

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2016040311

DECISION

A fair hearing was held before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California on May 25, 2016, in Fresno, California.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center (CVRC).

Claimant's maternal grandmother and legal guardian represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on May 25, 2016.

ISSUE

Should CVRC be required to purchase a crib bed for claimant?

FACTUAL FINDINGS

1. Claimant was born in 2003. He is currently 12 years old. Claimant is eligible for services and supports from CVRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., as an

individual with cerebral palsy and epilepsy, secondary to shaken baby syndrome. Claimant lives at home with his grandparents and other relatives. Claimant's uncle is claimant's full-time caretaker. Claimant is dependent on his uncle and other family members for all his personal needs. Claimant is not ambulatory and uses a manual wheelchair for mobility.

2. Claimant currently sleeps in a twin-size crib bed, which was purchased without the assistance of CVRC. Claimant's uncle uses the crib bed as a changing table when he changes claimant's diaper.

3. Given how large claimant has grown and continues to grow, claimant's grandmother requested that CVRC purchase a queen-size crib bed for him. The total cost of the queen-size crib bed, including tax, is \$7,607.75. The crib bed has rails all around it. The side rails can be lowered to remove or change claimant. The slats in the rails of the queen-size crib bed will be placed two inches apart, which is closer together than the slats on the twin-size crib bed, in an effort to prevent claimant from getting his hands and feet stuck between them.

4. CVRC denied the request for a queen-size crib bed. Claimant's grandmother appealed from CVRC's denial.

5. At the hearing, claimant's grandmother submitted a letter dated May 12, 2016, written by Raymond Miranda, M.D., claimant's primary care physician, which in relevant part stated:

[Claimant] suffered a Traumatic brain injury as a toddler with subsequent Right hemiparesis, seizure disorder and global developmental delays. He has far outgrown his bed. He measures 5 ft, 4 inches and weighs 145 pounds. He is in desperate need of an adult size bed. This bed will allow him to sleep comfortably and safely. He is a risk for falls and

escape to other areas. He has the agility to crawl and would cause injury to himself or damage to property. His family does not have the financial means to purchase an enclosure bed for [claimant]. We feel this durable medical equipment should be provided by his insurance. It would greatly help this family care for [claimant] in the home for the foreseeable future.

6. Claimant's grandmother also submitted a letter dated May 18, 2016, written by Caitlin Bernard, LCSW, Pediatric Neurology Social Worker, and Raymond David, M.D., Pediatric Neurologist, Valley Children's Healthcare. In their letter, Ms. Bernard and Dr. David, in relevant part, stated:

[Claimant] is paralyzed and presents with the mentality of a toddler due to being the victim of "Shaken Baby Syndrome" at one year old. [Claimant] needs the extra protection a "**CribBed**" provides due to his significantly impaired cognition (unable to talk, chewing and pulling on anything he can), inability to sleep well (wakes up and will try to get out of a normal bed which will lead to injury as he is unable to walk), and seizures he continues to present with at all hours (increased likelihood of [claimant] falling out of a normal bed).

Please accept this letter supporting medical necessity of a correctly sized **special needs bed – "CribBed"** for [claimant].

(Bolding and underlining in original.)

7. At the hearing, CVRC called two witnesses, Rachel Camacho Hagans, Director of Case Management Services, and Todd Chase, Assistant Director of Case Management Services.

8. Ms. Hagans has a bachelor's degree in psychology and a master's degree in social work. She has worked in the regional center system for 30 years. At hearing, Ms. Hagans raised two concerns with regard to the request that CVRC purchase a queen-size crib bed for claimant: (1) the crib bed is not the least restrictive option; and (2) claimant's grandmother did not first pursue funding through Medi-Cal or private insurance.

9. With regard to the concern that the crib bed is not the least restrictive option, Ms. Hagans testified that she considers the crib bed to be a "restraint." Ms. Hagans believes that placing the slats closer together in the queen-size crib bed would increase claimant's level of isolation. In addition, Ms. Hagans is concerned that claimant may get his hands or feet stuck between the slats, as he has in the past in his twin-size crib bed, and would not be able to get them out. Ms. Hagans explained that CVRC would like to pursue less restrictive options, such as behavioral intervention services and other environmental changes, before it funds a restraint like the crib bed. According to Ms. Hagans, research has shown that behavioral intervention services can be "very successful." Until these other options are pursued, CVRC will not be able to determine that the crib bed is the least restrictive option, as required by law.

10. With regard to the funding concern, Ms. Hagans testified that if claimant's healthcare providers believe that the crib bed is a medical necessity, then claimant's grandmother must first pursue funding from Medi-Cal or private insurance. CVRC received information from the manufacturer of the crib bed, which stated that, "CribBeds have been approved and paid for by insurance companies." The manufacturer enclosed billing codes to be used when seeking funding from Medi-Cal for purchase of the crib

bed as durable medical equipment. As Ms. Hagans explained, before CVRC may pay for the crib bed, claimant's grandmother must show that she sought funding from Medi-Cal or private insurance, and was denied in writing.

11. Mr. Chase has a bachelor's degree in psychology and a master's degree in counseling. He is a board certified behavioral analyst. He has 27 years' experience working with individuals with developmental disabilities. Mr. Chase agreed with Ms. Hagans that the crib bed was a restraint. He expressed a willingness to work with claimant's family to pursue other options, including behavioral interventions to address claimant's behaviors that caused his family to want to purchase the crib bed in the first place. Mr. Chase recommended that a functional analysis be conducted to review claimant's behaviors that may be amenable to modification, and to help decide the best ways to seek to modify these behaviors and teach claimant new skills. Mr. Chase also recommended that claimant's grandmother work with CVRC during the Individual Program Plan (IPP) process to develop a comprehensive plan to address claimant's and his family's needs in a way that will best develop claimant's strengths and abilities. Mr. Chase strongly encouraged claimant's family to take advantage of the behavioral intervention services that CVRC is offering.

12. Claimant's grandmother argued that the crib bed was necessary for claimant to get a full and safe night's sleep. Claimant's grandmother testified that claimant's "damaged brain" causes him to wake up in the middle of the night. Although claimant is not ambulatory, he can get out of bed and move around by pulling himself with his left hand. Claimant does not recognize danger and cannot protect himself from injury. Claimant's grandmother believes that the only way to keep him safe at night is for him to sleep in a crib bed, and that he needs a queen-size crib bed because he has outgrown his twin-size one. She has not agreed to proceed with the behavioral intervention services offered by CVRC because CVRC has not guaranteed that they will

work. She has not sought funding for the crib bed from Medi-Cal in writing because she was informed orally that it would be denied, so she believes it would be waste of time for her to submit a formal written request.

13. Claimant's uncle is claimant's primary care provider. At the hearing, claimant's uncle described the tasks he performs for claimant on a daily basis. Claimant's uncle recommended that a queen-size crib bed be purchased for claimant. Claimant's head now hits the side railings of the twin-size crib bed when claimant's uncle changes him. Claimant's uncle agreed with claimant's grandmother that behavioral interventions will not work for claimant given claimant's condition. Claimant's uncle puts claimant in his current twin-size crib bed at about 7:30 to 8:30 p.m. at night, and takes him out at about 7:00 a.m. in the morning.

DISCUSSION

14. From the testimony presented at the hearing, it was evident that claimant's grandmother and uncle love claimant and are devoted to ensuring that he is well taken care of and safe. Their dedication and commitment to claimant are commendable. It was clear that their request that CVRC purchase a queen-size crib bed was motivated by a sincere belief that it was in claimant's best interests to have a larger bed to ensure his comfort and safety.

15. But when all the evidence is considered in light of the applicable law cited in the Legal Conclusions below, claimant's grandmother did not demonstrate that CVRC should be ordered to purchase a queen-size crib bed for claimant. The testimony of Ms. Hagans and Mr. Chase was compelling that the crib bed was a restraint and that behavioral interventions and environment changes may be effective in allowing claimant to sleep in a less restrictive environment than a crib bed. Claimant spends approximately 11 hours of every day in his current twin-size crib bed. The slats of the queen-size crib bed that claimant's grandmother has requested will be only two inches apart. CVRC's

concern that the queen-size crib bed will increase claimant's level of isolation was persuasive. The expertise and experience that Ms. Hagans and Mr. Chase demonstrated regarding the effectiveness and value of behavioral interventions made their recommendations very convincing. Until the behavioral intervention services and environmental changes recommended by CVRC are tried, CVRC cannot be ordered to purchase a restraint as restrictive as the crib bed claimant's grandmother has requested.

16. In addition, given the opinions of claimant's primary care physician and other healthcare providers of the "medical necessity" for a crib bed, and the information provided by the crib bed's manufacturer about the billing codes that may be used when seeking funding from Medi-Cal to purchase the crib bed, claimant's grandmother must first seek funding from Medi-Cal before CVRC can be compelled to purchase the crib bed for claimant. In the absence of a formal request to and written denial from Medi-Cal, CVRC is precluded from purchasing the crib bed for claimant.

LEGAL CONCLUSIONS

1. In accordance with the Lanterman Act, regional centers fund services and supports for eligible individuals with developmental disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Ins. Code, § 4501.¹)

2. Section 4502 mandates that the services and supports purchased by regional centers for consumers must be the "least restrictive" and must ensure that consumers are free from unnecessary physical restraints and isolation as follows:

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(1) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

[¶] ... [¶]

(8) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect.

3. As set forth in the Findings, the queen-size crib bed that claimant's grandmother seeks is a "restraint" as that term is used in section 4502, subdivision (b)(8). Until the behavioral intervention services and environmental changes recommended by CVRC are tried, it cannot be found that the requested crib bed offers claimant the least restrictive environment required by section 4502, subdivision (b)(1). Consequently, the request of claimant's grandmother that CVRC purchase a crib bed for claimant must be denied under section 4502, subdivisions (b)(1) and (8).

4. Section 4548, subdivision (a)(8), provides:

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

5. Section 4659, subdivision (d)(1), in relevant part provides:

Effective July 1, 2009, notwithstanding any other law or regulation, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit.

6. As set forth in the Findings, although claimant's primary care physician and other healthcare providers have opined that the crib bed is a "medical necessity" and the manufacturer of the crib bed has provided billing codes to be used when seeking funding from Medi-Cal, claimant's grandmother has not formally applied to Medi-Cal for funding for the crib bed. Pursuant to sections 4548, subdivision (a)(8), and 4659, subdivision (d)(1), the failure of claimant's grandmother to formally pursue funding for the crib bed from Medi-Cal precludes CVRC from purchasing the crib bed for claimant.

7. When all the evidence is considered in light of the applicable law, claimant's grandmother failed to establish that CVRC should be ordered to purchase the requested crib bed for claimant. Consequently, claimant's appeal must be denied.

//

ORDER

Claimant's appeal is DENIED.

DATED: June 1, 2016

KAREN J. BRANDT

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 the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)