

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

In the Matter of:

CLAIMANT,

and

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

DDS No. CS0022229

OAH No. 2024110698

DECISION

A fair hearing was held on December 23, 2024, before Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconference from Sacramento.

Claimant was represented by her mother. The names of Claimant and her mother are omitted to protect their privacy and confidentiality.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin M. Black, Legal Services Manager.

Evidence was received, the record was closed, and the matter was submitted for decision on December 23, 2024.

ISSUE

Is ACRC required to provide a second opinion assessment of whether Claimant needs a new or modified lift system to move Claimant between her bedroom and the bathroom in the family home?

FACTUAL FINDINGS

Jurisdiction and Background

1. ACRC provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), and other related laws. (Welf. & Inst. Code, § 4500 et seq.) (All statutory references are to the Welfare and Institutions Code, unless otherwise specified.)

2. Claimant is 24 years of age. She is eligible for ACRC services under the Lanterman Act based on diagnoses of moderate cerebral palsy and profound intellectual disability. She resides with her mother in the family home. She has substantial disabilities in all major life functions, and has never lived independently.

3. Claimant's mother requested that ACRC perform a follow-up evaluation to determine whether Claimant needs a new or modified lift system installed in the family home for purposes of transporting Claimant between her bedroom and the

bathroom. ACRC denied the request. Claimant timely filed a fair hearing request, by which she appealed ACRC's denial. This hearing followed.

ACRC's Evidence

TESTIMONY OF LAURA MARTINEZ AND RELATED DOCUMENTS

4. Ms. Martinez is employed by ACRC as a service coordinator. She served as Claimant's service coordinator for approximately two years, ending in October 2024. In February 2024, Ms. Martinez, Claimant, and Claimant's mother participated in an annual Individual Program Plan (IPP) planning team meeting. The goals for Claimant as stated in the IPP summary include that Claimant will continue to live with her family, and will have access to appropriate medical equipment to ameliorate the physical limitations of her developmental disabilities. During the IPP meeting, Claimant's mother expressed concerns that the rail system used to transport Claimant between her bedroom and the bathroom was not safe because the "rails move a lot while [Claimant] is being lifted and the motor is not working." ACRC agreed to fund repairs of the system in the amount of \$1,470. ACRC also agreed to provide funding for an evaluation of the lift system.

5. On June 24, 2024, a physical therapist conducted a durable medical equipment (DME) evaluation of the lift system at Claimant's home. Claimant and her mother were present during the evaluation. The physical therapist prepared a written DME evaluation report dated July 3, 2024. The physical therapist provided a summary of claimant's concerns in her report. Claimant and her mother previously lived in West Sacramento where they had an overhead lift system that allowed Claimant's mother to transport Claimant between her bed and the bathroom. Claimant and her mother moved to a new home two years ago and a new lift system was installed. The new

system includes an electric gate and turntable. To open the gate and rotate the turntable, the trolley must be lined up with electronic sensors. This requires a slow and precise movement. If the trolley is pushed beyond the sensors, the gate will not open and the turntable will not rotate. According to Claimant's mother, there have been times when Claimant was loaded onto the trolley and they were not able to get the gate open, leaving claimant stuck between the bathroom and her bedroom.

6. Claimant's mother would prefer a single-track system from claimant's bed to the bathroom and over the bathtub. To the physical therapist's understanding, this would present some technical challenges including finding space to charge the electric rail motor, and making a 90 degree turn without an electric turntable. On the latter point, the physical therapist would defer to the contractor who installed the system.

7. On August 28, 2024, Ms. Martinez had a telephone conference with the owner of One Source Mobility who installed and repaired the existing lift system and the consultant from MTB Consulting who oversaw the work. They confirmed that the system is working correctly, and that claimant's mother does not have patience with the operation of the turntable and gate.

TESTIMONY OF CINDY LE AND RELATED DOCUMENTS

8. Ms. Le is employed by ACRC as a client services manager. Her responsibilities include direct supervision of service coordinators including Ms. Martinez. She is familiar with Claimant's request for a second assessment regarding whether a new or modified lift system is necessary to move Claimant between her bedroom and the bathroom. She consulted with Ms. Martinez, the contractor at One Source Mobility, the consultant at MTB Consulting, and ACRC Associate Director Faye

Tait. She also reviewed the DME evaluation prepared by the physical therapist. Based on her consultations and the information she reviewed, she agrees there is no need for a second assessment regarding a new or modified lift system. ACRC funded the installation of a new lift system in claimant's new home approximately two years ago. To Ms. Le's understanding, the new system is not working satisfactorily because of "user error" by Claimant's mother. With additional training for Claimant's mother, the new lift system would work as designed. Claimant's mother declined additional training, and instead wants to return to a less technical system such as the one she had in her previous home.

Claimant's Evidence

TESTIMONY OF CLAIMANT'S MOTHER

9. Claimant's mother testified that the problems with the current lift system are that the gate and the turntable in the bathroom get stuck, one of the three rails does not work properly at the gate and turntable, and the motor that lifts Claimant sometimes gets stuck. The result is that Claimant sometimes gets stranded between the bathroom and her bedroom, or part way up or part way down. She would like to have a manual gate and turntable installed. She spoke with the representative from One Source Mobility, and he told her this would be possible.

10. Claimant's mother does not believe she needs additional training. The lift system is simple to use. The people from ACRC do not understand the details of how the system works. Claimant's mother would like an assessment to determine whether the current lift system can be modified so she can push Claimant manually through the gate and turntable.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In an administrative hearing, the burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that ACRC is required provide a second opinion assessment of whether Claimant needs a new or altered lift system in the family home. (Evid. Code, § 115.)

Applicable Law

2. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from § 4620.)

3. As set forth in section 4646, subdivision (a):

It is the intent of the Legislature 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, if appropriate. . . . 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.

4. As set forth in section 4646.5, subdivision (a)(1), the planning process for the individual program plan discussed in section 4646, shall include the following:

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. . . . Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer [and] the consumer's parents The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

5. Section 4647, subdivision (a), provides that coordination of services shall include "assurance that the planning team considers all appropriate options for

meeting each individual program plan objective . . . and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

Analysis and Disposition

6. Claimant’s mother clearly and credibly established that the lift system installed in her home is not working to her satisfaction. She is the one who operates the system for Claimant. Pursuant to section 4646, subdivision (a), the opinions and preferences expressed by Claimant’s mother must be taken seriously. The mandate to make cost-effective use of public resources must also be taken seriously.

7. The evidence is not clear whether the lift system can reasonably be modified to provide the manual control that Claimant’s mother desires. Claimant’s mother testified that the One Source Mobility representative told her it could be done. The physical therapist stated in her DME evaluation report that she would defer to the contractor who installed the system on matters including whether it is feasible to make a 90 degree turn without an electric turntable. The One Source Mobility representative, who is perhaps best positioned to provide clarification, did not testify.

8. The evidence is also unclear whether the lift system is prone to malfunction as Claimant’s mother described, or whether the problem is “user error” as Ms. Le asserted. Ms. Martinez testified that during a telephone conference with the One Source Mobility representative and the MTB consultant, they told her Claimant’s mother lacks patience with the operation of the turntable and gate. Neither the One Source Mobility representative nor the consultant testified. Statements attributed to them by Ms. Martinez are treated as administrative hearsay pursuant to Government Code section 11513, subdivision (d).

9. ACRC denied Claimant's request for a follow-up assessment of the lift system based on the assertions that the lift system is working properly, and that Claimant's mother needs additional training to correctly operate the system. Claimant's mother contradicted both assertions in her testimony. ACRC did not present testimony from anyone with first-hand knowledge of the lift system's operability or the asserted "user error" attributed to Claimant's mother.

10. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, the follow-up assessment requested by Claimant is appropriate. Claimant met her burden of establishing by a preponderance of evidence that she is entitled to a follow-up assessment to determine whether it is feasible to modify the current lift system to better meet the needs of Claimant and Claimant's mother who operates the lift system. Claimant's appeal must therefore be granted.

ORDER

Claimant's appeal is GRANTED. ACRC shall facilitate a follow-up onsite assessment to determine whether the current lift system can reasonably be modified to better meet the needs of Claimant and Claimant's mother. Both a physical therapist or occupational therapist and a representative from One Source Mobility shall be present at Claimant's home concurrently to facilitate the onsite assessment.

DATE: January 7, 2025

TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party request a reconsideration within 15 days of receiving this decision (Welf. & Inst. Code § 4713, subd. (b)), or appeal this decision to a court of competent jurisdiction within 180 days (Welf. & Inst. Code § 4712.5, subd. (a)).