

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TANNER T.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2012070375

DECISION

The hearing in the above-captioned matter was held on August 1, 2012, before Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, in Bakersfield, California.

Claimant Tanner T. (claimant) represented himself.<sup>1</sup> The Service Agency, Kern Regional Center (regional center or KRC) was represented by Jeffrey Popkin, Associate Director.

Evidence was received, the case argued, and the matter was submitted for decision on August 1, 2012.

The Administrative Law Judge makes the following factual findings, legal conclusions, and order:

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<sup>1</sup> Initials are used in the place of family surnames to protect the claimant's privacy.

## ISSUE PRESENTED

Is the Kern Regional Center required to replace claimant's power wheelchair, which claimant contends has insufficient battery life?

## FACTUAL FINDINGS

1. Claimant is a 29-year-old man who is a consumer of services provided by the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)<sup>2</sup> based on a diagnosis of cerebral palsy. Claimant lives independently in an apartment in Bakersfield, California. He is frequently outside during the day and uses a power wheelchair and public transportation as his primary means of mobility in the community. Recently, Medi-Cal purchased a new power wheelchair for claimant. The new wheelchair is an improvement over his previous wheelchair except that, according to claimant, the new wheelchair has an inferior battery. A charged battery will last approximately four hours, while his previous wheelchair battery would hold a charge for approximately eight hours. Claimant requested regional center funding to purchase a new wheelchair with a battery that would hold a charge for at least eight hours.

2. On June 4, 2012, the service agency issued a notice of proposed action (NOPA) informing claimant that because Medi-Cal had recently purchased a new wheelchair for him, it had denied his request to have regional center provide funding for the purchase of new wheelchair. The regional center based its determination on Welfare and Institutions Code section 4648, subdivision (a)(8).

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<sup>2</sup> Welfare and Institutions Code section 4500 et seq. All statutory citations are to the Welfare and Institutions Code, unless otherwise noted.

3. On July 28, 2012, claimant filed a Fair Hearing Request, contesting the Service Agency's decision denying his request for a new wheelchair. This hearing ensued. All jurisdictional requirements have been met.

4. Claimant lives in an apartment. The Regional Center provides case management services and funds supported living services (SLS) for Claimant both of which are aimed at helping him maintain his independence. He receives SLS for assistance with grocery shopping, menu planning, cooking, laundry, housekeeping, medical and dental appointments, hygiene and maximizing his participation in community life.

5. The IPP's stated goals are for claimant to continue to fully utilize his electric wheelchair for independent mobility 95% of the time without assistance for the next 12 months. Currently, he is able to move his electric wheelchair unassisted with 90% accuracy. He requires assistance 10% of the time while he is at home. SLS also assists Claimant with consuming his food by cutting up certain foods. Claimant is otherwise in good health. He regularly sees his doctors and receives assistance getting to and from his medical appointments

6. Claimant enjoys spending time in the community. He uses public transportation to access the community.

7. (A) On April 16, 2012, Administrative Law Judge (ALJ) Janis Rovner issued a decision denying claimant's appeal of a regional center's NOPA denying claimant's request to repair his old wheelchair. In that matter, claimant contended that the older chair was more versatile because it had a longer battery life. In addition, claimant requested that his old wheelchair be repaired to serve as a backup in case of an unusual and extraordinary need. In her decision, ALJ Rovner referred to the regional center's purchase of service guidelines as follows:

The POS guidelines allow KRC to purchase durable equipment for adult clients only if all of the following criteria are met: (1) A KRC approved specialist has made an assessment, which indicates that the specific equipment to be purchased would enable the client to live a more independent and productive life in the community; (2) the need for the specific equipment is associated with, or has resulted from, a developmental disability; and (3) the equipment to be purchased has been denied by, or the client is not eligible for, a generic resource such as Medi-Cal, private insurance or any other third party payer. The POS guidelines do not address or specifically permit or require KRC to purchase, or repair and maintain, a back-up wheelchair for Claimant.

[¶] . . . [¶]

Although the POS guidelines do not have the same binding force as do regulations or statutes under the Lanterman Act, they should not be ignored and deserve a level of deference. KRC's POS guidelines do not require it to repair and maintain a backup chair or purchase a new chair for claimant.

(B) In denying claimant's appeal, ALJ Rover stated that "it would not be cost effective for regional center to purchase, or repair or maintain, another wheelchair for claimant in addition to his new chair."

8. Claimant testified that the battery in his new wheelchair cannot maintain a charge for more than approximately four hours and that he must either find a place to

recharge his wheelchair battery or return to his apartment to recharge the battery. He contends that this takes time, decreases his mobility and independence, and is impractical for him. The battery charge on the older wheelchair usually lasted most of the day and it was not necessary for him to return to his apartment to charge it in the middle of the day. Claimant has requested a longer lasting battery from Medi-Cal, but was informed that the battery currently in his wheelchair is the longest lasting battery available for this type of wheelchair. A new fully-equipped wheelchair with a longer lasting battery would cost approximately \$12,000.

## LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal regional center’s denial of his request on approximately July 27, 2011. Jurisdiction exists to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

2. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, Claimant bears the burden of proof because he is requesting a new benefit in asking regional center to purchase a new backup wheelchair.

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

4. The Lanterman Act is a comprehensive scheme to provide “[a]n array of services and supports . . . 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.” (§ 4501.) The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685); and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community.” (§§ 4501, 4571, and 4750; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. Services and supports are to be provided in conformity with the IPP. (§ 4646.) The process “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, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.” (§ 4646, subd. (a).) The formulation of the IPP is a collaborative process with consumer choice as one consideration in formulating the IPP. (See §§ 4512, subd. (b) and 4646.)

6. Section 4512, subdivision (b), of the Lanterman Act defines the services and supports that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives:

“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, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan and the cost-effectiveness of each option . . . .

7. Section 4512, subdivision (b), generally defines services and supports that can be funded by regional centers as being those that are "specialized . . . or special adaptations of generic services and supports directed toward the alleviation of a developmental disability . . . or toward the achievement and maintenance of independent, productive, normal lives . . . ." Pursuant to that same provision, such services and supports may include "adaptive equipment and supplies."

8. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide the services in a cost-effective manner. (§§ 4512, subd. (b), 4640.7, subd. (b), and 4646, subd. (a). In addition, regional center funds may not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds to provide those services. (4648, subd. (a)(8).)

9. Section 4646.4 requires regional centers to establish an “internal process” to be applied at the time of development, scheduled review, or modification of a consumer’s IPP. The “internal process” must adhere to “federal and state law and regulation, and when purchasing services and supports,” must ensure (1) conformance with purchase of service policies, as approved by the Department of Developmental Services; (2) utilization of generic services and supports when appropriate; and (3) utilization of other services and sources of funding as contained in section 4659.

10. A purchase of service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at pp. 390-393.) However, a purchase of service policy must be considered to insure cost effectiveness pursuant to section 4646.4, subdivision (a), which directs that the purchase of supports and services should conform to “the regional center's purchase of service policies, as approved by the department. . .”

11. Claimant has a new wheelchair that Medi-Cal purchased for him. He seeks to have regional center bear the cost of purchasing another chair with a battery that will hold a longer charge so that he has greater mobility and independence. However, Medi-Cal is a publicly funded agency that has the responsibility to purchase the wheelchair for claimant, and pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8), KRC funds cannot be used to supplant Medi-Cal’s budget by purchasing a new wheelchair. Further, the regional center’s POS guidelines do not require KRC to purchase a new chair for claimant. Finally, it would not be cost effective for regional center to purchase another wheelchair for claimant in addition to his new chair.

12. Cause exists, under Welfare and Institutions Code sections 4512, subdivision (b), 4646, and 4648, subdivision (a)(8), Factual Findings 1 through 8, and



Legal Conclusions 1 through 11, to affirm the regional center's decision not to purchase a new wheelchair for claimant.

## ORDER

Claimant's appeal is denied, and the regional center's Notice of Proposed Action is affirmed.

DATED: August 8, 2012

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HUMBERTO FLORES

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is a final administrative decision. Both parties are bound by the decision and either party may appeal the decision to a court of competent jurisdiction within 90 days.**