

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for Vehicle Modifications:

OAH No. 2013100840

CLAIMANT,

and

THE INLAND REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 7, 2014.

Claimant's mother (Mother) represented claimant, who was not present at the hearing.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Oral and documentary evidence was introduced on January 7, 2014. The record remained open until the following day to allow claimant time to submit additional documentation and the matter was submitted on January 8, 2014.

ISSUE

Should IRC fund claimant's request for vehicle modifications (van lift) to her vehicle?

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 10, 2013, IRC notified claimant that her request for it to fund vehicle modifications (van lift) was denied. IRC originally sent a denial letter on September 20, 2013, that claimant did not receive.

On October 15, 2013, claimant requested a fair hearing. Claimant was thereafter given notice of this hearing.

Evidence Presented At Hearing

2. Claimant is currently a six-year-old female who qualified for regional center services on the basis of a diagnosis of mental retardation.¹ Claimant also has trisomy, sleep apnea, congenital hypoplasia of her aortic arch, congenital mandibular hypoplasia, atrial septic deficit, sinus venosis, and is underweight. Claimant is fed through a G-tube, has no bowel or bladder control, requires total care, and is non-verbal. Claimant's IPP notes that she requires constant supervision during waking hours to prevent injury or harm in all settings. Claimant lives at home with her family and receives 30 hours per month of LVN respite services. Claimant has Medi-Cal, private medical insurance (Kaiser), dental insurance, and participates in the Home and Community Based Services Waiver program (HCBS waiver).² Goals in claimant's Individual Program Plan (IPP) require her parents to provide opportunities for her independence, to provide social opportunities, to encourage participation in social activities, to continue to schedule and transport claimant to medical and dental appointments, and to ensure that claimant is safe at all times.

3. On July 2, 2013, IRC performed a physical therapy equipment assessment to evaluate claimant's request for the vehicle modification. Michelle Knighten, an IRC physical therapist, prepared a report following the assessment. In that assessment Knighten noted that claimant is dependent for all functional mobility. She can ambulate with the assistance of a gait trainer. She uses a wheelchair. Claimant has nursing care on Mondays and Fridays. At hearing claimant's mother disputed the portion of the report that noted that claimant rarely goes into the community. Mother testified that she takes claimant into the community and that some outings, like walking in the neighborhood, do not require vehicle transportation. The report noted that because of the high floor to base size in claimant's

¹ Mental Retardation is now referred to as Intellectual Disability in the DSM 5. However, the documents introduced at hearing contained the former term, mental retardation.

² Claimant requested that her vehicle modification be paid from "her HCBS funds." However, claimant misunderstood how the HCBS waiver worked. Under that program, California receives federal funds that are deposited into a general fund used by the Department of Developmental Services to provide services to numerous consumers. The funds are not specifically earmarked for use by HCBS-qualifying consumers.

vehicle, an electric lift must be installed instead of a folding ramp. Mother reported that she had surgery on her arms, secondary to nerve damage, and has a 10 pound lifting restriction. Mother reported that as claimant is getting older and larger in size, it is becoming increasingly difficult to safely lift her and her wheelchair into the vehicle. Ms. Knighten concluded that three options existed: 1) have Mother continue loading claimant as she presently does; 2) have Medi-Cal provide a portable ramp; or, 3) have the regional center fund the requested modification. As Ms. Knighten noted, the first option was not feasible due to the mother's lifting restrictions and lack of nursing care on Tuesdays through Thursdays. The portable ramp option was not feasible given the vehicle's high floor base.

4. Mobile Help, Inc. estimated that it would cost \$6,230 to modify the vehicle.

5. A July 12, 2013, physician's order from claimant's Kaiser treating physician was for a "Lift for a Van" due to claimant's "quadriplegia."

6. A July 12, 2013, Pre-Service Claim Denial Notice from Kaiser denied the treating physician's request for authorization for a van lift because it was not a covered benefit.

7. Letters from IRC indicated that Mother refused to provide IRC with a copy of her physician's order restricting her lifting, asserting that she showed it to Ms. Knighten during the assessment. Mother also refused to "jump through hoops" and get additional estimates for the requested modification. IRC requested she obtain one or two additional estimates. IRC suggested that Mother purchase a different vehicle because of the high floor base issue. IRC provided the names of three generic resources that might fund the requested modification. Although Mother argued that IRC did not provide any contact information for those organizations, IRC did provide e-mail addresses for two organizations and a telephone number for the third.

8. Mother presented a statement outlining her position. Attached to the statement was a Disability Status Update indicating that Mother had a primary diagnosis of left ulnar...compression and right long trigger finger release.³ Mother was occasionally able to perform lifting of 10 pounds or less. She was never able to lift or carry more weight. Mother's physician noted her current limitations were "No heavy pushing, pulling or lifting." Mother's condition was permanent and stationary. Two additional estimates for the requested vehicle modification were also attached to the statement. One estimate was for \$7,139.09 and the other was for \$7,395.

9. Emails between the parties indicated that one of claimant's natural supports was her 95-year-old great grandmother. Mother asserted that this woman was physically unable to assist with placing claimant in the vehicle and no evidence disputed that assertion. Although claimant asserted that it had taken too long between the time of her request for vehicle modification, the assessment and IRC's denial of her request, the evidence did not

³ The word after ulnar is illegible and no testimony about Mother's diagnosis was offered at hearing.

support that argument. The evidence did not demonstrate that IRC had unreasonably delayed its evaluation of claimant's request.

10. HCBS waiver documents provided by claimant demonstrated that vehicle modifications are a covered service. Vehicle adaptations are permitted when "cost-effective and necessary to prevent institutionalization." There must also be a written PT assessment.

11. Consumer Services Coordinator Charles Monroe testified about his involvement with claimant's request. The evidence did not establish that he did anything to delay the process of evaluating the request for vehicle modification. In fact, the evidence established that most of the time delay was due to IRC's efforts to accommodate claimant's schedule.

12. Program Manager Pamela Hutt testified about why the request was denied. She explained that the reasons for the denial were due to claimant's failure to exhaust her generic resources, claimant's needs and the needs of her family. The failure to exhaust generic resources was the primary reason for the denial. Neither Monroe nor Hutt offered any testimony about whether claimant's exhibits demonstrating she had obtained additional estimates, had contacted the generic resources and had provided the requested medical information, affected IRC's position.

13. Mother testified consistent with her statement. It was apparent from her testimony that her frustration with the time it took to have an assessment and obtain IRC's denial led to her refusal to produce the additional requested information. She did produce that information at hearing.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports."

5. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, 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 requires the regional center to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. Section 4659 of the Welfare and Institutions Code requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services and prohibits regional centers from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan.

Evaluation

9. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating her need for the requested service and support, funding of a van lift. Claimant met that burden. IRC's position to the contrary was not persuasive.

IRC's records amply demonstrated claimant's multiple and critical needs. No evidence refuted Mother's credible testimony about how the van lift meets claimant's needs. Further, Mother cannot lift claimant due to her own physical limitations. No evidence refuted Mother's credible testimony about the difficulty of lifting claimant into the vehicle and the very real possibility claimant may fall and hurt herself, her caregiver, or her parents during that transition. Mother's testimony adequately explained why the family vehicle is the required mode of transportation and nothing in the Lanterman Act requires the family to purchase another vehicle. Providing claimant with the requested van lift meets her needs. Nothing demonstrated that purchasing the van lift would not be a cost-effective use of public funds and no evidence established that there was an available generic resource that had not been pursued.

While IRC's initial refusal to fund the request was reasonable and appropriate given Mother's refusal to produce the requested information, once claimant produced those documents, she did all that IRC required of her. Accordingly, claimant met her burden of

proof. IRC shall fund her request for a van lift. It is worth noting that if Mother had worked cooperatively with IRC and complied with its reasonable request for additional information, this issue may have been resolved much sooner.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund a van lift is granted. IRC shall fund claimant's request for a van lift in its entirety.

DATED: January 23, 2014

MARY AGNES MATYSZEWSKI
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 ninety days.