

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2019020246

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 8, 2019, in San Leandro, California.

Claimant was represented by his parents. Claimant was present at the hearing.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay (RCEB), the service agency.

The record closed and the matter was submitted for decision on March 8, 2019.

ISSUE

Is claimant entitled to RCEB funding for a hospital bed?

FACTUAL FINDINGS

1. Claimant is a 17-year-old with cerebral palsy and spastic quadriplegia. Claimant is non-ambulatory and non-verbal. Claimant weighs approximately 80 pounds. Claimant is insured by CCS, a Medi-Cal provider. He lives with his parents in a rented

two-story townhouse. He previously slept in an upstairs bedroom, but now sleeps on the lower level.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP), dated September 6, 2016. The IPP was updated following an annual review on September 24, 2018. Ashley Brown has been claimant's case manager for the last three and one-half years. The IPP and annual review note that claimant needs physical assistance with personal hygiene, feeding, bathing, toileting, and dressing. One of his objectives is to live comfortably in his home. Claimant's mother is claimant's primary caregiver.

3. Claimant's family contacted Brown in July 2018 and requested that RCEB purchase a hospital bed for claimant. Per RCEB policy pertaining to requests for medical equipment, Brown referred the request to the occupational therapy department. Occupational Therapist Daniel Lin reviewed the request. Lin visited claimant's home and discussed the request with the family. He reviewed RCEB policy and Medicare guidelines. Lin concluded that claimant did not meet the Medicare standard for a medical need for a hospital bed and recommended denying the family's request. Lin proposed that the family consider one of two different types of lifts for transferring claimant from bed to his wheelchair or stroller. The lift would be funded either through CCS, or, if denied, by RCEB. Lin also proposed that the family request a stair lift to help move claimant to the second story of the residence. RCEB would fund this item and would work with the family's landlord if there was resistance to installing it in the residence.

Lin explained that RCEB will only fund medical equipment if there is a medical need for the equipment as defined by Medicare guidelines. Lin analyzed the Medicare guidelines and concluded that claimant did not qualify for a hospital bed under the guidelines. He believes that claimant's needs could be met by a lift, a bed with bedrails, and pillows for positioning.

4. In a Notice of Proposed Hearing dated January 14, 2019, RCEB notified claimant that it was denying the request for a hospital bed for the following reason: "An RCEB occupational therapist evaluation has concluded that [claimant] does not have a justifiable medical need to support parent request." The Notice of Proposed Action cites to Welfare and Institutions Code sections 4646 and 4697, and RCEB Policy #3402 as the authority for the denial.

5. Claimant filed a Fair Hearing Request on February 4, 2019.

6. An informal meeting was held on February 5, 2019. Following the informal meeting, Case Management Supervisor Mariana Varela wrote a letter, dated February 15, 2019, in which she agreed with the denial of the requested hospital bed, and recommended a low bed with bedrail, a stair lift, and a bed lift for transferring claimant from bed to wheelchair.

7. Claimant has required several surgeries related to his cerebral palsy. After surgery, he has been provided a temporary hospital bed funded by CCS. Claimant last had surgery on February 19, 2019, and a hospital bed was at the residence at the time of hearing, for an indefinite period depending on physician recommendation.

8. Claimant's parents explained that their main concern is claimant's safety. As he has become heavier, it has become more difficult to move him from bed to wheelchair. When they have had the use of a hospital bed, the transfers have been easier and safer. Claimant is fragile and his parents fears that use of a sling-type lift would endanger his safety. Claimant's parents added that claimant seems more comfortable and able to sleep better in a hospital bed. In addition, they are able to change his diapers and clothing and give him a sponge bath on the bed, rather than having to move him to another location.

Claimant's family is not interested in a stair lift. They are no longer bringing claimant to the upper floor of the residence.

9. The family has been verbally told by CCS that it would not purchase a hospital bed for claimant. RCEB agrees that CCS is not a generic source for claimant to receive this item, because claimant does not meet the Medicare guidelines.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.¹) The Lanterman Act mandates that an “array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers have the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

2. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Regional centers must identify and pursue all possible sources of funding when determining whether to fund a requested service. (§§ 4659, subd. (a)(1) & 4646.4.) RCEB’s occupational therapist

¹ All statutory references are to the Welfare and Institutions Code.

persuasively testified that claimant is not qualified for funding by his insurer because he does not meet the Medicare guidelines for a hospital bed.

3. RCEB Purchase of Service Policy #3402 governs the provision of assistive technology. Assistive technology is defined as "items designed to facilitate mobility, communication, community access or environmental control to maintain or maximize function and independence." The policy states that "RCEB may purchase [assistive technology] when it is required for reasons related to the developmental disability and when the Planning Team believes either a) the equipment or device will prevent further disabilities, maintain or improve current functioning; b) such equipment is integral to the health care or function of an individual and/or makes specialized care in the home possible; c) the equipment allows the consumer to interact optimally with his/her environment and increases independence and family/community inclusion."

4. RCEB contends that it is precluded from purchasing a hospital bed for a consumer who would not be eligible for one under the Medicare guidelines. This contention is not supported by the Purchase of Service Policy or by the Lanterman Act. No authority was provided that sets forth that regional centers must abide by the Medicare guidelines in determining whether to fund a hospital bed.

5. Due to his developmental disability, claimant is non-ambulatory and fully dependent on others for assistance in all areas of daily living. RCEB does not dispute that equipment to assist transferring claimant from bed to wheelchair is warranted. Although there are other devices that can provide this function, claimant's family testified persuasively that a hospital bed is best suited to meet this need. A hospital bed provides additional benefits in that it facilitates specialized care of claimant, specifically bathing, dressing, and changing diapers. The family anticipates that claimant will use the hospital bed for many years. Purchase of a hospital bed will assist the family in maintaining claimant in the family home as he reaches adulthood.

6. Claimant has met his burden. Cause exists for RCEB to fund the purchase a hospital bed for claimant.

ORDER

Claimant's appeal is granted. RCEB shall fund a hospital bed for claimant.

DATED: _____

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.