

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0020253

OAH No. 2024081085

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 17, 2024, at Inland Regional Center in San Bernardino, California.

Kerri Neal, Fair Hearings Representative, represented Inland Regional Center (IRC).

Claimant's mother represented claimant.

A Spanish language interpreter was utilized to interpret the proceedings from English to Spanish and from Spanish to English.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 17, 2024.

ISSUE

Is IRC required to fund a manual rear entry van conversion for claimant?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 19-year-old regional center consumer pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et. seq. Claimant is eligible for services based on his diagnosis of autism spectrum disorder (ASD). Claimant also has chronic medical conditions including cardiomyopathy, scoliosis, neuromuscular scoliosis, cell myopathy, non-rheumatic mitral valve disorder, sleep apnea, muscular dystrophy, and Duchenne's multiple dystrophy, a progressive condition that causes claimant to get easily fatigued. Claimant resides at home with his parents.

2. On an unknown date, claimant requested IRC to fund the cost of a manual rear entry van conversion for claimant.

3. In a letter dated June 13, 2024, IRC served claimant with a Notice of Action denying the request to fund the manual rear entry van conversion, and approving funding for a Turney Seat instead. The reason for the denial was as follows:

An Inland Regional Center OT/PT assessment was conducted on April 17, 2024. This decision was made based on the recommendation [*sic*] that at this time a Turney seat would adequately [*sic*] meet [claimant's] needs.

4. On August 26, 2024, claimant submitted a fair hearing request objecting to IRC's decision, and this appeal followed.

IRC's Evidence

5. IRC presented documentary evidence and the testimony of three witnesses at the hearing. The following factual findings are based on the testimony of those three witnesses, as well as supporting documents received in evidence.

TESTIMONY OF ESMERALDA LUNA

6. Esmeralda Luna is employed by IRC as a Consumer Services Coordinator (CSC), a position she has held for three years and eight months. Her responsibilities include meeting with consumers and participating in the creation of their Individual Program Plan (IPP), researching possible resource agencies and service providers, and providing referrals to generic resource agencies. Ms. Luna explained that the IPP is the document agreed upon by the family and IRC that includes the details of strengths or concerns for claimant, and services needed for claimant, as well as all regional center funded sources and generic services he receives. Ms. Luna has been claimant's CSC since July 2022 and has met with claimant in person.

7. Ms. Luna testified that claimant wears leg braces and uses a manual wheelchair and a continuous positive airway pressure (CPAP) machine. She stated that claimant is ambulatory and only uses his wheelchair when he is out in the community

and when he has to travel longer distances. With regard to his self-care needs, claimant's mother provides assistance with his dressing and bathing, but claimant can provide "helpful movements" to assist her. Claimant also has behavioral challenges, including eloping, disruptive behaviors, destruction of property, and self-injurious behaviors. Claimant receives 40 hours per month of applied behavioral analysis (ABA) therapy. Additionally, claimant receives social security benefits, 280 hours per month of in-home support services with his mother as the provider, and California Children's Services benefits. Claimant attends school and has an individual education program (IEP). Claimant also receives 40 hours per month of licensed vocational nursing respite services as a result of surgery he had in 2019 for spinal fusion.

8. Ms. Luna testified that claimant's family requested a manual rear entry van conversion for claimant. After this request, Ms. Luna "got the required documents from the parents and presented it to the clinical team." She stated that a determination that more information was needed regarding the request, and as a result the matter was referred to an occupational therapist and a physical therapist for assessment.

TESTIMONY OF MICHELLE KNIGHTEN

9. Michelle Knighten is employed by IRC as a physical therapist, a position she has held for the past 20 years. Ms. Knighten holds a master's degree in physical therapy and has been licensed in California as a physical therapist for the past 26 years. Prior to working for IRC, Ms. Knighten worked as a physical therapist in various capacities, including at inpatient settings and at some skilled nursing facilities, as well as for California Children's Services (CCS) as a senior physical therapist and physical therapist providing services to deaf children. Her position with CCS required her to assess children for a determination of qualification for CCS, as well as provide

treatment and school assessments. She has worked as a physical therapist for 26 years. Her current position at IRC requires her to perform equipment assessments for children, a needs analysis for equipment, and run an equipment clinic for IRC consumers. She visits the homes of IRC consumers for an analysis of needs, including the need for home and vehicle access equipment. She performs these types of assessments about two to ten times per week.

10. Ms. Knighten explained that her equipment assessments require her to look at the needs of the consumer versus what equipment has been provided. She then forwards her assessment to IRC decisionmakers for a determination of whether specific equipment is needed, and whether IRC will fund the equipment. Ms. Knighten was tasked by IRC with performing an assessment of claimant's needs with regard to the request for a manual rear entry van conversion. Ms. Knighten testified that an occupational therapist (OT), Anette Richardson, accompanied her on the assessment in order to perform her own assessment from an OT standpoint. As part of that assessment Ms. Knighten and Ms. Richardson met with claimant's mother and claimant on April 17, 2024, during a "virtual visit." As part of her assessment, Ms. Knighten reviewed claimant's medical records. She also reviewed documents provided by claimant's mother, including two letters from Payam Soltanzadeh, M.D., Associate Clinical Professor of the Neuromuscular Program at University of California, Los Angeles (UCLA) Department of Neurology. The first letter dated January 10, 2024, provides, in part, as follows:

It is my medical opinion that [claimant] has a severe muscular dystrophy causing weakness and need to use wheelchair. It is necessary for his caregivers and parents to

have a ramp so they could get the patient in and out of vehicles and/or vans for transportation needs.

The second letter dated April 24, 2024, provides, in part, as follows:

[Claimant] is diagnosed with Duchenne muscular dystrophy that causes significant muscle weakness and requires a wheelchair for mobility. This is a chronic and progressive disease. It is necessary for his caregivers and parents to have a ramp so that they can perform safe patient transfer in and out of vehicles and/or vans for transportation needs.

Ms. Knighten explained that a folding ramp is consistent with what is recommended by Dr. Soltanzadeh. The folding ramp is used exclusively to put the wheelchair into the vehicle without the person using the wheelchair at the time the ramp is in use. The ramp can be folded and can be transferred from one vehicle to another with ease. The ramp is used when the patient is out of the wheelchair to put the wheelchair in the vehicle, and the patient is put in a standard seat of the vehicle by either moving from the wheelchair to the vehicle under their own power, or by being lifted into the vehicle by someone. The cost of a ramp is paid by CCS.

By comparison, Ms. Knighten stated that a manual rear entry van conversion the patient never leaves the wheelchair, and the wheelchair is wheeled into the vehicle with the patient in it. Thereafter, the wheelchair is strapped down or tied down to prevent its movement when the vehicle is in motion. A manual rear entry van conversion requires that the vehicle itself be altered so that the rear end of it is taken off and "a lowered back-end" is inserted with a fold out ramp attached so that the person in the wheelchair can be rolled into the vehicle and remain in the chair. Ms.

Knighen testified that the manual rear entry van conversion is for people who do not walk and are confined to a wheelchair. A manual rear entry van conversion cannot be transferred from one vehicle to another and is limited to only the vehicle that has been altered. Ms. Knighen stated that claimant pursued the manual rear entry van conversion through claimant's insurance, but the request was denied. Ms. Knighen stated that IRC also requested quotes for the cost of the manual rear entry van conversion, and those quotes ranged from \$31,000 to \$41,430. This cost would be on top of purchasing the vehicle itself.

11. Ms. Knighen's assessment of claimant's needs shows that claimant can walk inside his home without assistance, and he does wear braces on his feet. Claimant utilizes a wheelchair for community mobility for longer distances but can walk for shorter distances. He does not require a wheelchair while in the family home. Claimant takes a wheelchair to school, but generally walks on his own in the classroom. Currently, claimant accesses the community through the use of a 2015 Toyota Rav4, and claimant's mother provides him minimal assistance (25 percent or less) to help claimant into the vehicle's seat. Then claimant's mother puts the wheelchair in the back of the vehicle. Ms. Knighen testified that her assessment of claimant is that he can walk short distances, and he has a progressive muscular dystrophy that may leave him wheelchair bound in the future, but that is not the case today. Ms. Knighen testified that she is not aware of any medical records for claimant that indicated he will be wheelchair bound in the future.

12. Ms. Knighen concluded that claimant can use a Turny seat, which is a car seat located on the front passenger side of the vehicle that comes out of the vehicle and lowers to allow a passenger to easily sit in the seat. Thereafter, the seat is hydraulically lifted and turned back into the vehicle with the passenger sitting in it. The

Turny seat eliminates the need to physically assist claimant into the vehicle. The Turny seat must be installed into the vehicle, but it can be taken out of one vehicle and reinstalled into another vehicle. Ms. Knighten also stated that a Bruno Hitch mounted lift can be used to transport the wheelchair into the back of the vehicle if claimant has a heavier wheelchair in order to prevent the caregiver from having to lift the wheelchair. The quotes for the cost of the Turny seat provide to IRC show a cost of \$13,500, and the quotes for a Bruno Hitch show a cost of \$4,500. Ms. Knighten stated that the use of a Turny seat and Bruno Hitch will meet claimant's needs and be suitable for his purposes for a significantly lower cost, and both can be transferred to another vehicle, if necessary, unlike a manual rear entry van conversion. The reason that these options are acceptable for claimant's needs is because claimant can walk on his own for short distances and can get into and out of the vehicle with minimal assistance. Claimant currently uses a manual wheelchair and not a power wheelchair because claimant has the ability to stand and walk on his own.

13. All of the medical records Ms. Knighten reviewed supported the conclusion that claimant can stand and walk on his own for shorter distances, including his school IEP. Claimant currently takes a general education physical education class in school and met his goal to walk independently for two laps around a track with no assistance. Claimant can seat himself in a classroom chair and move independently. Claimant walks up and down stairs with the use of railing. In his most current report from his ABA provider from November 2024, it was reported that claimant exhibits incidents of eloping behavior. Ms. Knighten stated that in order to be able to elope, claimant must be able to walk on his own, which is consistent with her review of records across multiple settings. Overall, claimant has the ability to walk, stand, and sit down, and as a result he does not need a manual rear entry van conversion, which would be needed for a person who is completely wheelchair bound.

Ms. Knighten noted that the Turny seat and Bruno Hitch option is even better than what was recommended by Dr. Soltanzadeh, because Dr. Soltanzadeh only recommended the use of a ramp. Because the Turney seat and Bruno Hitch will meet claimant's needs and most cost-effective option, IRC is recommending their use for claimant.

TESTIMONY OF AMIRA ABDELMAGEED

14. Amira Abdelmageed is currently employed by IRC as a Program Manager, a position she has held for the past two years. Prior to this position, she worked at IRC as a CSC, a position she held for eight years. She has worked at IRC for 11 years. In her current role as a Program Manager, Ms. Abdelmageed is responsible for overseeing the work of 15 CSCs and reviewing their work. When a CSC receives a service request from a consumer, the CSC brings the request to Ms. Abdelmageed and they determine the appropriateness of the request for determination of whether IRC will fund them. Ms. Abdelmageed supervises Ms. Luna and oversaw claimant's request in this matter.

15. When claimant's request was first brought to the attention of Ms. Abdelmageed, a referral for an assessment by a physical therapist and an occupational therapist was made to determine claimant's needs for the manual rear entry van conversion. After receiving the reports from Ms. Knighten and Ms. Richardson, the information from those reports was provided for a compliance review with the director, who reviewed all the information to make a determination of whether IRC should fund the manual rear entry van conversion. IRC ultimately determined based on the information provided that a Turny seat and Bruno Hitch was the most appropriate option for claimant, and claimant's request to fund the manual rear entry van conversion was denied. Ms. Abdelmageed explained that this determination was made because claimant is able to walk, stand, and sit down on his own, and because the law

requires that IRC fund needed services at the least costly option because cost effectiveness is required to be considered. In this case the Turny seat with Bruno Hitch is the most cost-effective option that will meet claimant's needs.

Testimony of Claimant's Mother

16. Claimant's mother believes that claimant is entitled to the manual rear entry van conversion because it makes it easier for claimant to get into the vehicle instead of placing him in the front seat. She stated that she is concerned about his safety when she places him in the front seat, and then she has put the wheelchair in the back of the vehicle because he can elope. She also stated that claimant needs his wheelchair at all times because he gets fatigued easily. She is concerned because claimant's condition is progressive and will get worse with time.

LEGAL CONCLUSIONS

The 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, 500.) In this case, claimant bears the burden to demonstrate that he is entitled to receive funding for the manual rear entry van conversion of a vehicle.

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

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “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. . . .”

6. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“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, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements,

7. The Department of Developmental Services (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.) A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. 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.)

8. In order to be authorized, a service or support must be included in the consumer’s IPP. (Welf. & Inst. Code, § 4512, subd. (b).) In implementing an IPP,

regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

9. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process is to consider the needs and preferences of the consumer and his or her family, "where appropriate." Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).) The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

10. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Welf. & Inst. Code, §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.)

11. Welfare and Institutions Code section 4640.7, subdivision (b) provides:

Each regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model, in which each consumer shall have a designated service coordinator who is responsible for providing or ensuring that needed services and supports are available to the consumer. Regional centers shall examine the differing levels of coordination services needed by consumers and families in order to establish varying

caseload ratios within the regional center which will best meet those needs of their consumers.

12. Welfare and Institutions Code 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, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities to achieve the greatest self-sufficiency possible and to exercise 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 that would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work,

and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, if appropriate, the consumer's family. . . .

Evaluation

13. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet to qualify for regional center services. Claimant had the burden of demonstrating the need for funding for a manual rear entry van conversion, and claimant did not meet that burden. The evidence established that claimant has significant needs, is able to walk short distances, and can stand and sit down on his own. All of the medical records reviewed and provided in evidence support that conclusion. While claimant's mother testified that claimant needs a wheelchair at all times, that statement was not corroborated by records received in evidence and was contradictory to Ms. Knighten's testimony. Claimant's mother provided no evidence to support her assertion that claimant is wheelchair bound at all times. Additionally, while it is uncontested that claimant's condition is progressive in nature, no evidence was provided to show that claimant is currently or will be in the future wheelchair bound. Instead, he is capable of getting into and out of a vehicle with little assistance. Accordingly, the least restrictive, most cost-effective, and best option for getting him in and out of a vehicle is the Turny seat with Bruno Hitch. While claimant's mother would like the significantly more expensive option of the manual rear entry van conversion because she views it as "easier," IRC is required by law to use the most cost-effective means of meeting claimant's needs pursuant to Welfare and Institutions Code sections 4640.7, subdivision (b), 4651, subdivision (a), and 4659. In this case that cost-effective option is the Turny seat and Bruno Hitch, which will meet claimant's needs in a far more cost-effective manner than the manual rear entry van conversion.

ORDER

Claimant's appeal is denied.

DATE: December 27, 2024

DEBRA D. NYE-PERKINS

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 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.