

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

In the Matter of:

CLAIMANT

and

CENTRAL VALLEY REGIONAL CENTER, Service Agency

DDS No. CS0026113

OAH No. 2025041022

DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, acting as a hearing officer, conducted a fair hearing on May 29, 2025, in Fresno, California.

Jacqueline Molinet, Fair Hearing Representative, represented Central Valley Regional Center (CVRC).

Claimant's father and authorized representative (Father) represented Claimant.

Evidence was received, the record closed, and the matter submitted for decision on May 29, 2025.

ISSUE

Must CVRC fund the purchase of a Cubby Bed for Claimant?

FACTUAL FINDINGS

Jurisdictional and Procedural History

1. Claimant is four years old and lives with Father and her mother (Mother) in their home in Fresno, California. Claimant qualifies for Lanterman Act services coordinated through CVRC due to her diagnosis of cerebral palsy.

2. In early March 2025, Mother requested CVRC to fund the purchase of a Cubby Bed for Claimant to prevent Claimant from causing self-injury. On March 26, 2025, CVRC issued a Notice of Action (NOA) denying the request. The NOA provided three reasons for the denial: (1) the Cubby Bed would unduly restrain Claimant; (2) the Cubby Bed is not the least costly alternative that can meet Claimant's needs; and (3) Claimant's parents have not exhausted other generic resources to pay for the Cubby Bed.

3. On April 16, 2025, Mother, on behalf of Claimant, appealed the NOA and requested a fair hearing. The matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, acting as a hearing officer.

Claimant's Evidence and Arguments

4. Father testified at hearing. Claimant experiences daily seizures and uncontrollable spastic muscle movements. Her seizures are unstable and constantly

changing. Sometimes they are minor and other times they cause her to violently shake and stop breathing.

5. Due to Claimant's seizures and uncontrollable spastic muscle movements, she cannot sleep on her own. She currently sleeps in a crib in her parents' bedroom. However, she is tall for her age and is outgrowing the size of the crib. Additionally, Claimant's uncontrollable spastic muscle movements cause her to hit the sides of her crib resulting in bruising and bleeding. Father submitted numerous photos and videos of Claimant's spastic muscle movements, while awake and asleep, as well as her resulting injuries. Although Claimant's parents do the best they can to watch her to prevent injuries, some occur while they are asleep. Father fears that her daycare caregivers will suspect child abuse and report the family to child protective services.

6. Claimant's neurologist first recommended the Cubby Bed to Claimant's parents. The Cubby Bed is a full-sized bed with a tent-like canopy. It provides a 360-degree, soft-enclosed, padded environment with a zippered opening that can only be controlled by the caregiver. It is relatively spacious and allows the user's independent movement within the canopy, without the possibility of entanglement, entrapment, or endangerment from contact with hard surfaces. It is very secure and cannot tip over. The Cubby Bed includes a circadian light to improve sleep hygiene, temperature and humidity sensors, a Bluetooth camera for remote monitoring, a two-way communication system, and the ability to play soothing sounds for sensory regulation. It is an FDA-registered, Class 1 medical device covered by some insurers. It costs approximately \$15,000 out of pocket.

7. Claimant's parents have investigated alternatives. They considered placing Claimant on a mattress on the floor. However, this is unsafe because she can roll off it, army crawl, and pull herself up on objects in the room. Claimant's parents

also considered other potential enclosed beds. They tried the Safe Place Bed Model 100, which costs less than \$1,000, but it was very small, just straps to a mattress, and Claimant was able to tip it over. Thus, they sent it back. Additionally, Claimant's parents looked into the Safety Sleeper 200 model with a base price of \$4,000. However, it does not include a monitoring system. Finally, another alternative bed suggested by their insurance company was made of wood and did not have soft sides.

8. Father has submitted letters from Claimant's pediatrician and neurologist opining that a Cubby Bed is medically necessary to ensure Claimant's safety during the night. A letter from Claimant's daycare provider further supports the purchase of a Cubby Bed due to Claimant's observed behaviors.

9. Father does not believe the Cubby Bed would unduly restrain Claimant. Claimant's parents would only place her in it at night or during her naps, when they would be sleeping right next to her. Instead, it is a necessary item to ensure her safety and prevent self-injury.

10. Claimant's parents pursued other funding sources for the Cubby Bed. Thus far, California Children's Services and Claimant's health insurance company denied requests to fund the Cubby Bed. However, Claimant's parents have appealed the denials, and those appeals are still pending.

CVRC's Evidence and Arguments

11. Karina Padilla, CVRC's Early Childhood Program Manager, and Elisia Her, CVRC's Assistant Director of Intake and the Early Childhood Program, testified at hearing. Both expressed sympathy for the difficulties Claimant's parents face. However, they reiterated that the Cubby Bed is neither the least restrictive nor the least costly alternative that can meet Claimant's needs. Additionally, they explained that Claimant's

parents have not exhausted other generic resources to pay for the Cubby Bed, including Claimant's health insurance. Once generic resources are exhausted, CVRC would be willing to explore options with Claimant's parents.

LEGAL CONCLUSIONS

1. The 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.)

2. The Lanterman Act sets forth the regional center's responsibility for providing services and supports for eligible persons with developmental disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) An "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . to support their integration into the mainstream life of the community . . . [and to] prevent dislocation of persons with developmental disabilities from their home communities." (*Ibid.*) Additionally, "[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served." (*Ibid.*) However, generic resources such as Medi-Cal or private health insurance must be exhausted before a regional center a particular service or support. (Welf. & Inst. Code, § 4659.)

3. Here, Father, on behalf of Claimant, asserts that CVRC must fund the purchase of a Cubby Bed for Claimant. Claimant bears the burden of proving that

claim by a preponderance of the evidence. (See Evid. Code, §§ 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that [s]he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. Here, Claimant failed to establish by a preponderance of the evidence that generic resources have been exhausted in accordance with Welfare and Institutions Code section 4659. Indeed, Father testified that appeals of the denials by California Children's Services and Claimant's health insurance company remain pending. Thus, Claimant's appeal must be denied at this time on the basis of failure to exhaust generic resources. However, such denial is without prejudice to Claimant renewing a request to CVRC to fund a Cubby Bed upon exhaustion of generic resources.

5. To resolve this appeal, it is unnecessary to reach the remaining grounds for denial referenced in the NOA. Upon exhaustion of generic resources, CVRC will have an opportunity to reconsider its position on the remaining grounds for denial referenced in the NOA, if appropriate.

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ORDER

Claimant's appeal of Central Valley Regional Center's denial of Claimant's request to fund the purchase of a Cubby Bed is DENIED without prejudice for failure to first exhaust generic resources.

DATE: June 11, 2025

WIM VAN ROOYEN

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 a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), 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.