

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NIKOLAI B.,

Claimant,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH No. 2011091027

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Stockton, California, on April 13, 2012.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director of Case Management and Hearing Designee.

Claimant was represented by his father.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is VMRC required to provide a Voyager lift system for claimant?

FACTUAL FINDINGS

1. Claimant is an eighteen-year-old young man eligible for VMRC services based on a diagnosis of cerebral palsy. He has a history of seizures, is non-ambulatory, and requires assistance in all areas of daily living including feeding, hygiene, self-care and mobility.

Claimant lives at home with his parents and his father is his primary caregiver. He is eligible for special education and enjoys his school placement in the Walton Special Center SDC (Special Day Class) program.

2. Claimant utilizes durable medical equipment including a wheelchair, bath chair and commode chair. Because he is non-ambulatory, his father typically uses a “lift and carry” method when he needs transferring. Claimant weighs approximately sixty pounds.

3. Claimant meets the eligibility criteria for California Children’s Services (CCS) and receives services, including medically necessary physical therapy (PT) and occupational therapy (OT) through the CCS Medical Therapy Unit (MTU). Claimant’s March 2, 2011, Individual Program Plan (IPP) states that “if appropriate, CCS will fund adaptive or orthopedic equipment needs recommended by CCS physicians and therapy teams.” The IPP also notes that “he is seen twice a year to check and adjust his equipment.”

4. On September 6, 2011, VMRC issued a Notice of Proposed Action (NOPA) to claimant, advising that the agency proposed to “deny request for Voyager lift.” The reason for the action was “duplication of service. The family already has a Hoyer lift that provides the same function.”

5. Claimant filed a Fair Hearing Request appealing VMRC’s decision denying provision of a Voyager lift stating that a “Voyager lift is most functional for home and travel use.”

6. Cindy Le is claimant’s VMRC Service Coordinator. She testified that in May, 2011, claimant’s father requested VMRC purchase a Voyager lift system to be used to assist with claimant’s transfers at home and for limited travel use. She completed a referral for an OT assessment to determine claimant’s need for the requested lift.

7. VMRC referred claimant to Mendel Uychutin, OTR/L, for evaluation to address the need for the requested mechanical lift. Mr. Uychutin is vendored with the regional center to perform this service through Lifeworks, Applied Clinical Solutions. He has been board certified for over thirty years and estimates that he has conducted “thousands” of OT assessments.

8. The evaluation was conducted at claimant’s home on July 20, 2011, with claimant, his parents, and his Service Coordinator, Ms. Le, present. Mr. Uychutin issued his report on August 3, 2011.

9. Claimant and his parents are the sole occupants in a “spacious 3 bedroom single story home with 2 and ½ bathrooms.” At the time of the report, “both parents preferred that claimant sleep with them in the same king sized bed in the master bedroom.”

10. Mr. Uychutin testified that, while conducting the evaluation, he discovered that the family had an existing Hoyer hydraulic floor lift that had been provided by CCS. After

claimant's father demonstrated a lift and carry method, to transfer claimant from his wheelchair to the bed in the master bedroom, Mr. Uychutin asked why the family had not been using the hydraulic floor lift. Claimant's father explained that he had no place to store the device when not in use and it would be in the way and could possibly obstruct an exit in case of an emergency. He also felt that the hydraulic floor lift is "difficult to pump" and that the Voyager lift would be "portable" to assist with transfers while away from home.

11. Mr. Uychutin determined that "given the ample amount of available space in the master bedroom, this therapist feels that there is enough room to stow the hydraulic lift when not in use without obstructing evacuation routes. Further, the family can also re-organize and reconsider priorities related to space utilization to find alternative storage space in the other two bedrooms if necessary."

He also stated that "although the concept of a portable lift would be ideal to allow safer transfer procedures to be completed regardless of the location, there are no existing commercially available mechanical lifts that are truly portable and suitable for [claimant]." He explained that existing variations of floor lifts are cumbersome and heavy to transport and the product has to work in a specific environment. He then determined as follows:

The requested Voyager lift does not offer a practical alternative to the hydraulic floor lift. The Voyager lift requires assembly and disassembly each time it is moved thus increasing the probability of errors or missteps in the process. The Voyager lift requires securing two vertical posts via compression pressure between the ceiling and the floor. A telescoping horizontal bar that serves as the track for the motorized lift is hoisted up and attached at both ends to receivers in the vertical post. Assembly and disassembly of the Voyager lift requires a ladder and preferably two physically able adults to complete. None of the mechanical lifts known to this therapist that is appropriate for [claimant] are recommended to be transported on a regular basis.

12. The assessment recommended that VMRC replace a missing divided leg sling with a medium size unit with head support and use the existing hydraulic floor lift. The Voyager lift was not recommended because it duplicates the function of equipment currently available.

13. At the time of the July 20, 2011, assessment, claimant's father explained that claimant would soon be undergoing spinal surgery for scoliosis. Mr. Uychutin opined that it "would be advisable to seek input from [claimant's] medical providers regarding transfer procedures once he is discharged from their care."

14. After claimant's surgery, Mr. Uychutin completed an additional assessment on March 14, 2012. This assessment was also conducted at claimant's home, with his parents, VMRC Service Coordinator, Ms. Le, and CCS Occupational Therapist, Melody Wilkins,

OTR/L, in attendance.

The assessment report noted that there had been no changes to the home environment. It also noted that, other than the surgical procedure to correct claimant's scoliosis, there had been no other changes to his overall health or daily living needs. It was determined that claimant can assume a seated position, with flexion at both hips and knees, and there were no postural positions that would restrict the use of a mechanical lift due to the surgery.

15. During this second assessment, claimant's father explained that he was considering moving claimant from the master bedroom to one of the other bedrooms. Mr. Uychutin took the hydraulic lift through the hallway and into the bedroom to determine whether any environmental barriers might restrict its use. He concluded that, given the measurements of the bedroom, the space required by the durable medical equipment and the workspace required by the caregiver, there was ample space for the hydraulic floor lift.

16. Next, the therapist proceeded to determine whether or not claimant can safely use a divided leg sling with the available hydraulic lift. Claimant was raised from his manual wheelchair, suspended, and then returned to his seat. He cried during this process.

Mr. Uychutin testified that, after trial use, that there were no contraindications to the use of the sling. He opined that claimant might need time to get used to being suspended when being transferred because he is used to being held and lifted by his father. He explained that the same sling would be required for use with either lift system.

17. After this second assessment, Mr. Uychutin concluded:

The use of the existing hydraulic floor lift with a medium size divided leg sling with head support in the proposed hallway bedroom or in the present master bedroom continues to be appropriate and recommended as previously stated in this therapist's report dated 8-3-11.

18. Julie DeDiego is a VMRC Program Manager responsible for supervising eleven Service Coordinators. There are approximately 1,000 consumers in her unit. She explained the agencies responsibility for obtaining services and supports for the consumer and her role in approving or denying requests for services.

VMRC considered the expert opinion of Mr. Uychutin and the mandate to meet the needs of the claimant in a cost-effective manner. The agency estimates the cost of repairs and modifications to the existing lift at approximately \$500. The cost of the Voyager lift is approximately \$4,000-\$6,000 and a track system, which was also considered, is approximately \$9,000.

19. Ms. DeDiego testified that VMRC determined that the claimant's needs could best be met through the use of the existing Hoyer lift with necessary modifications and repairs.

She explained that they would work with claimant's family and the OT to determine sling options that would be safe and appropriate to meet his needs. VMRC has agreed to fund the cost of these modification and repairs

20. Claimant's father testified that claimant was uncomfortable being lifted. He doesn't believe his son "will get used to it" and he explained how difficult it is, as the parent, to watch his son in this situation. He also voiced his concerns that the existing lift is bulky and could be a fire hazard if it blocked egress.

21. Claimant's father declined cross-examination of Mr. Uychutin's expert testimony. He did not offer any additional expert testimony or contradictory evidence to show that the Hoyer lift is inappropriate.

LEGAL CONCLUSIONS

1. Regional centers are governed by the provisions of Welfare and Institutions Code section 4500 et seq. (Lanterman Act).¹ Section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure 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 family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. 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.

Section 4646.4, subdivisions (a)(1) and (2), provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the

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

following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.

Section 4648, subdivision (a)(8), specifies:

In order to achieve the stated objectives of the 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.
- (8) Regional center funds shall 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 for providing those services.

Section 4644, subdivision (b), defines "generic agency" to mean:

Any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

2. *Burden of Proof:* A party seeking to add a service or support to a consumer's IPP typically has the burden of demonstrating that its proposed addition is correct. Therefore, claimant bears the burden of establishing that he requires a Voyager lift.² The above matters having been considered, claimant has not met that burden.

3. The Lanterman Act mandates that a consumer's IPP be based on his or her individual needs. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources, avoid duplication of services, and ensure the cost-effective use of public funds.

CCS has provided a Hoyer Lift for claimant's use. There was no evidence that use of the Hoyer lift, with modifications and repairs including a new sling with head support, is inappropriate. Purchase of the requested Voyager lift would be a duplication of services and would not be a cost-effective use of public funds.

² California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

While claimant's father was convincing that his son was uncomfortable with the sling, Mr. Uychutin's testimony was persuasive that the sling would be required with either lifting system. Hopefully, claimant will learn to adjust to use of the sling over time. Mr. Uychutin also testified credibly that the family home can accommodate the Hoyer lift safely without blocking egress.

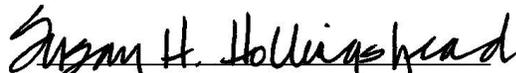
4. The IPP team shall work together to insure that an appropriate sling is purchased to meet claimant's needs and that any other required modifications and repairs are completed. The team shall also continue to consider the appropriateness of the lift as claimant's needs change.

VMRC is not required to purchase a Voyager lift for claimant at this time.

ORDER

The appeal of claimant Nikolai B. is denied.

DATED: April 25, 2012


SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)