

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014101024

CLAIMANT,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on December 12, 2014, in Pomona, California. Claimant was represented by his mother and authorized representative.¹ San Gabriel Pomona Regional Center (Service Agency or SGPRC) was represented by Daniela Santana, Fair Hearing Manager.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 12, 2014.

ISSUE

Should SGPRC be required to fund the construction of an earthquake proof structure with a wheelchair lift (for emergency exit and for use in physical therapy) on Claimant's home?

EVIDENCE

Documentary: Service Agency exhibits 1-9; Claimant's exhibits A-E.

Testimonial: Claimant's mother.

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¹ Claimant's name is omitted throughout this Decision to protect his privacy.

FACTUAL FINDINGS

1. Claimant is a 21-year old male consumer diagnosed with Leukodystrophy, seizure disorder, developmental delays and visual impairments. He is non-ambulatory and largely non-verbal, with limited expressive language skills. He requires total supervision in all settings and physical assistance transferring to and from his bed, chair, wheelchair/stroller, and vehicular transport.

2(a). Claimant lives with his parents in their family home. Claimant's parents provide his main support at home. His family receives funding through Los Angeles County In-Home Supportive Services (IHSS) to assist in maintaining him at home. Claimant's mother is his IHSS service provider. Additionally, SGPRC funds 30 hours per month of licensed vocational nursing (LVN) respite services.

2(b). Claimant had previously received Early and Periodic Screening, Diagnostic and Treatment (EPSDT) skilled nursing services, provided to Medicaid eligible individuals under age 21. However, the EPSDT services were discontinued after his 21st birthday.

3(a). Claimant is transported from his educational program via a school bus, which picks him up and drops him off at his home. His house is located at the top of a very long, steep driveway which runs up to and along the side of his home. The bus service will not travel up the private driveway to pick him up. Consequently, Claimant's mother walks him down the driveway in his wheelchair/stroller to meet the bus in the morning and walks him up the steep driveway in his wheelchair/stroller when the bus drops him off in the afternoon.

3(b). Claimant's bedroom is situated at the front of his home with a sliding door facing the street. The steep front yard, directly outside his bedroom, is filled with dirt, plants and a very large tree. Immediately adjacent to his bedroom exit is a small concrete landing with a single step to the side of the door. The step down accesses a concrete walkway running along the front of the home, leading to the driveway which it intersects perpendicularly. Due to the step at the front entrance, Claimant's mother cannot take Claimant's wheelchair in and out of the house through his bedroom, but instead wheels him in and out of the back entrance of the home, where a sliding door is accessible at the top of the steep driveway.

4(a). Claimant's mother requested that SGPRC fund the construction cost to modify Claimant's home and install a vertical platform lift machine for Claimant's wheelchair. This would entail excavating the front yard to build a structure which would house the lift machine to raise and lower Claimant's wheelchair to access the street without having to utilize the steep driveway.

4(b). Claimant's mother obtained estimates from two contractors in the amounts of \$149,600 and \$149,400, for construction of a new one-car garage and installation of an Ameriglide Vertical Lift. The proposed work from both contractors included: excavation of the slope leading to Claimant's house (including cutting down the large tree) to prepare the new garage surface and driveway; building an eight-foot retaining wall to support the sloped hill; constructing the foundation, framing, electric, drywall stucco, roof, gutters, garage door and side door for new garage; pouring concrete for a new driveway; painting the garage to match the house color; and payment of any architectural/engineering fees and city/permit fees.

4(c). Claimant's mother also requested funding for the vertical platform lift from Ameriglide Atlas (valued between \$4,799 and \$6,500) which would be installed in the new structure.

5(a). In September 2014, SGPRC explored potential generic funding sources for Claimant's mother. Two possible options were "A Change of Life Foundation," which provides grants based on income need in amounts from \$1,000 to \$13,000 for items directly needed by the applicant/client. The other option was the "Aidan Red Envelope Foundation" which provided grants up to \$5,000, for circumstances similar to those required for the Change of Life Foundation grant. On September 23, 2014, Claimant's mother asked that SGPRC request these grants on her behalf. Rosa Chavez, Client Services Manager, agreed to submit the grant requests and have Claimant's Service Coordinator coordinate with Claimant's mother regarding any supporting documentation she may need to accompany the grant applications.

5(b). The evidence did not establish the status of those applications.

6(a). In a Notice of Proposed Action (NOPA) dated October 21, 2014, SGPRC informed Claimant's mother that it was taking the following action:

Deny your request for property modification and construction to install a vertical platform lift machine as well as funding for a vertical lift platform.

You have requested SGPRC to fund for property modification and construction to install a vertical platform lift machine with an estimated value between \$149,200 and \$149,600 for construction work through Sweet Home Construction or Precision Craft Construction respectively. You have also requested funding for a vertical platform lift from Ameriglide Atlas with a value between \$4,799 and \$6,500 dollars.

(Exhibit 1.)

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6(b). SGPRC's stated reasons for the NOPA were:

Welfare and Institutions [Code] states that "It is the intent of the Legislature that regional centers shall find innovative and economical methods of achieving the objectives contained in individual program plans of persons with developmental disabilities. It is further the 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. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting."

Services and supports are available to enable [Claimant] to continue living in his home. [Claimant] is a conserved adult with a developmental disability. SGPRC is currently funding 30 hours a month of LVN respite and [Claimant] is also receiving EPSDT shift nursing hours along with In-Home Support Service hours through the county to assist in maintaining him at home. Services and support in the home are to assist in providing reasonable access to and from the family home.

(Exhibit 1.)

7. Claimant's mother filed a Fair Hearing Request on Claimant's behalf, which stated:

I care from my disabled child (21 years). I have no safe or emergency exit for my son. I was told to get estimates by his [Service Coordinator]. I did & was told I could not get what's needed to provide an emergency exit for my son. My home is on a hill which would require some escavation [sic]. I can't afford to make the needed changes. I need the regional center to help me. I need the regional center to put in an earthquake proof structure with wheelchair lift to help us safely get him out of our home during emergencies. I am requesting a structure for emergency exit. I do not want to put him in [a] home.

(Exhibit 9.)

8. After filing the Fair Hearing Request, Claimant's mother informed SGPRC that the earthquake proof structure for which she was seeking funding would be used to provide physical therapy in addition to being used as an emergency exit. Although the use of the structure for physical therapy had not been stated in the Fair Hearing Request, SGPRC agreed to include the newly-asserted basis for funding as one of the issues for fair hearing.

9(a). At the fair hearing, Claimant's mother did not specify why an earthquake proof structure was needed to conduct physical therapy other than to assert that it was not currently safe to place Claimant in a gait trainer.

9(b). Claimant's mother contended that "this is a safety issue," not just in emergency situations such as fires and earthquakes, but regarding her regular ability to get her 109-pound son in and out of his home and up and down the steep driveway safely. Although she had a special "golf cart wheelchair" specially made for Claimant five years ago, he is now heavier and the cart scrapes the ground, which Claimant's mother asserts renders it unusable in an emergency. She did not indicate that it was inoperable for regular daily use.

9(c). Claimant's mother was also concerned about the ability to remove Claimant from the home during an emergency such as an earthquake or fire. She noted that they have to use a lift to take him out of his bed and through the kitchen to the back exit. She pointed out that if there were a fire in the kitchen, he could not exit through that room. She maintained that the added structure and mechanized lift would provide Claimant with a safe place to exit his house.

9(d). Claimant's mother also noted that they would need to have the large tree removed from the front yard because it could fall onto her son's room.

10(a). At the fair hearing, SGPRC argued that the modification was not necessary to achieve any Individual Program Plan (IPP) goal.

10(b). Claimant's IPP, dated October 9, 2013, sets forth the most recent discussion between Claimant's family and SGPRC regarding his desired goals and the plans to provide supports and services. The IPP documented the parties' discussion regarding emergency preparedness and the importance of having an emergency plan and information on emergency contacts. The IPP did not document any discussion of the need for modifications to the family home to promote emergency preparedness or to provide an exit from the home which did not include use of the steep driveway. Additionally, the IPP did not document any discussion regarding the need for an earthquake proof building in which to conduct physical therapy sessions. Consequently, the home modification sought by Claimant's mother is not necessary to achieve any IPP goal.

11(a). To address the IPP discussion regarding emergency preparedness and the importance of having an emergency plan, SGPRC provided several publications to Claimant's mother which addressed emergency preparedness.

11(b). Two of those publications, "Emergencies Do Happen" from Los Angeles County Public Health, and the County of Los Angeles "Emergency Survival Guide," recommended getting to know neighbors, forming a neighborhood network, and having a neighborhood plan for emergencies which included making special arrangements for assisting persons with disabilities.

11(c). Another publication, "Home Safety Emergency Plan Prep Guide," noted that natural disasters can result in breakage of electrical, gas and water lines and cautioned against using elevators during earthquakes or fires. Specifically regarding earthquakes, the pamphlet instructed, "If inside, stay there and take cover where you are." (Exhibit 6.)

12(a). At the fair hearing SGPRC submitted as evidence a publication by Disability Rights California, dated June 2006, which addressed the funding of housing modifications and several programs which could provide people with money to repair their homes. In a section entitled "Medi-Cal and Community Based Services Waivers," the document discussed six home- and community-based waiver programs in California for persons who would otherwise qualify for Medi-Cal funded long-term care in a nursing facility, sub-acute nursing facility, hospital or intermediate care facility for the developmentally disabled. The document stated, "All of the waivers cover minor architectural modifications and special equipment that Medi-Cal says it does not cover." (Exhibit 4.)

12(b). Four of the waiver programs -- AIDS Waiver, Nursing Facility Level A & B, Nursing Facility Sub-acute Waiver, and In-Home Medical Care (hospital) Waiver -- were capped at \$5,000. However, two of the waiver programs -- Multipurpose Senior Services Program, and the Intermediate Care Facility for Developmentally Disabled (ICF/DD) did not have any cap on the amount available under the waiver. The document specified, "Waiver for persons with developmental disabilities -- this waiver applies statewide and does not have a cap on the amount, though it is subject to some limitations. Applications are available through regional centers." (Exhibit 4.)

12(c). The document also contained a section entitled, "Regional Center," that stated:

For people with development disabilities and their families, the regional center may be a payor of last resort for home modifications that are required by a consumer's Individualized Program Plan (IPP). This is in addition to services under the DD Home and Community Based Waiver. The IPP contains a

list of the consumer's goals and services. If removal of an architectural barrier or other home modification is necessary to reach one of a consumer's goals, the regional center may be obligated to pay for the modification if it is unable to get another agency to do so. Contact your local regional center to ask about details.

(Exhibit 4.)

12(d). The evidence did not establish whether the statements in the 2006 Disability Rights America publication were still operative. The evidence did not establish that the statements were/are binding on regional centers.

13. At the fair hearing, SGPRC also argued that the construction of the emergency exit should be funded by Claimant's parents, and that if SGPRC funded this emergency exit for Claimant, they would be required to pay for such modifications for every family that wanted an emergency exit.

LEGAL CONCLUSIONS

1. Cause does not exist to grant Claimant's appeal and to order the Service Agency to fund the construction of an earthquake proof structure with a wheelchair lift (for emergency exit or for use in physical therapy) on Claimant's home. (Factual Findings 1 through 13, and Legal Conclusions 2 through 10.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing on receipt of the Service Agency's denial of funding for construction of an earthquake proof structure with a wheelchair lift on Claimant's home, and therefore, jurisdiction for this appeal was established.

3. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

4. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Specifically, in a case where a party is seeking funding not previously provided or approved by a regional center, that party bears the burden of proof. In this case, Claimant made a new request for SGPRC to fund construction of an earthquake proof structure with a wheelchair lift on his home. Claimant therefore bears the burden of proof. He has failed to meet his burden.

5. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

6. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a 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.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

7(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t 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.

7(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

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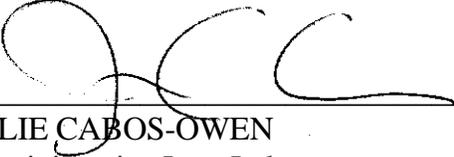
8(a). Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

“Services and supports for persons 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, and normal lives. The determination of which services and supports are necessary for each consumer 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 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. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or

ORDER

San Gabriel Pomona Regional Center's denial of funding for the construction of an earthquake proof structure with a wheelchair lift on Claimant's home is upheld. Claimant's appeal is denied.

DATED: December 19, 2014



JULIE CABOS-OWEN
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.