

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of the Request for Funding of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS Case No. CS0015650

OAH No. 2024040464

PROPOSED DECISION¹

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 30, 2024, by videoconference.

¹ At hearing, Inland Regional Center stated that claimant was not in the Self Determination Program (SDP), but his IPP states he "is in the [SDP] starting April 1, 2024." Thus, this matter shall be treated as an SDP matter and a proposed decision issued accordingly.

Claimant's mother and legal guardian represented claimant, who was not present.

Dana Hardy, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 30, 2024.

ISSUE

Should IRC fund the remaining cost of claimant's bathtub to shower conversion over and above the \$7,500 claimant's medical insurance provider authorized?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, a 25-year-old male, resides in his home with his mother and maternal grandmother. According to his Individual Program Plan (IPP), he is eligible for regional center services based on his diagnoses of autism spectrum disorder and epilepsy. He is covered by Inland Empire Health Plan (IEHP), a Medi-Cal managed care plan serving residents in the Inland Empire.

2. Claimant sought a modification of his bathroom and IEHP authorized \$7,500 for that work, which was less than the cost to perform that work based on three contractor bids claimant obtained. IEHP rejected claimant's request to fund the difference. Claimant then looked to IRC for those funds. On March 21, 2024, IRC issued

a Notice of Action to claimant advising that it was denying his request to fund the "additional costs for the bathroom modification not covered by" IEHP.

3. Claimant timely appealed, and this hearing followed.

Evidence Introduced at Hearing

4. IRC Program Manager Amina Abdelmageed, IRC Physical Therapist Michelle Knighten, and claimant's mother all testified in this hearing, and various documents were introduced. The factual findings are based on their testimony and those exhibits.

5. Claimant's bathroom is extremely small, consisting of only a six-foot bathtub that runs the length of one wall, and a toilet. The vanity is located in a separate room. The bathroom door swings inward, and photographs depicted the very tight space which comprises the bathroom footprint. Claimant's mother explained that she requested a seat in the shower to make it easier when she washes her son's hair given his height, as he is several inches taller than her. She does try to afford him privacy for his bathing needs, but also keeps the door open because he previously suffered a seizure while in the bathroom, resulting in serious injury. She is trying to foster his independence while at the same time keeping him safe. Because of his balance issues, she is seeking to modify the bathtub and convert it to a shower because claimant has difficulty stepping over the side into the tub.

6. Shehryar Mahmood, M.D., claimant's primary care physician, wrote a referral order on October 3, 2023, for a "tub to walk in shower modification."

7. On May 1, 2024, Dr. Mahmood authored a letter advising that claimant "requires a walk in shower modification from his current bathtub shower due to his

inability to safely and independently access his current tub shower." Claimant "has a diagnosis of Epilepsy (history of tonic clonic/grand mal seizures) as well as Autism and Motor Planning challenges. He has also had dual hip surgeries in the past 18 months that make getting in and out of his current situation very challenging for him and requires physical support from his mother or caregiver."

8. On November 14, 2023, a physical therapist/occupational therapist with Prior Level Home Health evaluated claimant for the tub to shower and handheld shower head he requested. Of note, one document indicated the assessment occurred on November 14, 2023, another that it took place on November 16, 2023.

9. A November 29, 2023, Prior Level Home Health Physical Therapy Initial Evaluation - Addendum, signed by Ali McClintock, a licensed physical therapist, noted that the initial evaluation took place on November 16, 2023. (The report of this evaluation was not introduced in evidence. As claimant's mother testified, and as noted in the documents introduced, Prior Level Home Health informed claimant they would not share the report as they send it to IEHP.) (No evidence was introduced that claimant attempted to subpoena this report.) Ms. McClintock did not perform the evaluation, or visit claimant's home, she merely signed the reports. The addendum indicated that claimant requires assistance with showering due to his poor balance. He "needs a tub-to-shower conversion and a handheld showerhead." He "needs a shower conversion due to [his] inability to lift his leg over the tub without feeling as if he would fall and the hand held [*sic*] shower head allows [him] to sit and clean himself." The "Recommendations" section stated:

Home modification for a shower conversion to include
transfer bath bench, grab bars and open door tub. -due [*sic*]
to [claimant's] inability to lift his leg over the tub without

feeling as if he would fall or lose balance and the hand held [sic] shower head allows [claimant] to sit and clean himself again without risk of injury from fall or lose [sic] of balance.

10. A January 10, 2024, estimate from BathPlanet detailed the work to be performed, which claimant's mother testified she specifically requested so that the work was clearly set out. She also explained how she asked all bidders on the project to reuse as much of the bathtub materials as possible, selected the least expensive fixtures and materials so as to keep the costs as low as possible, and all three bids indicated similar scopes of work. BathPlanet's bid was \$11,695, which included a \$7,770 discount. As noted by IRC in the Physical Therapy Equipment Assessment performed by Ms. Knighten, BathPlanet's bid was the lowest.

11. Home Depot's bid was \$12,166. It was undated but indicated that its discount price was good until October 2, 2023.

12. American Standard's January 23, 2024, bid was \$17,993.

13. Emails between IRC and claimant's mother documented her request for service, and provided the various estimates and documents supporting her request. Those emails noted that IEHP approved \$7,500 for the bathroom modification which was below the costs for the work.

14. Emails between claimant's mother and People First Services LLC, a company specializing in high level supports for persons with disabilities per its website, and which contracts with IEHP, contained claimant's mother's offer to fund the difference in modification costs that exceeded IEHP's \$7,500 approval. The emails documented that claimant's mother was advised that IEHP does not permit members to pay the additional cost "under no circumstances [sic]."

15. A May 29, 2024, letter from the Chief Executive Officer (CEO) at People First, denied claimant's mother's request that the individuals who participated in the physical therapy assessment testify at this hearing because per "corporate policy, our staff does not serve as witnesses in cases." (No evidence was introduced that claimant attempted to subpoena these witnesses.) The CEO "listed the facts and sequence of events regarding the shower modification referral that People First received from our contractor, IEHP." The CEO's letter then set forth the timeline regarding the request for modification, including People First's ability to negotiate for a lower bid from BathFirst, and confirmed that claimant "is not allowed to pay the [cost] differential amount."

16. Ms. Knighten's March 11, 2024, Physical Therapy Equipment Assessment "was generated from a records review." Ms. Knighten reviewed the November 16, 2023, physical therapy report which assessed the need for home modifications. Ms. Knighten wrote that claimant "was issued a one time approval for home modifications from IEHP for \$7500." She noted the physical therapy report stated that claimant "needs assistance with showering due to his poor balance and inability to lift his leg over the tub without feeling as if he was going to fall." The physical therapy report "recommended home modifications including: transfer bath bench, grab bars, open door tub, and a handheld shower." Those modifications can be accomplished with the IEHP approved \$7,500. Claimant submitted three bids ranging from \$11,695 to \$19,993 to remove the existing fiberglass tub and install a shower. Claimant was requesting IRC fund the difference. In the "Impression" section of her report, Ms. Knighten merely noted that claimant "has difficulty stepping into the present bathtub"; that the Prior Level Home Health recommendations were for a transfer bath bench, grab bars, and tub cut out; that IEHP had granted \$7,500 to the family for home modifications; that the recommendations could be completed with the allotted monies; and that claimant was requesting IRC fund the difference to convert the bathtub to a shower. Ms.

Knighten made no recommendation regarding the request that IRC fund the difference. However, at hearing she testified that the Prior Level Home Health recommendations meet claimant's needs and can be done using the \$7,500.

17. Ms. Knighten testified there are all types of bath bench sizes, some of which hangover the lip of the tub and that claimant could sit on the bench and then "schoochie" himself into the tub. Ms. Knighten also described the various types of tub cutouts available which would also meet claimant's needs. However, Ms. Knighten's testimony did not address or refute claimant's mother's testimony that all three bidders informed her that a tub cutout would not work due to the bathroom size.

18. The IRC Purchase of Services Policy sets forth how various services shall be provided and funded, including requiring IRC "to utilize the least costly provider" and requiring families to carry out their responsibilities. The section regarding home modifications permits funding for modifications when the IPP identifies the need, the modification "encourages independence, inclusion and empowerment," and includes "options that are most appropriate to meet the needs of the consumer and family." The purchase of services policy also provides that any consumer dissatisfied with IRC's determination may file an appeal, as claimant did here. Nothing in the policy prohibits IRC from funding the modification which claimant seeks.

19. Claimant's April 10, 2024, IPP set forth his goals, challenges, and strengths. He is in the SDP effective April 1, 2024. Claimant's mother testified that the IPP is a snapshot of her son at a point in time, and that many things stated therein were goals or things her son did before his dual hip surgery. For example, prior to that surgery, when they lived in Colorado, they hiked, which claimant enjoyed, but they have not hiked since his surgery three years ago. Likewise, her son enjoys skiing, but had not done that since his surgery. He also rides a mountain bike, but does not go

mountain bike riding; rather he uses the bike for regular bike rides because it has a secure braking system and wide tires which makes it a safe bike for him to ride. The reference in the IPP to claimant riding his bike to school is a goal and would be done with a personal assistant. Claimant's mother also explained that the reference in the IPP that claimant only requires verbal prompts for showering is incomplete because he also requires physical assistance. Of note, the IPP does reference physical assistance being required but is written in such a way as to not make it clear that it is also required for showering. Claimant's mother's testimony regarding the statements in the IPP was unrefuted.

20. Ms. Abdelmageed testified IRC denied claimant's request to pay the cost differential above IEHP's approved amount of \$7,500 because it was not the most cost-effective way to address his needs given the physical therapy assessment that indicated a transfer bath bench, grab bars, and open door tub would meet his needs. Those items cost less than the funds claimant seeks from IRC.

21. Ms. Knighten testified a bath bench is less than \$300, depending on the model; a grab bar is approximately \$200, absent installation costs which she did not know; and door tubs range from \$2,000 to \$3,600. The total of these costs is within the \$7,500 approved by IEHP. Ms. Knighten spoke with Ms. McClintock who advised that her understanding was the assessment was to determine if IEHP would approve \$7,500 for the tub to shower conversion; she did not know Prior Level Home Health was to assess whether there were alternatives that would meet claimant's needs. The addendum was written when Prior Level Home Health learned it must assess for alternatives. Ms. Knighten testified that based upon claimant's IPP and the physical therapy assessment, she agreed with the assessment's recommendations.

22. Claimant's mother described her son's balance issues, her safety concerns, her attempts to pay the differential which were denied, her attempts to keep the remodel costs low, and the information the three licensed contractors provided her as to why the recommendations made in the physical therapy assessment would not work in her bathroom given its small size. Her testimony here was also unrefuted.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) In this case, claimant bears the burden to demonstrate that IRC should fund the services he seeks.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act and Regional Centers

4. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

5. The purpose of the Lanterman Act is 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.” (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

6. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

7. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

8. IRC is one of 21 California regional centers. IRC provides advocacy for and assistance to a large developmentally disabled population living in its catchment area. To qualify for IRC services, a person must live within that area and be diagnosed with a substantial disability as defined by Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000.

Applicable Statutes

9. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them

which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

[¶] . . . [¶]

An array of services and supports should be established which is 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. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

10. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. The IPP 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 the development of the plan. The provisions of services must be effective in meeting the IPP goals, reflect

the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

11. Welfare and Institutions Code section 4646.4 requires regional centers to establish an internal process when an IPP or individualized family service plan is created, and sets forth what that must entail.

12. Welfare and Institutions Code section 4646.5 outlines the IPP development process which must include a statement of goals and identify the sources of the funded services.

13. Welfare and Institutions Code section 4647 sets forth what service coordination must include.

14. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(8) prohibits the regional center from using its funds "to supplant the budget of an agency that has responsibility to serve all members of the general public and is receiving public funds for providing those services."

15. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Evaluation

16. IRC's decision relied, in part, on the physical therapy assessment which recommended a transfer bath bench, grab bars, and open door tub. However, no evidence was introduced that either the physical therapist who performed the assessment or IRC took claimant's bathroom configuration and its attendant physical space limitations into account, something which all three bidders had done. Those bids were performed by reputable, licensed, insured, and bonded contractors, all of whom informed claimant that an open door tub would not work given the bathroom configuration/space limitations. No evidence refuted claimant's mother's testimony about what those contractors told her, and IRC presented no evidence refuting those contractors' opinions that an open door tub was not feasible.

Claimant established by a preponderance of evidence that the recommendations set forth in the bids meet claimant's needs given his bathroom's size limitations. Claimant's mother also established that she has done all in her power to keep the costs low, even trying to get a bid that fell within the IEHP \$7,500 limit. Claimant's mother, in addition, established that her offer to fund the difference is not possible, and IRC is her only option to cover the shortfall. On this record, claimant's appeal must be granted and IRC shall be required to fund the shortfall.

ORDER

Claimant's appeal of IRC's denial to fund the remaining cost of claimant's bathtub to shower conversion over and above the \$7,500 IEHP approved is granted.

IRC shall fund the additional costs for the bathtub to shower modification not covered by IEHP.²

DATE: June 4, 2024

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

² The bids received in evidence may now be outdated, requiring new bids to be obtained, and an evaluation may need to be conducted to determine which tub to shower installation best serves claimant's needs.

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024040464

Vs.

DECISION BY THE DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On June 4, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

Given the unique circumstances of the case, the Proposed Decision is adopted in full.

In addition, DDS Orders that Inland Regional Center shall fund the remaining cost of claimant's bathtub to shower conversion over and above the approved Inland Empire Health Plan (IEHP) of \$7,500 outside of claimant's Self Determination Program (SDP) budget.

The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day July 1, 2024.

Original signed by:

Nancy Bargmann, Director