BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: P.K., Claimant, vs. KERN REGIONAL CENTER, Service Agency.	OAH Case No. 2013060593

DECISION

The hearing in the above-captioned matters was held on August 5, 2013, at Bakersfield, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Claimant P.K. was represented by her father, T.S., and by her mother, A.K.[1] The Service Agency, Kern Regional Center (Service Agency or KRC), was represented by Cherylle Mallinson, Interim Director of Community Services. Dr. KanwalGlory Sing, Ph.D., served as interpreter.

Evidence was received, the matter was argued, but the record was held open so that Claimant could submit a photo of her house, and so that the Service Agency could comment further on the document. The photo was submitted in a timely manner, and is received in evidence as exhibit A. No response was received from the Service Agency, and the matter was submitted for decision on August 19, 2013.

The ALJ hereby makes his factual findings, legal conclusions, and order.

ISSUE PRESENTED

The issue is whether the regional center should be ordered to provide funding to add a bathroom to the home Claimant shares with her parents.

[1] Initials are used for the Claimant's and her family names in the interests of privacy.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant P.K. is a fourteen-year-old-girl who is a consumer of regional center services from the Service Agency. She receives the services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.,[2] based on a diagnosis of Moderate Mental Retardation and Epilepsy.

2. On May 24, 2013, the Service Agency issued a Notice of Proposed Action (NOPA) which stated that KRC was denying Claimant's request for addition of a wheelchair accessible bathroom in the family home. (Ex. 3.) On June 13, 2013, Claimant's mother filed a Fair Hearing Request, seeking the addition of a bathroom in the family home, to meet Claimant's needs. The hearing in this matter then ensued. All jurisdictional requirements have been met.

Claimant's Disabilities

3. Claimant suffers from Moderate Mental Retardation and Epilepsy. According to her Individual Program Plan (IPP), her epilepsy is controlled by medication. She is unable to complete any activities of daily living without total physical assistance. Her mother completes all of hygiene/grooming, dressing, eating, and toileting tasks for her. She is non-ambulatory, and because she can't take care of herself, needs constant attendance. (Ex. 5, p. 3.) She is unable to toilet, and requires the use of diapers at all times, as she has neither bladder nor bowel control. (*Id*., pp. 5, 10.)

The Requested Construction

4. Claimant seeks assistance for her family in building out a bathroom that the family contends is necessary to accommodate her disabilities. As explained below, that construction would involve adding an entirely new bathroom by expanding the exterior of the family home.

5. (A) The family home has a small rectangular concrete area—like a small patio—that adjoins Claimant's bedroom on one side and the living room on another. One of the narrow ends of that outdoor space is defined by an exterior wall of the Claimant's bedroom, which wall has a window. One of the long sides of the concrete area runs along an exterior wall of the living room, which wall does not have a door or window. Put another way, the wall of Claimant's bedroom, described above, intersects with the wall of the living room to form two sides of the concrete rectangle.

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[2] All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

(B) The concrete area is covered by the roof of the house, which projects over the concrete area. The roof is supported by the two exterior walls described above, and by a post at the corner opposite the junction of the bedroom and living room wall. Two large beams connect the post to the living room and bedroom walls. The beams run parallel to the two exterior walls.

6. Claimant's parents want to close in the space around the concrete rectangle, and turn it into a bathroom for Claimant, by adding two new exterior walls. One new wall would parallel the wall of the living room, and the other new wall would be parallel to the wall of Claimant's bedroom where the window is located. Presumably, the window opening would be expanded to make a doorway into the new bathroom area from Claimant's bedroom. The existing stucco on the exterior of the living room wall would likely have to be removed, and interior wallboard added. Whether a door would connect the new bathroom to the living room is not disclosed by the record.

7. It is apparent that a significant impediment to the proposed project is the cost associated with cutting in the plumbing. The house is built on a concrete slab, not on a raised foundation. Therefore, plumbing—both water into the bathroom, and a sewer line and other drains—would have to be cut into the existing concrete. They could not be simply run under the house to be tied in with other water lines or drains, as might be done in a house with a raised foundation. It appears from the picture provided by Claimant's father (exhibit A) that the drain lines, at least, would have to be routed around the exterior of the house. The length of those runs is unknown, but plainly the trenching and burial of the lines would be costly.[3]

8. The proposed project presupposes that the structure holding the roof over the concrete area is stout enough to be closed in without significant engineering, but that has not been ascertained. There is no way of knowing if the concrete outside the house, upon which the floor of the new bathroom would be built, is in fact adequate to serve as part of the new bathroom's foundation. And, it appears that in any event, the two walls to be added would have to be built on foundations that would have to be tied to the existing exterior concrete slab.

9. There are no price estimates for the proposed addition. The proposed project must be termed an addition because the family proposes adding a room, and adding what is technically living space, to the home. That is not the same as renovating or improving an existing room or space.

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[3] The ALJ is aware that in some houses built on concrete slabs, new water lines can be run up into the attic, across to the room where water is needed, and then down into that space. It is fairly inferred that electrical might be added in that way, though it might be feasible to extend circuits now providing power to Claimant's bedroom, and to the living room. However, the drain lines cannot be treated in that manner; they have to be buried, and they must have a certain amount of slope, so that they will drain.

The Service Agency Position

10. KRC took the position, before the hearing process started, that it would pay to help improve an existing bathroom, perhaps by simple repairs, such as adding grab bars, and perhaps by more expensive renovations, which might include enlarging or reconfiguring an existing bathroom. However, it has been KRC's position for many years that while it will renovate existing space, it cannot and will not add space, which is part of the reason it refused to carry out the project requested by Claimant. In this regard, KRC relies upon provisions of California's Constitution, which forbid making gifts of public funds.

11. Historically, KRC has never spent more than $20,000 for an improvement to a home, and only where the family in question gives the Service Agency a lien against the property, which is recorded and protects the Service Agency from a family selling the improved house within a short period of time after the improvements are competed. It appears that the liens are typically written so that they last seven years. Claimant's parents did not want to grant a lien on their property.

Other Matters

12. Claimant's father testified that Claimant's service coordinator had visited the home, with a contractor, to see about improving the property. However, the Service Agency did not agree to add a bathroom by doing so.

13. During the hearing, Claimant's father testified that Claimant sits on the toilet for long periods of time, attempting to eliminate, which ties up the bathroom to the detriment of the rest of the family. This was not easily reconciled with the information from the IPP, to the effect that she has no bladder or bowel control, and must wear diapers at all times. This apparent distinction between what the IPP document states regarding toileting, and the testimony, is not explained on this record. Claimant's father also attested that the issues that Claimant's toileting deficits tie to some cultural issues for his family. Aside from gender issues, this assertion was not well explained, though Claimant's father may have attempted to be circumspect.

14. Claimant's father testified that he does not have the money to do the work in question, but would make monthly payments to KRC if it would fund the construction.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 and 2.

2. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the

construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See § 4710.5, subd. (a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, *e.g*., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) &. (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

4. Services provided must be cost effective (§ 4512, subd. (b), *supra*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g*., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

5. Section 4512, subdivision (b), of the Lanterman Act provides, in pertinent part, that

> "Services and supports for person 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 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy, . . . habilitation, . . . recreation, . . . community integration services, . . . respite, . . . social skills training . . . .

As can be seen, section 4512, subdivision (b), does not speak to either upgrading or adding rooms to a consumer's home.

6. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the individual consumer, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

7. Here the Claimant seeks a service that is not clearly authorized by the Lanterman Act. KRC, and other regional centers, do assist in upgrading or renovating homes to better accommodate the disabled. In the ALJ's experience, other regional centers will pay for construction of a wheelchair ramp to help a consumer get in and out of a house. KRC is willing to consider remodeling an existing bathroom. But, it objects to expanding the house on the grounds that such would constitute a gift of public funds.

8. That Constitutional rule does not appear dispositive, in that there may be contractual devices that would prevent the expenditure from being a gift. It appears that the lien used in renovation or improvement cases is such a device. However, it does not appear that Claimant's family will enter into the type of agreement that KRC deems necessary to protect its expenditure for renovation, so it does not appear that an agreement would be forthcoming for a bathroom addition.

9. In this case, the need for an entirely new bathroom has not been established. As noted in Finding 13, it is not clear why Claimant is sitting on the toilet for hours when KRC is paying for diapers that Claimant must always wear. (See Factual Finding 3.)

10. It has not been established that an addition would be cost effective. As noted in Factual Finding 9, there is no estimate for the cost of the addition. As noted in the other findings, the construction would be expensive due to the problems of putting in the drain lines, and the cost could well exceed the maximum amount that KRC has ever spent to improve a house.[4] Without a solid cost estimate, there is no way to determine if the expenditure would be cost effective, which it must be. (Legal Conclusion 4.)

11. In all the circumstances, and based on all the foregoing, Claimant's appeal must be denied.

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[4] The ALJ is entitled to evaluate evidence based on his experience and training. (Govt. Code, § 11425.50, subd. (c).) He has heard scores of cases for the Contractors' State License Board, has received training from that Board regarding home improvement construction, and has been involved with remodeling projects of his own, such that his experience allows him to infer that the proposed project is not so simple as to close in the space by adding two walls.

ORDER

The appeal filed by Claimant is denied, and the Notice of Proposed Action is upheld.

August 28, 2013

_____/s/_____
JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision