

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANDREW W.

Claimant,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2012120328

DECISION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings, heard this matter on January 2, 2013, in Watsonville, California.

Claimant Andrew W.'s mother, S.W., represented claimant at the hearing of this matter.

Jacques Maitre represented San Andreas Regional Center (service agency).

On January 2, 2013, the parties submitted the matter for decision.

ISSUE

Under the provisions of the Lanterman Developmental Disabilities Services Act (Lanterman Act), must service agency fund the modification of a personal residence consisting of the cost of the installation of a shower enclosure at the family home?

FACTUAL FINDINGS

1. Claimant Andrew W. (claimant) was born on May 23, 2000. He is a regional center consumer by reason of a qualifying diagnosis of Autism.

2. Claimant lives with his parents and twin sisters in the City of Aptos, Santa Cruz County. Claimant's sisters have not been diagnosed with any developmental disability.

3. Claimant was a consumer at the Golden Gate Regional Center until early 2012, when her family moved from Menlo Park to the new family home in Aptos. After that move, claimant became a consumer of San Andreas Regional Center (service agency).

4. Claimant has a comprehensive Individual Program Plan (IPP) with service agency. The IPP was reviewed and accepted on June 8, 2011. Claimant's mother and his consumer services coordinator participated in that review.

5. Claimant has an additional chronic health concern in the form of Type I, Insulin Dependent Diabetes as well as environmental allergies. His overall health, however, is deemed to be good.

Claimant is physically active. He experienced early onset of puberty; and, his mother describes claimant as being physically larger than her. Claimant requires constant supervision for safety reasons. Claimant has had a history of elopement from the family premises. He has a history of daily temper tantrums. Claimant does not understand the concept of safety. He has shown impulsivity and he has little insight into the consequences of his actions. Claimant is "full of energy and [he is] always moving."

6. Of importance to this matter is that claimant's developmental disability requires that he receive total assistance with bathing and shampooing.

7. In September 2012, claimant's family moved into a residence. But before occupying the rental real estate, claimant's parents did not comprehensively survey or contemplate the configuration of the house's bathrooms' shower stalls for use during claimant's bathing.

After the family moved into the residence, it was discovered that as a result of claimant's tendency for physical movements, including his interest to grab a removable hose for the water in the shower, the bathroom's floor was always covered with water. Accordingly, claimant's parents determined that a shower curtain or door was required to lessen the inordinate work impacting the family to clean the bathroom after claimant's showering, as well as to lessen the danger of falls due to the wet floor.

8. During either September or October 2012, claimant's parents asked service agency to fund the modification of the family home's bathroom shower that was used for claimant's bathing. Service Agency issued a Notice of Proposed Action, which became effective November 1, 2012, that sets out the "denial of request for regional center funding for modifications to bathroom shower." Service agency also took the position that it was not required to provide funding for activities the family would ordinarily provide to a family member without a disability.

On November 15, 2012, claimant's mother filed a Fair Hearing Request to contest service agency's Notice of Proposed Action.

The hearing in this matter ensued.

9. Ms. Kimberley Pierce offered compelling and credible evidence at the hearing of this matter.

Ms. Pierce is claimant's Service Coordinator at service agency.

At the hearing of this matter, Ms. Pierce established her familiarity with claimant's IPP and the family's request for funding the modification of the family home's shower as used for claimant's bathing.

First, Ms. Pierce noted that the IPP prescribes that claimant must be constantly supervised and that he cannot bath or shampoo without assistance. Ms. Pierce was reasonable in advancing that service agency's denial of the family's request was grounded in the concept that the parents have a responsibility to provide a safe environment for claimant without regard to the 12-year-old boy's disability status. Further, Ms. Pierce explained that the installation of a shower door or curtain is a matter that is not directed towards the alleviation of claimant's developmental disability. Moreover, the expenditure of money for the installation of a shower enclosure, as contemplated by claimant's family, is not a cost-effective use of public resources.

10. Claimant's mother, S.W., was the only witness at the hearing in support of claimant's appeal.

S.W. asserted that claimant gains great joy and satisfaction with long showers. Yet, during the showers his movements cause water to splash throughout the bathroom.

The matter of the installation of a shower door is a health and safety measurement as asserted by S.W. However, there was no competent evidence to support the argument by S.W. that a shower door is an issue of claimant's health and safety that should be bore by service agency rather than an obligation of the family.

11. Without first gaining the agreement of service agency, claimant's family hired a handyman to install a "shower slider/splash guard" on or before December 4, 2012. The family has paid the handyman a fee of \$200 for the installation of the shower door. Claimant, therefore, is seeking reimbursement to his family of the costs for the recent modification to the family's home's bathroom shower.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, it is the regional centers, not the Department of Developmental Services, which provide services to developmentally disabled persons and determine the manner in which those services are to be rendered. While the Department of Developmental Services has the authority to promote uniformity and cost-effectiveness in the operations of the regional centers, its authority does *not* extend to control the manner by which the individual regional centers provide services or in general operate their programs. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.App.3d 384, 389-390.)

Burden of Proof

2. An applicant seeking the provision of a government benefit or service has the burden of proof. (See Evid. Code, § 500; Welf. & Inst. Code, § 4712, subd. (j).) Thus, claimant has the burden of proving that service agency should be ordered to reimburse the costs for that modification to his family home as he requests. (Evid. Code, § 115.) The standard of proof in this matter is a preponderance of evidence.

Overview of Lanterman Act

3. 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 Service, supra*, 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 Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "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.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made “on the basis of the needs and preferences of the consumer or, when 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.” (*Ibid.*) As the California Supreme Court recognized in *Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390, while a regional center has “no discretion at all in determining whether to implement” an individual program plan, it has “wide discretion in determining how to implement” an individual program plan. (Italics added.)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

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 the 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.

6. Welfare and Institutions Code section 4646.4, subdivision (a), however, provides:

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 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.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, 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.

7. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

8. As a result of the state budget crisis, effective July 1, 2009, Welfare and Institutions Code section 4648.5 was added to the Lanterman Act. That legislation suspends the regional centers' authority to purchase the following services:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(3) Educational services for children three to 17, inclusive, years of age.

(4) *Nonmedical therapies*, including, but not limited to, specialized recreation, art, dance, and music.

[¶] . . . [¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his . . . home and no alternative service is available to meet the consumer's needs.

(Emphasis added.)

10. California Code of Regulations, title 17, section 54326, subdivision (d)(1), provides that regional centers *shall not*:

Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, *the family's responsibility for providing similar services to a minor child without disabilities*. In such instances, the regional center must provide for exceptions, based on family need or hardship.

(Emphasis added.)

Cause to Deny Claimant's Request for Funding for Modification of the Family Home's Bathroom Shower

11. Pursuant to Welfare and Institutions Code sections 4646, subdivision (a), 4646.4, subdivision (a), 4648, subdivision (a)(2), and 4648.5, in conjunction with California Code of Regulations, title 17, section 54326, subdivision (d)(1), claimant has not established that installation of a shower door or curtain would alleviate his developmental disabilities, assist his habilitation or rehabilitation, or achieve and maintain an independent, productive, and normal life. In addition, claimant did not establish that a shower door is required to meet his goals or is cost effective.

12. Service agency is reasonable in interpreting Welfare and Institutions Code sections 4646.4 and 4648.5 to support the denial of the funding for expenditures that are ordinarily a financial obligation of the family. A regional center is not required to provide all of the services and supports that a client may require, as regional centers also are subject to certain fiscal constraints and limits on their budgets and contracts with the Department of Developmental Services. (Welf. and Inst. Code §§ 4651 and 4791.) In this matter, service agency is not in a position to extend funding for modification of claimant's family home's bathroom to install a shower door, but rather service agency is making a reasonable determination in the interpretation of the recent enactment of Welfare and Institutions Code sections 4646.4 and 4648.5 with the Notice of Proposed Action denying the request.

ORDER

Claimant Andrew W.'s appeal is denied. Service agency is not required to provide funding for the modification at the family home of a shower in a bathroom set aside for claimant's use.

DATED: January 11, 2013

PERRY O. JOHNSON
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).)