

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

In the Matter of:

CLAIMANT

and

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0027152

OAH No. 2025060267

DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on July 11, 2025, in Napa.

Claimant was represented by her brother. She was not present.

Beth DeWitt, Director of Client Services, represented the North Bay Regional Center (NBRC), the service agency.

The record closed and the matter was submitted for decision on July 11, 2025.

ISSUE

Must NBRC replace a bathtub, installed as part of residential home modification bathroom remodel, with a bathtub selected by claimant?

FACTUAL FINDINGS

1. Claimant is a 75-year-old non-conserved adult residing in her family home. Claimant is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)¹ for services from NBRC because she is substantially disabled by moderate intellectual disability and cerebral palsy. Claimant relies upon a combination of natural supports, NBRC-funded services, and In-Home Supportive Services (IHSS) to manage her day-to-day needs. Claimant has lived in her family home her entire life and her primary caregiver was her mother until 2018, when her brother became her primary caregiver.

2. The purpose of an Individual Program Plan (IPP) meeting is to use a person-centered approach to consider the needs and preferences of a regional center client and, as appropriate, their family, using an individualized needs determination to develop the provision of services and supports to assist a client to achieve their personal outcomes and life goals and promote inclusion in their community through a cost-effective use of public resources. (§ 4646.) In addition, services and supports should be provided in the least restrictive environment that will “foster the

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise stated.

developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible,” and “services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.” (§ 4502, subd. (b)(1).)

3. On October 26, 2022, an IPP meeting was held for claimant, and an IPP with person-centered objectives was developed.

4. Claimant requires assistance with all aspects of daily living including bathing, dressing, and personal care. She uses a walker for ambulation inside and outside of her home and a wheelchair for any type of long-distance outing. Claimant’s brother is her IHSS worker, and he lives in their home with her. Due to claimant’s age, her needs are changing, and it has become more difficult for her to navigate steps, get in and out of the bathtub (she does not use a shower), move down hallways, and get in and out of bed. Claimant has had several falls and continues to be at risk for falling.

5. NBRC employee Heidi Oestreich contacted occupational therapist (OT) Christina Williamson, O.T.R./L., to perform an OT assessment to assess claimant’s needs for additional supports and/or modifications in her home. One of the areas addressed by the OT assessment was the modifications needed to the bathroom tub area in claimant’s home for claimant’s safety and independence. Claimant’s brother reported that he had pain and issues with the ongoing lifting burden of assisting claimant into and out of the bathroom tub (which was a “regular” tub with a high edge that claimant needed to step over). Williamson conducted her OT assessment at claimant’s home while claimant and her brother were present so Williamson could observe how claimant accessed and used the current tub. Williamson ultimately recommended an activities of daily living (ADL) bath spa tub be installed for claimant

with a listed price of \$12,500. Williamson and claimant's brother agreed that claimant was at risk for falls associated with accessing the tub and claimant's brother also acknowledged that claimant requires assistance with water set-up and safety while bathing.

6. On July 18, 2023, an IPP addendum meeting was held for claimant. The following individuals helped develop the addendum: claimant, her brother, Williamson, contractor Ian Whipple, and Oestreich. Agreement was reached that the ADL bath spa tub referenced in Factual Finding 5 would be installed in claimant's bathroom. In addition, NBRC also agreed to fund other bathroom renovations recommended by Williamson's assessment for a total project cost of up to \$44,925 to be paid to Whipple who would be completing the contracting work.

7. For various reasons, the completion of the bathroom renovations was delayed, and the ADL bath spa tub was no longer available as the manufacturer was no longer making the model selected. On February 13, 2025, an IPP addendum meeting was held for claimant. The following individuals helped develop the addendum: claimant's brother, Williamson, Whipple, and NBRC employee Sandy Nogales. An alternative tub, American Standard outward swinging right hand walk-in tub, was selected due to the unavailability of the ADL bath spa tub. Williamson and Whipple selected the alternative tub as comparable to the ADL bath spa tub.

8. At some point in March 2025, Whipple installed the American Standard tub in claimant's bathroom. After the installation of the tub, but prior to the completion of the remaining bathroom renovations, claimant's brother contacted NBRC and raised multiple concerns regarding the newly installed tub.

9. On April 15, 2025, NBRC program manager Patricia Cullen, Williamson, and Whipple met with claimant and her brother at their home to discuss the concerns of claimant's brother. Claimant's brother expressed the following concerns during the meeting: the tub was not 59 inches in length (which was the length of the bathroom wall); the tub had a door that opens outward which would not allow for sufficient maneuvering space because of the placement of a toilet and he wanted a tub door that opened inward; the bar handle lock closing the tub door was difficult to use; and the tub appeared "cheap" and had a "defect."

During the meeting, Cullen took pictures of claimant interacting with the tub and claimant was able to appropriately access the tub with assistance. The tub was confirmed to be in working order. During the meeting, Whipple explained that the installed tub was less than 59 inches in length because a tub that size would be too large to fit in the hallway leading to the bathroom. During the meeting, Williamson opined that a tub door that opened inward was a safety hazard as that style of door, in case of emergency, cannot be opened when the tub is filled with water. During the meeting, Cullen was able to easily open and close the bar handle lock for the tub door.

During the meeting, Claimant's brother requested that work stop on the remaining bathroom renovations until the issue with the tub was resolved. As of the hearing date, no further work has been completed on the remaining bathroom renovations.

At some point after the meeting, Cullen spoke with claimant's brother by telephone and informed him that NBRC would be willing to consider replacing the installed tub with a different tub if he provided a reference to a specific replacement tub that would be appropriate to address claimant's needs and not be a safety hazard. Claimant's brother never provided NBRC with this information although he provided

information on a tub with a door that opened inward, which the evidence established is safety hazard.

10. After the April 15, 2025, meeting, Cullen spoke with claimant's brother reiterating NBRC's denial regarding the tub, and informed him that she would initiate the process for him to appeal NBRC's decision if he wanted.

11. On April 30, 2025, NBRC sent claimant, care of her brother, a Notice of Action denying the request to replace the tub and stating, "NBRC is unable to accommodate this request as we must follow the recommendation of the expert that assessed the need."

12. On May 29, 2025, claimant's brother filed the appeal in this matter in which he stated:

Damaged tub that was purchased for [claimant] use -
missing and dented panels Non ADA compliant door and
step configuration for [claimant] Disability Cerebral Palsy
Door cannot be open properly Step is too high for easy
access for [claimant] to walk in the tub Setup is unsafe for
[claimant] to independently access the tub by herself due to
obstacles in the way - toilet, cabinet and small space. if
door open inward this would not be a problem. The
Specification of the Walk in Tub is not compatible to
original assessment. [Claimant's] ability to be more
independent and self sufficient has been taken away.

13. Cullen testified at hearing in a credible manner regarding the decision made by NBRC to deny claimant's request. Cullen's testimony regarding NBRC's denial

was consistent with NBRC's reasoning set forth in Factual Findings 9 and 11. When asked if the installed tub was damaged, Cullen indicated that a panel was missing on the outside of the tub (which was shown in a picture), but Whipple had stated the panel could be replaced, there was not any other damage, and the tub was safe and operational for claimant's needs. When questioned if the installed tub would decrease claimant's independence as she will require assistance in opening the tub door, Cullen testified that it would not because claimant's IPP, and the statements of claimant's brother, document that claimant already requires assistance for bathing due to safety concerns.

Cullen further testified that NBRC is still willing to consider replacing the installed tub with an appropriate alternative tub that is safe and will meet claimant's needs if claimant or her brother provide NBRC with reference to a specific (make and model) replacement tub.

Claimant's Additional Evidence

14. Claimant's brother testified at hearing in a passionate manner regarding his perceptions of claimant's needs in order to allow her to continue to be safe and as independent as possible in her home and in her activities of daily living. His testimony clearly demonstrated the depth of the concern he has for claimant's well-being. The testimony of claimant's brother regarding his concerns about the installed tub are consistent with those he made at the April 15, 2025, meeting set forth in Factual Finding 9. In addition, claimant's brother testified to his concerns that Whipple was not being honest regarding how much he paid for the installed tub as compared to the original tub cost of \$12,500. However, claimant's brother was not able to provide evidence to contradict the expert opinions of Williamson and Whipple regarding the

appropriateness of the installed tub and the inappropriateness of the replacement tub that he is seeking that is 59 inches long and has a door that opens inward.

Ultimate Factual Finding

15. As set forth in Factual Findings 9, 13, and 14, claimant failed to prove that the tub installed in claimant's bathroom is not safe, not operational, and does not address claimant's needs.

LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review a service agency's service decisions. (§ 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires NBRC to replace the tub installed in her home bathroom. The standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Through the Lanterman Act, the State of California has accepted responsibility for persons with developmental disabilities. The Lanterman Act mandates that "[a]n array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) The purpose of the Lanterman Act is twofold: (1) to prevent or minimize the institutionalization of persons with developmental disabilities and their dislocation from family and community, and (2) to enable persons with developmental disabilities to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives. (§§ 4501, 4685; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Department of Developmental Services (Department) is the state agency responsible for implementing the Lanterman Act. It contracts with regional centers that are charged with the responsibility of providing developmentally disabled individuals with access to services and supports best suited for them. (§ 4620, subd. (a).)

4. As set forth in Factual Finding 15, claimant failed to meet her burden to prove that the tub installed by NBRC in claimant's bathroom is not safe, not operational, and does not address claimant's needs related to a condition of her developmental disability.

5. As set forth in Factual Finding 13, nothing in this decision precludes claimant from presenting for NBRC's consideration an appropriate alternative tub, including make and model information, that is safe and will meet claimant's needs.

ORDER

Claimant's appeal is denied.

DATE:

CARL D. CORBIN

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.