

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

v.

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0004306

OAH No. 2023050081

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 12, 2023, by videoconference.

Claimant's mother appeared for claimant.

Director of Client Services Beth DeWitt appeared for service agency North Bay Regional Center.

The matter was submitted for decision on October 12, 2023.

ISSUES

1. Must North Bay Regional Center (NBRC) fund purchase for claimant of a booster seat, for use at a table during mealtimes?
2. Must NBRC fund purchase for claimant of an enclosed bed?
3. Must NBRC fund purchase for claimant of an indoor air filter or purifier?

FACTUAL FINDINGS

1. Claimant was born in August 2019. He lives in a multi-generational household with his mother and several extended family members.
2. Claimant is an NBRC consumer because he is substantially disabled by autism spectrum disorder. In addition to autism spectrum disorder, claimant has asthma. He uses medications regularly for his asthma, but these medications provide only partial control of his symptoms.
3. Claimant has asked NBRC to fund purchase for him of a booster seat, with safety straps to keep his body in the seat, for him to use while sitting at a table, such as during mealtimes. He also has requested NBRC funding for purchase of an enclosed bed (the "Cubby Plus Safety Bed"), as a nighttime independence and safety measure. Finally, claimant has asked NBRC to fund purchase for his household of an air purifier, to improve indoor air quality in light of claimant's asthma. Claimant has asked NBRC to fund claimant's purchase of these three items because funding is not available to him for them from any other health or social service agency.

4. By letter dated March 23, 2023, NBRC declined the funding requests summarized in Finding 3. Claimant made a timely request for fair hearing to review these decisions.

High Chair or Booster Seat

5. Claimant is extremely active. At mealtimes, he does not like to sit at a table. Unless restrained or vigilantly supervised, he runs, jumps, and climbs, often with food in his mouth or cutlery in his hands. Sometimes claimant puts large amounts of food in his mouth without chewing and swallowing. Claimant's mother believes reasonably that these behaviors create a risk that claimant will choke, or will injure someone.

6. Few children of claimant's age have mastered table manners. Because of claimant's autism spectrum disorder, however, his mealtime behavior is much more dangerous, and much more challenging for his family, than the usual behavior of most neurotypical children his age.

7. At four years old, claimant now is too large for a conventional infant high chair, but too short to sit comfortably in an adult-size chair at an adult-height table. Claimant's mother would like to seat him for meals on a booster seat. She seeks a seat that offers straps or belts for claimant's body, to remind him to stay seated and to delay (if not prevent) him from leaving his seat with food in his mouth or cutlery in his hands. Although claimant might use the booster seat, until he is taller, for other activities involving sitting at a table, claimant's mother anticipates using the safety straps only during meals.

8. One of claimant's therapists, Katherine Steineman, endorses this request. Steineman believes that a booster seat that restrains claimant during mealtimes not

only will keep him safer, but also will assist him in learning to sit still for meals, "by prompting him to sit and rewarding him for sitting for the entirety of his meal."

9. Documents, and testimony by NBRC Case Management Supervisor Deborah Simms, explained NBRC's reasons for declining to fund purchase of a belted booster seat for claimant. The special feature of the type of booster seat claimant's mother seeks that makes the seat different from, and much more expensive than, a booster seat suitable for a neurotypical child of claimant's age is the belt system, which would limit claimant's ability to leave the seat suddenly. The Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code § 4500 et seq.) generally disfavors physical restraint as a way to control maladaptive behaviors, however, and NBRC does not purchase durable equipment for NBRC consumers that has restraint as its sole purpose.

10. The evidence does not establish cause for NBRC to deviate from this legislative and organizational policy by assisting claimant's family in purchasing a booster seat with restraint straps for him to use at mealtimes.

Enclosed Bed

11. Because of his autism spectrum disorder, claimant sleeps very poorly. His mother describes him as never having made the transition from a newborn sleep pattern to a childhood pattern. Instead of sleeping all night for between 10 and 13 hours, as would be healthy and typical for a child his age, claimant sleeps for a few hours at a stretch, intermittently around the clock.

12. When claimant is fully awake, he is active, including during the night. In addition, claimant sometimes experiences sleep terrors in which he is neither fully asleep nor fully awake. During these episodes, which do not occur every night but

which sometimes occur more than once during a night, claimant becomes very agitated and engages in self-harming behavior such as hair-pulling and head-banging if someone does not restrain him.

13. Claimant is receiving occupational therapy, with the objectives of improving the quantity and quality of his sleep and helping him develop a sleep schedule that is more compatible with the other members of his household.

14. Claimant and his mother currently share a bedroom and bed. For his independence as well as her health and well-being, claimant's mother would like to transition claimant to sleeping independently. Because of the behavioral challenges summarized in Finding 12, she has asked NBRC to fund purchase of an enclosed bed for him.

15. The bed claimant's mother has identified, the Cubby Plus Safety Bed, is large enough to accommodate claimant now, and for about ten more years. It resembles a tent with integrated bed. According to the manufacturer's literature, it offers zippered doors that a person can configure from the outside so that a person inside "cannot unzip the door and get into dangerous situations, unsupervised." It also includes a camera, microphone, and speaker, permitting a person outside the enclosure to observe and communicate with a person inside it. The special features of the Cubby Plus Safety Bed that make the bed different from, and much more expensive than, an ordinary bed are its restraint and communication features.

16. Claimant's pediatrician (Lily M. Nguyen, M.D.) does not recommend the Cubby Plus Safety Bed specifically. She notes, however, that claimant needs a sleep environment "that prevents falling from a high place, avoids sharp edges/corners, and limits climbing potential."

17. Simms testified credibly that NBRC recommends addressing the behavioral challenges summarized in Finding 12 and the needs summarized in Finding 16 with additional overnight supervision, such as through an NBRC vendor's Intensive Behavioral Support Program, and with a safety evaluation of claimant's home and bedroom to identify opportunities to reduce danger in the event that he is the only person awake inside the house. NBRC has declined to pay for a Cubby Plus Safety Bed because NBRC policy prohibits funding purchase of an overnight restraint and isolation device, even with the integrated communication features of the Cubby Plus Safety Bed.

18. The evidence does not establish cause for NBRC to deviate from its purchasing policy, or from the Lanterman Act's limitations on behavioral restraint, by assisting claimant's family in purchasing an enclosed bed such as the Cubby Plus Safety Bed.

Air Purifier

19. NBRC's Purchase of Services Policy and Durable Medical Equipment Procedure emphasize NBRC's responsibility to fund services and equipment that claimant needs because of his developmental disability.

20. The evidence does not establish that claimant's autism spectrum disorder is the reason that he would benefit from an in-home air purifier. Rather, the evidence establishes that the air purifier would benefit claimant because of his asthma, which is not a developmental disability.

LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review NBRC's service decisions. (Welf & Inst. Code, § 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires NBRC to deliver the services and supports he requests.

2. The Lanterman Act expresses the Legislature's preference against using restraint to control or modify developmentally disabled persons' behavior. (Welf. & Inst. Code, § 4502.) Although the Lanterman Act does not categorically preclude restraint, it does require NBRC to maintain records and make disclosures regarding its vendors' use of behavioral restraints. (Welf. & Inst. Code §§ 4436.5, 4659.2.) The NBRC policy described in Findings 9 and 17 is consistent with this legislative principle, and is reasonable.

3. NBRC policy prohibits NBRC from funding either a restraint booster seat or a Cubby Plus Safety Bed, and no cause appears from the evidence in this matter to deviate from this policy.

4. As stated in Findings 19 and 20, no cause appears from the evidence in this matter for NBRC to fund purchase for claimant of an indoor air purifier.

ORDER

Claimant's request for orders directing NBRC to authorize funding for a restraint booster seat, a Cubby Plus Safety Bed, and an indoor air purifier is denied.

DATE:

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.