

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2016090657

DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on November 8, 2016, at Torrance, California.

Gigi Thompson, Fair Hearing Representative, appeared and represented the Harbor Regional Center (the Service Agency).

Claimant's mother<sup>1</sup> appeared and represented Claimant, who was present throughout the hearing.

The record was held open to November 23, 2016, for either party to file any correspondence from Medi-Cal pertaining to the requested coverage. By November 23, 2016, neither party had filed any additional evidence and the administrative law judge closed the record and took the matter under submission.

---

<sup>1</sup> Claimant and his family are not identified by name in order to protect their privacy.

## STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to fund the purchase of a Posey Bed for claimant.

## EVIDENCE CONSIDERED

*Exhibits.* Service Agency's Exhibits 1 through 20

*Testimony.* Gigi Thompson, claimant's mother, Dr. Ahoo Sahba, and Bjoern Peterson

## FACTUAL FINDINGS

1. Claimant is a Service Agency consumer based on diagnoses of cerebral palsy and epilepsy. On June 27, 2016, the Service Agency denied claimant's request for funding to purchase a Vail Bed, an enclosed bed system, because the Service Agency determined behavioral intervention would be more effective at creating a safe home environment. Also, the Food and Drug Administration had issued warnings about the safety of Vail Beds. Claimant filed a Request for a Fair Hearing, alleging "my request was for a Posey Bed, not a Vail Bed."

2. Claimant is a 19-year old adult male who lives with his mother and siblings in Long Beach, California. He is non-verbal and non-ambulatory. His primary mode of transportation is a wheelchair, equipped with restraints to prevent claimant from falling out and injuring himself. When taken out of the chair, claimant is able to move himself around on the floor using his hands and arms. Claimant has behavioral issues relating to his impulse to grab and pull anything within his reach, including people and objects. Claimant has also exhibited self-injurious behaviors, including biting and scratching himself. Claimant suffers epileptic seizures, including grand mal seizures, causing violent full body spasms and muscle contractions.

3. Approximately eight years ago while a resident of San Diego County, claimant acquired a Posey Bed, a specialized bed with an enclosed netting and zippered opening. According to its descriptive brochure, the Posey Bed 8060 is an A-frame canopy system that attaches to a compatible hospital bed on wheels "to help provide a safe, controlled environment for patients at extreme risk of injury from a fall or unassisted bed exit." (Ex. 20.) No evidence was presented to show that the Food and Drug Administration had issued warnings about the safety of Posey Beds.

4. Over time, the bed fell into disrepair from ordinary wear and tear. Claimant has ripped the bedding and the stuffing out, and claimant's mother has replaced the mattress on several occasions. The zipper has come off and shoelaces are used to tie the canopy closed. On December 17, 2013, claimant's mother first reported to the Service Agency that claimant's bed was "falling apart" and asked the Service Agency to fund the purchase of a new bed. A counselor with the Service Agency advised claimant's mother to first inquire with California Children Services (CCS) and "if they deny funding a bed to get a denial letter from CCS and then see if Medi-Cal will fund." (Ex. 17, p. 1.)

///

5. A medical team at the Service Agency has concluded that the requested bed is "not a medical need, but a behavioral need." (Ex. 17, p. 51.) The bed is not related to any medical necessity, is not prescribed for most people with cerebral palsy or epilepsy, and will not prevent seizures. However, the confining nature of the canopy prevents injury to claimant and serves more of a safety purpose than a medical need. In March 2015, the Service Agency funded a behavioral assessment to determine whether claimant's behaviors required either a hospital bed canopy or if in-home behavior intervention. The assessment team concluded,

It does not appear that behavioral intervention would be beneficial as behaviors appear to be related to sensory issues and underlying medical conditions.

It is therefore suggested [claimant] be provided with appropriate environmental equipment to assist with keeping him safe both during waking hours and during sleeping hours. [Claimant] uses a medical bed with a safety net that zips up, which appears to be able to keep him safe during the night in the event of a seizure. The bed, however, appears to be too small for [claimant's] large frame. The bed also appears to be deteriorating and in need of repair. It may be beneficial for [claimant] to have his bed replaced with a more appropriate bed of similar functionality. (Ex. 6.)

6. The Service Agency has an established policy authorizing the purchase of durable and non-durable equipment and supplies for a consumer if "the supplies or equipment to be purchased have been denied by, or the client is not eligible for, [CCS], Medi-Cal, private insurance or any other third party payer." (Ex. 18.)

7. Claimant does not have private insurance that would cover the purchase of a Posey bed. On January 2, 2014, CCS denied funding because "the requested service is not related to the CCS medically eligible condition." (Ex. 13. ) CCS deferred the request to Medi-Cal for coverage.

8. In 2014, Dr. Kenneth H. Morris wrote three prescriptions to authorize the replacement of claimant's canopy bed. A counselor for the Service Agency inquired with a nurse at Dr. Morris' office who reported, "the problem has been trying to find a

provider that takes Medi-Cal for a canopy bed” and that she had been “working on this matter for 2 months now and stated it is difficult to find providers outside of San Diego County.” (Ex. 17, p. 8.) On September 5, 2014, the counselor noted, “CCS is working towards finding a vendor that agrees to submitting a quote to Medi-Cal. So far, CCS has been unsuccessful.” (Ex. 17, p. 12.)

9. On September 15, 2014, a counselor with the Service Agency notified claimant’s mother about two possible funding sources: Partners in Care and United Cerebral Palsy of Los Angeles. By November 11, 2014, Partners in Care was reviewing the referral, but required a grant proposal by February 2015 in order to complete funding. On January 20, 2015, Partners in Care mailed the counselor a grant application; however, the counselor was unable to complete all of the attachments needed to be filed by the February deadline.

10. On December 10, 2014, the Health Committee of the Service Agency noted, “No vendor will submit [a quote] to Medi-Cal due to cost of bed.” (Ex. 17, p. 17.)

11. By April 17, 2015, the Service Agency had “not received any quotes from providers” and “asked mother to please help . . . find a vendor that can submit a quote for [claimant’s] bed.” (Ex. 17, p. 26.) By October 21, 2015, the Service Agency was still “waiting for multiple service providers to submit their quotes in order for the application for the grant to be submitted. . . . No new updates at this time.” (Ex. 17, p. 30.)

12. On October 26, 2015, NuMotion submitted a quote to the Service Agency in the amount of \$13,973.56. On December 8, 2015, claimant and his mother attended an Individual Family Service Plan (IFSP) meeting, during which the parties discussed a grant available to help fund the purchase, but the grant was limited to \$7,500. The Service Agency refused to fund the balance without denial letters from CCS and Medi-Cal.

13. On January 5, 2016, claimant's mother was reminded that the Service Agency needed "a denial letter from Medi-Cal so we can revisit her request." (Ex. 17, p. 37.) Claimant's mother sought assistance from Lori Okamura (Lori) at Long Beach Medical Therapy. On January, 26, 2016, Lori reported to the Service Agency that she had been "working with different veil (sic) bed vendors to get them to contact Medi-Cal, but the vendors are not willing to contact Medi-Cal, because they will lose money." (Ex. 17, p. 39) Lori further explained to the counselor at the Service Agency that Medi-Cal only pays \$900 for a bed "so no vendor is willing to take the risk of Medi-Cal approving the bed."

14. On October 18, 2016, the Service Agency counselor agreed to assist claimant's mother in sending a request to CCS and Medi-Cal for the Posey Bed. The next day, she inquired with Lori if a request was sent to Medi-Cal and, if so, whether Medi-Cal denied funding. "Lori reported that there was never a request submitted to Medi-Cal because there wasn't [sic] any vendors that would be willing to submit a request to Medi-Cal [knowing] the bed is very expensive and [the vendor] will not be getting paid the full price for the bed through Medi-Cal." Lori informed the counselor "they all refused . . . this was the reason why Medi-Cal never got a request." (Ex 17, p. 56.)

15. On October 25, 2016, the service agency received new prescriptions from claimant's doctors and forwarded them to CCS. CCS again denied funding for the bed, deferring the matter to Medi-Cal.

16. On October 27, 2016, Cori Reifman, Benefit Specialist with the Service Agency, reported to the counselor that "we are not able to directly submit a prescription to Medi-Cal" and that the prescription would need to be submitted by a vendor that works with Medi-Cal. (Ex. 17, p. 62.)

17. At the hearing, Bjoern Peterson, a Client Services Manager with the Service Agency, testified that two vendors are submitting quotes to Medi-Cal, pending forms to

show a medical necessity, and that a response from Medi-Cal could take up to three months.

## LEGAL CONCLUSIONS

1. The Frank D. Lanterman Developmental Disabilities Act (Lanterman Act) sets forth the Service Agency's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.)

2. The determination of which services and supports the regional center shall provide is 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." (Welf. & Inst. Code, § 4512, subd. (b).)

3. A regional center is required to "identify and pursue all possible sources of funding," including Medi-Cal. (Welf. & Inst. Code, § 4659, subd. (a).) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers are prohibited from purchasing any service that would otherwise be available from Medi-Cal when a consumer or a family meets the criteria of this coverage, "but chooses not to pursue that coverage." (Welf. & Inst. Code, § 4659, subd. (c).)

4. Claimant bears the burden of proof as the party seeking government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

5. In this case, a Posey Bed will prevent claimant from falling out of bed and injuring himself, approximating the pattern of everyday living available to people without disabilities of the same age. The Service Agency identified Medi-Cal as a possible source of funding for the requested Posey Bed. The Service Agency, claimant's mother, a nurse at Dr. Morris' office, and Lori have actively pursued vendors to submit a bid to Medi-Cal, all without success.

6. The Service Agency's purchasing policy requires either a denial by Medi-Cal, or in the alternative, claimant's ineligibility for Medi-Cal coverage. In the three years since claimant made the initial request, claimant has substantially complied with the statutory requirement to pursue coverage from Medi-Cal, but vendors have refused to submit quotes to Medi-Cal. Accordingly, a denial letter from Medi-Cal is unnecessary, when the weight of the evidence tends to prove that Medi-Cal is not a generic funding source for the purchase of a Posey Bed.

7. The preponderance of the evidence established that claimant needs a Posey Bed to approximate the pattern of everyday living available to people without disabilities of the same age and no generic funding source is available.

## ORDER

Claimant's appeal is granted. The Service Agency shall fund the purchase of a Posey Bed for claimant.



DATED: November 30, 2016

---

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.