

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015030534

DECISION

Abraham M. Levy Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 28, 2015.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, at Inland Regional Center, represented Inland Regional Center.

Claimant's mother and father, who are his conservators, represented claimant.

The matter was submitted on April 28, 2015.

ISSUE

Is IRC required to reimburse claimant \$21,290 for the purchase of an electric power wheelchair lift?

FACTUAL FINDINGS

Jurisdiction and Background

1. Claimant is an 18-year old conserved male who lives with his parents in the family home. He has cerebral palsy, spastic quadriplegia, seizures, blindness, asthma, and G-tube dependency. He is also diagnosed with moderate intellectual disability. Claimant is enrolled in a special education program at a school for students with disabilities. He receives

Supplemental Security Income benefits and 272 hours per month of In Home Supportive Services. Claimant is Medi-Cal and California Children's Services (CCS) eligible.

In October 2014, claimant asked IRC for help to pay for an electric power lift used to lift him in his wheelchair into the family van. Claimant's parents purchased this power lift in October 2014 after the van they used to transport him broke down. On March 4, 2015, IRC issued claimant a Notice of Proposed Action. In this notice, IRC denied claimant's request to fund the electric power lift for these reasons: Claimant's request was made after the power lift was purchased and IRC cannot reimburse claimant retroactively; the cost of the power lift was not cost-effective; and there were generic resources available.

On March 7, 2015, claimant requested a fair hearing. In his fair hearing request, in summary, he asked IRC to reimburse him for the electric powerlift his parents purchased in October 2014 because this power lift was medically necessary to transport him to his medical appointments when his health was at risk. Claimant described the power lift as an urgent purchase.

Evidence Adduced at Hearing

2. Claimant's mother testified that she purchased the power lift with a new van on October 27, 2014, for \$21,290. Aero Mobility installed the power van lift.¹ Claimant's parents financed the sum to purchase the van with the power lift installed when they purchased the van for a total price of \$61,130.

3. Claimant's mother said that she needed to purchase this van with the power lift after the van they had been using to transport claimant broke down. The old van did not have a power lift and claimant's mother and father lifted claimant in his wheelchair into the van. Claimant's mother stated that she and claimant's father are in the 50s and have increasing difficulty lifting claimant in his wheelchair into the vehicle. Claimant is 5 feet 2 inches and weighs 123 pounds. Claimant's mother did not wait for IRC to approve the van with the power lift because the authorization process to purchase the van lift takes time and she felt that she could not wait due to her son's medical condition. IRC did not dispute that the authorization process may take time. Claimant's mother added that claimant's family has limited financial resources.

4. Claimant's mother stressed claimant's medical needs and health problems as the reason his family urgently needed the power van lift. To take him to the doctor, or the hospital, claimant's mother must be on call when claimant is at school because of his life-threatening conditions, including seizures. When claimant has seizures, his mother noted, he is not allowed to take the school bus. The school calls her and she takes claimant to the

¹ IRC did not argue that Aero Mobility was not a "vendored service provider", under California Code of Regulations, title 17, section 50612, subdivision (b)(1). This rule allows regional centers to authorize payment for "emergency" services after the service was provided "by a vendored service provider. . ."

doctor. Since October 2014, when the van and lift were purchased, claimant's mother said that she has had to pick him up from school three times and take him to the doctor. On one occasion, claimant had pneumonia. Pneumonia, according to claimant's mother, is a condition that claimant is especially at risk to develop because of his health problems. Claimant's mother noted that without the power lift she and her husband would be unable to take claimant to necessary medical appointments in the event of a medical emergency.

5. On October 28, 2014, after claimant's family purchased the van with the power lift, claimant's mother called her IRC service coordinator, Teresa Monano, regarding the process to request IRC to approve a power van lift for claimant. Ms. Monano explained that, before claimant's mother could request IRC provide the lift, she needed to apply for CCS and Medi-Cal; obtain denial letters from both agencies; and provide an estimate for the van lift.

6. On January 26, 2015, claimant's parents met with Ms. Montano and Brandie Parhm, IRC Program Manager, regarding the power lift purchase request. At this meeting, claimant's mother asked IRC for help with the purchase of the power lift. As documented in an Addendum IPP dated March 4, 2015, claimant's family agreed to seek out generic resources to fund the power lift and provide IRC with a copy of the "Medi-Cal" denial letter.

7. Claimant's mother submitted CCS and Medi-Cal denial letters to Ms. Montano sometime in February 2015.

8. At the hearing, Annette Richardson, Occupational Therapist with IRC, testified. On February 12, 2015, Ms. Richardson assessed claimant's need for a power van lift. Ms. Richardson testified that the power lift is necessary. But, she said that there is a less expensive alternative to the power lift that claimant's family purchased. Ms. Richardson described a manual lift that uses springs and levers that requires only 10 pounds of exertion to use. The cost of this manual lift is from \$16,000 to \$17,000.

Argument of the Parties

9. IRC did not dispute that the power lift was necessary to serve claimant's needs. IRC argued that it cannot fund the power lift under California Code of Regulations, title 17, 50612, subdivision (b)(1), and IRC's own policy directive, IRC Policy Chapter 1.2.4.² This rule and policy do not allow IRC to retroactively pay for services, unless there was an emergency. IRC said that the exception for emergency purposes does not apply in claimant's situation.

² IRC Policy Chapter 1.2.4, as revised May 29, 2012, states, "Additionally, services by the regional center must be cost effective and must meet the administrative requirements of the State and Inland Regional Center and must be approved for payment by Inland Regional Center in advance of the service being provided. (Welf. & Inst. Code, § 4512 (b).)"

Claimant's mother argued that claimant's family had an urgent need to purchase the power lift before IRC could approve the power lift purchase due to claimant's medical condition and his family's need to take him to necessary medical appointments.

LEGAL CONCLUSIONS

Burden of Proof and Standard of Evidence

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a fair hearing to appeal IRC's denial of the request for reimbursement.

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that he is entitled to be reimbursed for the electric power wheel chair lift.

3. The standard by which respondent must party must prove this matter is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Statutes

5. The Lanterman Act provides for regional centers to secure "services and supports" for persons with developmental disabilities. Under Welfare and Institutions Code section 4512, subdivision (b), these services and supports are to be "directed toward the achievement and maintenance of independent, productive, normal lives" for persons with developmental disabilities.

6. In determining appropriate services and supports, the regional center must consider "the needs and preferences of the consumer, or when appropriate, the consumer's family", "a range of service options proposed by individual program plan (IPP) participants", the effectiveness of each option in meeting (the IPP's goals)", and "the cost-effectiveness of each option." (Welf. & Inst. Code, § 4512, subd. (b).)

7. Services and supports must assist persons with developmental disabilities in achieving "the greatest self-sufficiency possible." (Welf. & Inst. Code, § 4648, subd. (a)(1).) The term "services and supports" is specifically defined in the Lanterman Act to mean

“specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the achievement and maintenance of independent, productive, normal lives.” (Welf. & Inst. Code § 4512, subd. (b).) Services and supports secured by the regional center must be “flexible and individually tailored to the consumer and, where appropriate, his or her family.” (Welf. & Inst. Code, § 4648, subd. (a)(2).)

8. Regional centers are required to provide services in a cost-effective manner. (Welf. & Inst. Code, § 4646, subdivision (a).)

9. When purchasing services and supports, regional centers shall conform to their purchase of service polices and ensure the utilization of generic services and supports. (Welf. & Inst. Code, § 4646.4, subds. (a)(1) and (2).)

10. Regional centers must authorize services in advance except for emergency services rendered by a vendored service provider. (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

Evaluation

11. IRC is required to reimburse claimant for a portion of the cost of the power lift, pursuant to California Code of Regulations, title 17, section 50612, subdivision (b)(1), and Welfare and Institutions Code section 4646, subdivision (a). In October 2014, claimant had an emergency that required claimant’s family to purchase the power lift before it asked IRC to approve the service.

California Code of Regulations, title 17, section 50612, subdivision (b)(1), permits IRC to reimburse claimant for the power lift only if the purchase was due to an emergency. The definition of “emergency,” according to Merriam-Webster is as follows: “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” By this definition, claimant had an emergency in October 2014. He had a sudden, urgent, and unexpected, need to purchase this power van lift in October 2014 when the van his family used to transport him broke down. The power van lift is a necessary component of this van and allows claimant’s family to take him to medical appointments to ensure his health and well-being.

But, a less expensive suitable alternative existed, as IRC showed through Ms. Richardson’s testimony. Under Welfare and Institutions Code section 4646, subdivision (a), IRC is required to provide services in a cost-effective manner. The alternative manual van lift has springs and levers and costs between \$16,000 and \$17,000. This van lift requires only the use of 10 pounds of force to lift a person in a wheelchair. At the hearing, claimant did not appear to dispute that this lift may have been a suitable alternative to the lift they purchased. Considering the price range of the manual lift is between \$16,000 and \$17,000, the average price of this alternative lift is deemed to be \$16,500. Claimant is, thus, entitled to reimbursement in this amount.

ORDER

Claimant's appeal of the regional center's decision to deny claimant's request for reimbursement of the cost of electric power wheelchair lift is granted in part and denied in part. IRC shall reimburse claimant in the amount of \$16,500 for the electric power wheelchair lift.

Dated: May 5, 2015.

ABRAHAM M. LEVY
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.