

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

In the Matter of

CLAIMANT

and

FRANK D. LANTERMAN REGIONAL CENTER

OAH No. 2019010997

DECISION

Deena R. Ghaly, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 27, 2019, in Los Angeles, California.

Cynthia J. Waterson and Jessica Franey, Waterson Huth & Associates, Attorneys, represented the Frank D. Lanterman Regional Center (FDLRC). Victoria M., Claimant's mother and conservator (Mother)¹, represented him.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 27, 2019.

¹ Claimant's name is omitted and his mother is identified by her first name and initial of last name to protect their privacy.

ISSUE

Should FDLRC reimburse Claimant's parents for medical supplies and equipment for Claimant's care that they purchased in 2016 and 2017?

Factual Findings

Background

1. Claimant is a 33-year-old male, eligible for Regional Center services under the diagnoses of Cerebral Palsy, profound intellectual disability, and epilepsy. His condition is the result of a near-drowning when Claimant was just 22 months old, leaving him with severe anoxic brain injury.

2. Claimant is quadriplegic, nonverbal, and incontinent. He requires complete and total care for all of his needs. Claimant cannot eat and receives nutrition and medication through a Gastrostomy Tube (G-Tube). Claimant's kidneys malfunction, he suffers from seizures approximately twice a year, and is prone to bed sores. Because of the condition of his kidneys, Claimant is on a special diet and his food, which must be pureed for delivery via G-Tube, is prepared at home.

3. Claimant lives with his parents, who are his primary caretakers. They have consistently taken excellent care of him

4. The record does not establish when Claimant first became a consumer at FDLRC; however, there is documentation between Mother and FDLRC dating from as early as 1997.

Services and Support Provided for Claimant

5. Under the current Individual Program Plan (IPP), FDLRC funds 92 hours of respite care and 138 hours of personal assistance service per month. FDLRC also provides funding for G-Tubes and G-Tube-related medical equipment. Most recently, the IPP was amended to provide Mother up to \$100 per month for supplies needed for Claimant's day-to-day care such as disposable gloves, swabs, and products for dental hygiene.

6. Claimant's family have accessed assistance from sources beyond FDLRC (generic resources). Until 2014, Claimant had health coverage through his parents' private insurance. Thereafter, Claimant began receiving both Medicare and Medi-Cal health insurance benefits. He also receives Social Security payments. Additionally, Claimant's parents are paid for part of the time they care for Claimant through the county In-home Supportive Services program.

Claimant's Accelerating Health Needs

7. Until approximately five years ago, Claimant could take some nourishment orally. After he began to aspirate on food or liquids he swallowed, he could no longer safely eat or drink and began receiving nourishment solely through a G-Tube. In 2016, Claimant's kidneys began to malfunction. He developed kidney stones and was hospitalized multiple times. Around the same period, bed sores he suffered became larger and more problematic. These developments increased his need for assistance, medication, and medical supplies.

8. At the same time Claimant's needs were increasing, his coverage under Medicare and Medi-Cal proved less comprehensive than coverage under private insurance, which had paid for supplies such as G-Tubes, diapers, pads, and special

bath soap. Notes documenting Mother's communications with FDLRC in 2014 reflect her efforts and those of the Service Coordinator at the time to secure coverage for the supplies Claimant needed through Medicare and Medi-Cal before resorting to FDLRC funding. One example from an August 2014 consumer transaction note, demonstrate the bureaucratic tangle involved in getting even basic information regarding insurance availability.

SC received a call from client's mother/conservator stating that every year [Claimant's] physician completes the medical exemption and had done so this year, and had received the approval. [Mother] stated that she was told by [vendored supplier] that they can't send the diapers because she is under [Medi-Cal health plan] LA Care. [Mother] reported that when she called the [primary care physician], they stated that they lost the approval for [Medi-Cal] exemption and [Mother] called LA Care and they referred her to [Medi-Cal]. [Mother] stated that she called [Medi-Cal] and they refused to speak with her even when she told them she is the conservator.

(Claimant's Exh. 1.)

9. Despite the difficulties, Mother continued to communicate with FDLRC about Claimant's needs for supplies not covered by insurance and request its assistance. As she noted during the hearing, FDLRC, through its personnel, was helpful and approved the funding sought but only prospectively and generally, only after Mother had documented both medical need and insurance denial to its satisfaction. Mother learned to, as she put it, "choose her battles" when deciding whether to pursue

FDLRC funding. Online and other retail outlets sometimes had economical supplies for which Mother would pay out-of-pocket. Other times, the need for supplies was urgent and Mother knew there would be no opportunity to undertake the complex process for securing FDLRC funding and so would self-fund then too.

10. The year 2016 brought further challenges and pressures on Claimant's family. With Claimant's health failing more frequently and his needs for medical supplies increasing, self-funding became more expensive. Claimant's father retired, decreasing the family's financial resources even as Claimant's expenses increased. Mother found the cycle of phone calls and form-filling ever more difficult to maintain and, in any event, documentation she sought to support claims for FDLRC funding was sometimes not forthcoming, even after best efforts.

11. Claimant's next service coordinator, Lusine Gambaryan, made every attempt to step into the breach. Her efforts, documented in dozens of consumer transactions, reflect near-daily tasks Ms. Gambaryan completed on behalf of Claimant and his family. She researched options, negotiated with service providers, and, in certain instances, advocated for FDLRC to fund supplies even when documentation of insurance coverage denial was incomplete or unavailable. As she stated during her testimony, Ms. Gambaryan was well-aware of Claimant's health needs and how important medical supplies were for maintaining his well-being. During this period, with Ms. Gambaryan's assistance, Claimant's IPP was amended some 36 times over a three-year period to add services and supplies.

Issue in Controversy

12. In February 2018, Claimant's father began making preparations for a trip to visit his terminally ill sister. At approximately the same time, the lift Claimant's

family used to hoist Claimant from bed to bath or wheelchair, purchased over ten years before, began to malfunction. The manufacturer, a vendored provider, had ceased to do business in this state. Mother was panicked because, without the lift, Claimant's father was the only one able to lift Claimant out of bed. Mother made multiple calls to Ms. Gambaryan but it became clear to Mother that the replacement parts, costing several hundred dollars and not covered by insurance, would have to be purchased without waiting for the FDLRC's protracted process. During one of these communications and for what Mother maintained was the first time, Ms. Gambaryan advised Mother that she may purchase the equipment and then request parent reimbursement. Mother took Ms. Gambaryan's advice, purchased the equipment herself, and requested reimbursement, which FDLRC eventually authorized.

13. During the hearing, Mother stated that she was completely surprised and even angered to learn that retroactive payments to parents may be available from regional centers. Until then, Mother believed that FDLRC funding was only available prospectively. Time and again, she had had to make the difficult choice between undertaking the complicated process to secure FDLRC funding or pay out-of-pocket to obtain necessary supplies timely.

14. In addition to the reimbursement request for the lift equipment, Mother determined to request reimbursement for supplies she had purchased between 2016 and 2018 and for which she at least had a receipt or a credit card statement. The supplies for which Mother sought reimbursement were diaper ointment, syringes, and latex gloves, as well as durable medical equipment such as a head support, a pressure mattress, and padded joint protectors. In total, Mother's original reimbursement request was for \$692.50.

15. At the hearing, Mother stated that doctors will not write prescriptions or otherwise document the medical necessity of ointments, syringes, and latex gloves and neither Medicare nor Medi-Cal cover them. She also stated that the durable medical equipment she purchased were ones that had worn out faster than the replacement schedule allowing for insurance coverage. Mother's representations were credible and circumstantially corroborated by the many consumer transaction notes from FDLRC documenting Medicare and Medi-Cal's refusal to fund day-to-day supplies or medical equipment similar to the ones for which Mother is seeking reimbursement.

16. FDLRC approved reimbursing the expenses for 2018 and amounts reflected in two undated CVS receipts, a total of \$235.22. FDLRC denied the balance, \$460.41,² the expenses incurred in 2016 and 2017.

FDLRC Review Process

17. FDLRC Regional Manager Shoghig Dikijian first reviewed Mother's request with Ms. Gambaryan. In a letter dated January 2, 2019, they explained that FDLRC denied reimbursing Mother for the 2016 and 2017 because they concluded the Lanterman Act prohibits regional centers from retroactive parent reimbursement except in emergency circumstances that occur outside regional center business hours and are followed by a reimbursement request within five days of the transaction. Additionally, the January 2019 letter noted that the Lanterman Act requires consumers to exhaust generic services such as Medi-Cal before receiving regional center funding. The writers cited "Welfare and Institutions Code Section 56012(a)-(c)" in support of

² Subsequent to the time Mother submitted a Fair Hearing Request seeking reimbursement of \$544.23, FDLRC made an additional payment to Claimant's family for the amounts for the items listed on the CVS receipts and totaling \$83.82. Thus, the amount at issue is \$460.41.

their contention that the Lanterman Act prohibits retroactive funding and “Welfare and Institutions Code 4659 (a) and (c)” in support of their contention regarding exhausting generic resources.

17. Mother appealed the January 2019 decision and requested a Fair Hearing. Pursuant to applicable procedures, FDLRC first convened an informal meeting before another FDLRC manager, Katie Ramirez. In her April 18, 2019 letter, Ms. Ramirez upheld the January 2019 decision, noting “I have little choice but to **uphold** the Regional Center’s decision to deny retroactive funding from 2016 and 2017.” (FDLRC Exh. 7, p. 2 (bold text in original).) Ms. Ramirez also cited “Welfare and Institutions Code Section 50612 (a)-(c),” in support of her contention that retroactive funding was not permitted under the Lanterman Act.

18. Ms. Dikijian, who has been employed at FDLRC for over 30 years and its regional manager for the past 17 years, testified at the hearing and further explained FDLRC’s position. Ms. Dikijian stated that FDLRC personnel “are aware of claimant’s precarious medical condition,” and so, have tried, within the bounds of the law, to meet his needs. She, however, not only maintained that the Lanterman Act does not permit retroactive parent reimbursement outside the narrow exceptions for emergencies, but that Mother was well-aware of the restrictions and the necessity for timely requests based on Mother’s prior dealings with FDLRC. In support of this contention, FDLRC presented a vendor application from Mother dated November 21, 1997. (FDLRC Exh. 12.) The document reflects that Mother applied for vendor status to provide after-school care for her son, a child at the time. The record does not establish whether the application was approved.

19. Mother vigorously denied that she was aware of FDLRC parent reimbursement before the exchange about the lift parts in 2018. She noted that the

1997 application was for an entirely different funding stream to allow her to be compensated for providing services to her son.

20. Mother's testimony is credited. Not only was Mother specific, and unhesitating in her recollections of her communications with FDLRC, consumer transaction notes submitted by both parties (see Claimant's Exh. 1 and FDLRC Exh. 17) reflect in detail the information exchanged between her and the two service coordinators and are consistent with Mother's testimony. Moreover, Mother's vendor application from almost 22 years ago does not establish otherwise. However, whether Mother did or did not know parent reimbursement was an available option is only relevant if, as a matter of law, there is a five-day limitation period for requesting such reimbursement.

21. Notably, there is no "Welfare and Institutions Code section 50612 (a) – (c)," as cited in both the January 2019 and April 2019 letters from FDLRC. There is a regulation by that number, Code of California Regulations, title 17 (Regulation) section 50612, which provides that *services* cannot be retroactively funded except in emergency circumstances. (Reg. § 50612, subds. (a) –(c) (*italic text added*).) As discussed in greater detail at Legal Conclusion 12 below, the supplies for which Mother seeks reimbursement are not "services" in the ordinary sense of the word. Moreover, even if the regulation applies to medical supplies, it may not be dispositive if its application in this matter would thwart the main objectives and purpose of the underlying statute.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act or Act) (Welf. & Inst. Code, § 4500) acknowledges that the state accepts responsibility for disabled individuals and extends entitlements to eligible disabled individuals for “treatment and habilitation services and supports in the least restrictive environment.” (§ 4502, subd. (a); see also § 4741.)

2. The Act provides a “Persons with Developmental Disabilities Bill of Rights,” which includes the right to humane care, prompt medical care and treatment, and freedom from harm or neglect. (See § 4502, subd. (b)(2),(4), and (8).)

3. One of the Lanterman Act’s main objectives is to prevent or minimize institutionalizing consumers and prevent their dislocation from their families and communities. (Welf. & Inst. Code, §4502, subd. (a); see also Welf. & Inst. Code, § 4741.)

4. The Lanterman Act obligates the state to secure and, if necessary, to pay for services and support. The state contracts with private, nonprofit regional centers such as FDLRC, which then executes these obligations. (§§ 4620, 4621, 4629, & 4648, subd. (a).) Regional centers must “identify and pursue all possible sources of funding” including “[g]overnmental or other entities or programs required to provide or pay the costs of providing services.” (§ 4659, subd. (a).)

5. The Lanterman Act calls for a collaborative process, the individual program plan process, between consumers, their families, and regional service personnel in order to achieve its mandate:

The complexities of providing services and supports to persons with developmental disabilities requires the

coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services. A consumer of services and supports, and, where appropriate, his or her parents, legal guardians, or conservator, shall have a leadership role in service design.

(§ 4512, subd. (b).)

6. A central tenet of the IPP process is that regional centers must gather information about the consumer, including from the consumer's family. (§ 4646.5, subd. (a)(1).)

7. While regional centers are required to take into account "the family's responsibility for providing similar services and supports for a minor child without disabilities" (§ 4646.4, subd. (a)(4)), the Lanterman Act does not expressly call for assessment of family contributions when the consumer is an adult. Even when family contributions can be expected, "regional centers shall take into account the consumer's need for extraordinary care, services, supports, and supervision, *and the need for timely access to this care.*" (*Ibid.* (Italicized text added).)

8. Regulation section 50612 provides that all services purchased out of regional center funds must be pursuant to a purchase of service authorization which shall be in advance of the provision of service, except:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

(Reg. § 50612, subd. (b)(1)(A)-(C).)

9. When regional centers and consumers cannot agree on services and related issues, an administrative law judge has the authority to make appropriate orders, including retroactive payments. (*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293.) In *Harbor Regional Center*, the court upheld multiple administrative rulings ordering the regional center to fund services for the care of a claimant requiring intensive physical therapy, including retroactive payments for moneys paid directly by claimant's mother to secure the ongoing employment of skilled assistants. "These administrative rulings were based on Lanterman Act requirements that regional centers be flexible and innovative when designing programs for each individual disabled person they serve, and take all steps possible to keep disabled children at home." (*Id.* at p. 301.)

10. A consumer seeking to obtain additional funding, as here, bears the burden of proof. (See e.g., *Hughes v. Board of Architectural Examiners* (1998) 17

Cal.4th 763, 789, fn. 9.) The standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

11. Here, Mother has credibly testified that she was unaware of even the possibility of parental reimbursement until last year. (Factual Findings 13) She has presented evidence of the necessity of the items in providing prompt, humane care to Claimant consistent with the Lanterman Act. (Legal Conclusion 2.) Parents have cared for Claimant in their home and, by all accounts, done an excellent job. (Factual Finding 3.) Where time constraints prevented her from going through a lengthy process to obtain permission to obtain necessary supplies and expenses in advance, she and Claimant's father have paid out-of-pocket to their own detriment.

12. FDLRC's reliance on Regulation 50612's emergency provisions is not persuasive. As noted above (Factual Finding 21), the provision references services, not supplies or supports. Throughout the Lanterman Act, reference is made to both services and supports (see, e.g., § 4501), indicating that, for purposes of the Act, there is a difference between the two. Moreover, under an ordinary understanding to the terms, services, for instance, home care or physical therapy, are qualitatively different from supplies, which can be characterized as supports.

13. Even if Regulation 50612 did encompass parental reimbursement for supplies, in light of the central objectives of the Lanterman Act - that the state accepts responsibility for its disabled citizens, that such citizens are entitled to humane, timely care, that a central objective of the Act is to prevent their institutionalization, that the regional centers are obliged to take the initiative to obtain all necessary information, and assist in obtaining generic services (Legal Conclusions 1-7) – the Regulation is inconsistent with the law in this case. As such, the Regulation's requirements are not

dispositive. (See *Ontario Community Foundation, Inc. v. State Board of Equalization* (1984) 35 Cal.3d 811, 817.)

14. At the hearing, FDLRC's counsel argued that much more than the relatively modest sum involved is at issue. If retroactive payment is permitted here, it invites additional claims for reimbursement, potentially reaching back decades. Perhaps so; however, that neither changes FDLRC's obligations under the Act nor Claimant's burden to prove by sufficient evidence that there is a basis for each claim. Here, Mother, as Claimant's conservator, met the burden and so, as set out in the Order below, is entitled to the relief she has requested.

ORDER

Claimant's appeal, as modified, is granted. The Frank D. Lanterman Regional Center will pay to Claimant's mother and conservator, Victoria M., \$460.41.

DATE:

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.