claimant's case, noting she did not receive timely guidance about documentation needed to support her request and that some of Service Agency's documentation contained inaccurate dates or other details. She did not understand why, if Service Agency denied her request to fund an air cleaning system, claimant's service coordinator subsequently requested Mother provide a quote describing the cost to install the air cleaning system, leading her to believe Service Agency would fund her request. Although Mother's concerns are legitimate, they do not factor into the decision in this matter, as they do not relate to whether the Lanterman Act requires Service Agency to fund an air cleaning system.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for regional center funding, the burden of proof is on claimant to establish by a preponderance of the evidence they meet the proper criteria. (Evid. Code, §§ 115, 500.) A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. 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, 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.)

3. "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 an independent, productive, and normal life. (Welf. & Inst. Code, § 4512, subd. (b).)

4. Developing the IPP for a regional center consumer is the cornerstone of the Lanterman Act. The IPP process must consider the needs and preferences of the consumer and, where appropriate, the family, to determine the services and supports to be funded. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, 4648.) The planning process includes gathering information and conducting assessments to determine the “life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.” (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) The IPP process must ensure conformance with the regional center’s purchase of service policies and utilization of generic services and supports when appropriate. (Welf. & Inst. Code, § 4646.4, subds. (a)(1), (a)(2).)

5. While a regional center is obligated to secure services and supports to meet the goals of each consumer’s IPP, a regional center is not required to meet a consumer’s every possible need or desire but must provide cost-effective use of public resources. (E.g., Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4685, subd. (c)(3)(A), & 4697, subd. (b)(2).)

Claimant’s Request for Funding

6. Claimant did not prove by a preponderance of the evidence Service Agency must provide funding for an air cleaning system. “Services and supports for persons with developmental disabilities,” as defined by the Lanterman Act, extend beyond those directly alleviating a developmental disability. Service Agency may fund services and supports toward the physical habilitation of an individual with a developmental disability or toward the achievement and maintenance of an

independent, productive, and normal life. An air cleaning system may achieve those goals for claimant, given his breathing difficulties and his inability to wipe his nose or clear his throat. However, a regional center is not required to meet a consumer's every possible need or desire but must provide cost-effective use of public resources. Given Dr. Swaine's testimony an air cleaning system is not the standard of care for asthma or allergies, and she would expect a treating physician to first maximize use of medication to alleviate those conditions, the evidence did not establish an air cleaning system is the most effective treatment for claimant's breathing difficulties or a cost-effective use of public resources. Service Agency therefore is not required to provide funding for an air cleaning system.

ORDER

Claimant's appeal is denied.

DATE:

HARDEN SOOPER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.