

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Request for Services:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2017100649

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Diego, California, on November 28, 2017.

Claimant's mother/conservator represented claimant who was present during the hearing. Claimant's father also attended the hearing.

Neil Kramer, Fair Hearing Manager, represented San Diego Regional Center (SDRC).

The matter was submitted on November 28, 2017. At the close of hearing, the parties indicated that claimant's annual Individual Program Plan (IPP) meeting was scheduled to take place the next day, November 29, 2017. Given the issues presented at the hearing, it was possible they would be discussed and resolved at the IPP meeting. In order to avoid issuing a decision that might conflict with any agreements reached at the IPP meeting, the record was re-opened to allow the parties an opportunity to advise OAH if any of the five issues identified below were resolved at the IPP and no longer needed to be decided. In response to the order, the parties submitted letters that were marked and received as exhibits advising that they met and agreed that the

administrative law judge would rule on those five issues. The matter was submitted and the record was closed on December 22, 2017.

ISSUES

1. Claimant requests 15 hours per week of tailored day services (TDS) that claimant asserts were approved at an August 15, 2017, meeting with SDRC representatives;

2. Claimant seeks reimbursement for all costs incurred since August 15, 2017, to procure or provide those TDS;

3. Claimant is requesting two tailored day agencies to work with him for a total of 15 hours per week and/or SDRC fund two agencies to provide a total of 15 hours per week of TDS;

4. Claimant seeks an increase of five hours per week in his Independent Living Services (ILS); and

5. Claimant asserts that SDRC agreed to provide 20 hours per week of ILS that would begin on October 3, 2017, but thereafter advised that SDRC would only fund 15 hours per week. Claimant seeks 20 hours per week funded as of October 3, 2017.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On October 5, 2017, SDRC issued a notice of proposed action, denying claimant's request for two individual agencies to provide TDS. On October 6, 2017, claimant submitted a fair hearing request with attached letters identifying the services he was seeking.

Claimant was thereafter given notice of this hearing.

EVIDENCE PRESENTED AT HEARING

2. Claimant is a 27-year-old male who qualifies for regional center services based upon the diagnoses of mild intellectual disability and autism.

3. A March 2016 memo from Monica Peralta, ILS program manager at Employment and Community Options (E&CO), described a new ILS program being offered by E&CO. The memo outlined the various services that the new program would offer consumers. A March 2017 E&CO calendar identified the various services offered.

4. Claimant's September 30, 2016, Individual Program Plan (IPP) included the following outcomes/services: obtaining a part or full-time work opportunity, receiving respite services, completing a Section 8 housing application, maintaining appropriate social boundaries, and learning to independently budget and perform various chores. The IPP noted that claimant receives SSI and IHSS benefits. He currently resided with his parents, but they desired that he "eventually live on his own independently but with possible supported living support services." The IPP team stated that claimant may benefit from ILS or SLS services. Claimant participates in a community based day program and attends college. He uses several modes of transportation, continues to work out at the local gym, and enjoys several different sporting activities. Claimant has a rudimentary understanding of the value of money and enjoys listening to music and watching videos. He requires ongoing monitoring and close supervision to ensure personal safety and security and has a history of wandering away from general activities or individuals, but that behavior has not been observed recently.

5. A February 27, 2017, e-mail from claimant's parents requested an ILS worker accompany claimant to class. SDRC replied that the request could not be accommodated because ILS services were not used to attend classes with consumers, but were provided in the consumer's home working on living skills. Additionally, while TDS could be used for college classes and furthering education, claimant was already enrolled in the integrated employment program, making him ineligible for TDS.

6. The Mira Costa College Spring 2017 Basic Academic Skills calendar documented the various programs/courses offered.

7. A Basic Academic Skills syllabus for the fall 2017 outlined the program in which claimant was enrolled from August through December 2017.

8. Claimant's resume outlined his education, training, skills and experience.

9. E-mails exchanged between the parties, and the SDRC Title 19 notes were introduced at the hearing, several of which were referenced during testimony. A review of those exhibits provided the following timeline:

- An August 15, 2017, Title 19 note documented that SDRC met with claimant and his parents to address claimant's needs to determine if TDS and ILS services that his parents were requesting could meet his needs and were appropriate.
- An August 16, 2017, Title 19 note documented that SDRC provided claimant with a list of five ILS providers to consider for services "per the agreement at the last review meeting." However, the Title 19 notes did not document what "agreement" had been reached.
- On August 18, 2017, claimant's mother e-mailed SDRC thanking the team for meeting to discuss her son's TDS and ILS needs. She noted she was taking SDRC's advice to work with E&CO regarding her son's needs. She referenced the ILS assessment and the eight hours per week of ILS as discussed at the meeting, but believed her son required more hours. She noted that she would be contacting the five ILS agencies that SDRC had provided.
- On August 22, 2017, claimant's mother sent an e-mail indicating that PRIDE "firmly indicated to implement [claimant's] ILS needs of 15 hours per week" and her satisfaction with PRIDE and that determination. Subsequent e-mails from SDRC documented that the required information was being sent to PRIDE.

- On August 24, 2017, claimant's mother's e-mailed SDRC that SDRC sent the information to PRIDE "without informed to us [sic] with your approval of 20 hours per month. It is not acceptable. [PRIDE] indicated to you of the 15 hours per month [sic]." She wrote that SDRC "stated that 20 hours per month and denied all that the agency cannot work with [claimant] until 9/1/17 [sic]." She was not comfortable starting in September and noted that the ILS assessment indicated that claimant required 15 hours per week, that they cannot use 20 hours per month, five hours per week, and requested more than 10 hours per week be provided. SDRC replied that they had not had an opportunity to review the ILS assessment report and would contact claimant as soon as that review was completed.
- An August 28, 2017 e-mail from claimant's mother to SDRC outlined what the TDS services would provide, noted that they had "mapped out the schedule" with E&CO for TDS, stated that the "15 hours approved by SDRC starting 9/1. It is very limited, can not be able to implement it. Which I have not though [sic] of it prior to our meeting with you on 8/15 [sic]." She added that SDRC had indicated several times at the 8/15 meeting that ILS does not provide recreation for claimant, he gets this from TDS. She concluded: "At this point [claimant] needs [TDS] more that [ILS]. Please disregard to review the assessment/recommendations by the [ILS] vendor [sic]."
- On August 29, 2017, SDRC responded to that e-mail requesting clarification of the total number of hours being requested for TDS and advising that E&CO was only contracted to provide a total of 41 hours a month. Based upon claimant's mother's e-mail, it appeared that 108 hours per month was being requested, but the maximum hours allowed was 41 hours. Moreover, E&CO advised SDRC that they would be unable to provide services to claimant until at least October due to staffing shortages. SDRC requested that claimant

confirm the number of TDS hours being requested. Claimant replied that 15 hours per week of TDS had been approved at the 8/15 meeting, that 27 hours per week was being requested, and that claimant had no knowledge of E&CO being unable to immediately start services. SDRC replied that claimant needed to discuss the start date with E&CO as SDRC had received the September start date information from E&CO.

- An August 29, 2017, Title 19 note documented an SDRC collaboration meeting regarding the case status and claimant's mother's concern regarding ILS hours. A copy of PRIDE's ILS assessment document was requested to determine the appropriate number of ILS hours.
- Two August 31, 2017, Title 19 notes documented the planning review meetings held to discuss different options that might be available to meet claimant's needs based upon his mother's request.
- On August 31, 2017, claimant's mother sent an urgent e-mail requesting an additional 17 hours per week of TDS hours. On August 31, 2017, SDRC e-mailed claimant to advise that the TDS increase requested was not possible due to "Lanterman act rules and guidelines" and that SDRC was exploring an option with another agency due to the SDRC area specialist's suggestion.
- Claimant's mother sent an e-mail on September 1, 2017, advising that she had not requested anything from the area specialist, that she was unsure to what SDRC was referring, and that she wanted clarification before filing a fair hearing request since the parties could not agree on the additional TDS hours requested. Claimant also requested reimbursement of the 15 TDS hours per week beginning 8/21, and was waiting to hear how many ILS hours had been approved by PRIDE. SDRC sent a follow-up e-mail explaining the area specialist's role and the investigation being performed based on his suggestion. SDRC also referenced Welfare and Institutions Code section

- 4688.21 where claimant could find explanations related to TDS rates and maximum units of service designs.
- Claimant's mother replied that SDRC had not responded to her request for reimbursement of the 15 TDS hours or information regarding PRIDE's ILS determination. SDRC replied that it had submitted a purchase of service request to PRIDE to complete an ILS assessment that would be necessary before hours could be determined. In a second e-mail, SDRC advised claimant that in order to be reimbursed for providing TDS services, claimant must have an established day program approved by the Department of Developmental Services in advance.
 - A September 5, 2017, Title 19 note documented a meeting with SDRC representatives and the Life of Liberty agency to address claimant's parents' request for services. Life of Liberty appeared to be "a perfect fit" for claimant and his mother would contact the agency to get more information.
 - On September 6, 2017, claimant's mother sent an e-mail to SDRC requesting a link to Welfare and Institutions Code section 4688.21, asking that SDRC work with her so that TDS and ILS services could be implemented, and indicating she wanted to file a fair hearing request regarding the additional 17 hours of TDS services needed.
 - On September 6, 2017, SDRC sent claimant an e-mail advising that it was trying to work with claimant to support his needs, noting that at the August 15 meeting, SDRC had agreed to 15 hours per week of TDS and an ILS assessment, but that after the meeting claimant determined that the TDS hours were insufficient. SDRC noted that based on claimant's decision SDRC had been able to find a resource that was better suited based on his request and provided contact information for Life of Liberty. The e-mail identified claimant's proposed needs as transportation, employment opportunities,

socialization/recreation and education and advised claimant to discuss those issues with Life of Liberty. In reply, claimant's mother requested SDRC to send her a list of agencies. SDRC sent her a list of TDS agencies that would provide up to 15 hours per week of services but stated that it hoped claimant would consider the Life of Liberty option suggested by the area specialist.

- A September 6, 2017, Title 19 note documented that SDRC collaborated to review claimant's mother's request for an increase in ILS and TDS hours.
- On September 7, 2017, claimant's mother sent an e-mail requesting a team meeting to discuss the TDS hours needed.
- On September 7, 2017, SDRC sent claimant an e-mail indicating that claimant had been provided with a list of TDS providers that provide 15 hours of services per week, that the request for 21 hours per week was denied, and that SDRC would send claimant a notice of action allowing her to request a fair hearing. In response claimant's mother sent an e-mail indicating that she was requesting an additional 17 hours per week, not 21 hours per week and she was working with "the agency has [claimant's] TDS [*sic*]." She noted that Life of Liberty does not have TDS and is not suitable for claimant's needs.
- On September 8, 2017, claimant's mother e-mailed SDRC the responses she had received from some of the agencies SDRC provided her on September 6, 2017, requested information be sent to those agencies and thanked SDRC "for working with [claimant's] 15 hours TDS approved on 8/15." In a separate e-mail, she advised that she was unaware that SDRC could not fund ILS until the assessment was completed and that the family could train claimant "5 hours of ILS needs now" while the assessment was performed.
- On September 11, 2017, SDRC advised that information had been sent to agencies as requested. Claimant's mother replied that claimant had been out of services for five weeks, since 7/21, and that his behaviors were out of his

routines. In another e-mail, claimant requested a different service provider and to disregard the previous provider request. Another e-mail referenced TDS being provided by two different agencies and another asked about the PRIDE ILS services.

- September 11, 2017, Title 19 notes documented SDRC's contacts and provision of information to various programs per claimant's mother's requests.
- A September 12, 2017, Title 19 note documented a call from San Diego Community Living Services advising that they could provide ILS services to claimant. A purchase of service was completed and submitted for approval.
- On September 17, 2017, PRIDE e-mailed SDRC a copy of its ILS assessment.
- On September 18, 2017, claimant's mother sent an e-mail requesting information be sent to a TDS agency, inquiring as to what needed to occur next with PRIDE, and requesting an informal meeting. She also sent several follow-up e-mails regarding the PRIDE ILS status and one advising that she had not received a response from SDRC.
- A September 18, 2017, Title 19 note documented that SDRC responded to claimant's mother's e-mail regarding clarification relating to TDS hours and services and that she wanted two different TDS agencies to provide services to her son.
- September 20, 2017, Title 19 notes documented SDRC's review of claimant's mother's e-mail regarding a list of different TDS agencies in her area and that a telephone conference was conducted with the director of San Diego Community Living Services regarding "the status of" claimant's TDS services. The note did not indicate what that "status" was.
- On September 26, 2017, claimant's mother e-mailed that neither she nor PRIDE had received a response from SDRC regarding the PRIDE assessment

sent nine days earlier. She sent similar e-mails in the following days. SDRC then e-mailed her the PRIDE assessment.

- On September 27, 2017, PRIDE advised SDRC that claimant was not a good fit for ILS services and that PRIDE could not provide ILS services to claimant at that time.
- A September 27, 2017, Title 19 note documented that San Diego Community Living Services advised SDRC of claimant's mother's request for a daily report and that the agency was not sure it could continue working with claimant.
- A September 27, 2017, Title 19 note documented SDRC's request for more clarification from claimant's mother and an explanation of what she was requesting. Claimant's mother replied asking SDRC to send information to another TDS agency while claimant was still receiving TDS with San Diego Community Living Services.
- September 27, 2017, e-mails between claimant's mother and SDRC documented claimant's request for information to be sent to Community Interface Services and SDRC's confusion because SDRC understood that claimant was receiving TDS services from San Diego Community Living Services. In response, claimant's mother advised that she needed two agencies "to train [claimant's] TDS" because no agency could provide 15 hours so he was receiving six hours from one and trying to receive nine from another. SDRC replied that Community Interface Services would be unable to provide services "due to the long distance" and claimant replied requesting the ability to use two agencies. Claimant's mother stated that PRIDE advised that they had staff available to help claimant. SDRC responded that PRIDE would be unable to provide the services requested.
- On September 28, 2017, claimant's mother e-mailed SDRC requesting how many more ILS hours claimant would receive in addition to the five ILS hours

previously authorized. She requested authority for claimant to use two TDS agencies and disputed the contention that PRIDE could not provide services as PRIDE and claimant were waiting on SDRC's response to the ILS assessment. In a separate e-mail, she advised that she was contacting agencies who could provide ILS hours.

- An October 2, 2017, Title 19 note documented the internal collaboration at SDRC regarding claimant's request and ways to meet his needs. An October 2, 2017, note documented claimant's request for 15 hours of ILS services.
- On October 2, 2017, SDRC e-mails to claimant advised that two TDS agencies were not an option and sought to explore other resources and options now that the ILS assessment determined that claimant was not a good candidate for that service. SDRC provided claimant with a list of possible ILS agencies and claimant's mother replied asking how many ILS hours claimant could receive. Other e-mails from claimant also sought information regarding how many ILS hours SDRC would authorize. SDRC advised that another agency might work but that claimant would need to be assessed. In one e-mail claimant's mother instructed SDRC to send information about claimant to that agency and in another e-mail claimant's mother advised that claimant was not going through another assessment. An SDRC e-mail to claimant's mother also confirmed SDRC's discussions with PRIDE which advised that it had informed claimant that his needs exceeded his ability to receive ILS.
- On October 3, 2017, SDRC sent claimant an e-mail advising that if the request for a second TDS option was in addition to the one he currently had, then his request was denied. If claimant needed more hours than available through his current TDS program, one that supported his needs, then the more appropriate service was a day program. Information regarding a day program had previously been provided when he was with E&CO. Unfortunately, the

other two E&CO clients did not want to attend the program. SDRC found a day program that was on the same site where those classes could be provided to claimant and included in his day program activities, as claimant originally requested. The Life of Liberty contact information was again, provided. SDRC noted that "it has become increasingly more evident based on the number of hours you are requesting" that claimant is better accommodated by a day program that can meet his needs. TDS offers fewer hours because it is intended for clients who have the capability to be more independent thereby requiring less supervision at home and in the community.

- On October 3, 2017, claimant's mother sent an e-mail reply requesting receipt of a notice of action and identifying four issues. Although similar to the five issues outlined above, those five issues referenced above under the Issues section of this decision were the ones to be decided in this proceeding.
- An October 11, 2017, Title 19 note documented a telephone call between the service coordinator and Program Manager (PM) Deatriz Cook wherein PM Cook advised the service coordinator that she had approved 15 ILS hours before she was transferred. The service coordinator e-mailed claimant's mother a list of TDS agencies that might accommodate her request.
- An October 12, 2017, Title 19 note documented a call from Lifeworks [sic] that advised that claimant was requesting both TDS and ILS, but Lifeworks [sic] was unable to provide those services until later in the year or even later. Lifeworks [sic] advised that claimant's mother had stated she would be canceling her other services in anticipation of starting with Lifeworks. Lifeworks [sic] was concerned that the family would cancel services assuming they could start with Lifeworks when Lifeworks was unable to provide services at this time.
- An October 17, 2017, Title 19 note documented that SDRC responded to claimant's e-mail request regarding respite hours and e-mailed her a list of

respite agencies. Claimant also wanted information sent to St. Madeleine Sophia Center [s/c], a TDS provider.

- An October 18, 2017, Title 19 note documented that SDRC spoke with the program manager at St. Madeleine Sophia Center [s/c] who advised that the agency was not providing any respite services to claimant. Another note on that same day advised that during a telephone call, claimant's mother refused to meet for the IPP review meeting due to her pending fair hearing request.

10. A September 14, 2017, ILS assessment and plan prepared by PRIDE, Inc., documented that the target areas for claimant were: assistance with activities of daily living; physical assistance and hand over hand prompts; ongoing support for all hygiene and home care tasks; financial planning, money management, transactions and budgeting; management of medical and dental appointments; support for varied home care needs; community access; support to mitigate behavioral issues; assistance in maintaining appropriate social boundaries; and assistance with supported volunteer and employment services. The report documented an assessment of each area and claimant's needs. The conclusion noted that claimant:

[C]urrently has no ability to live independently nor possess any independent living skill [s/c]. He is completely dependent on others to maintain his personal safety, health, affix his housing and maintain his hygiene. He is not able to advocate for himself without assistance and needs prompting in order to help fulfill his needs. Without the complete support of his family and friends, as well as, generic/paid support, [claimant] would be incapable of living independently successfully. In order for [claimant] to one day live on his own, he will need significant training in all areas of

independent living. He will no doubt require supportive living services, 24 hours per day. Once he does decide to move into his own home, [claimant] would be unsafe with anything less than total support and assistance, 24 hours per day, 7 days per week.”

11. Claimant introduced a document outlining information he received on July 21, 2017, regarding the end of his day program services, the dates claimant alleges SDRC approved 15 hours per week of TDS and 20 hours per week of ILS, the hours and days claimant would have received those services, and the number of hours claimant’s mother spent in meetings and making phone calls to secure services.

12. The parties met on October 23, 2017, for an informal meeting. Mr. Kramer authored a letter to claimant following the meeting outlining the issues discussed and SDRC’s position. SDRC denied claimant’s request for additional TDS and his request for two TDS agencies to work with him to train him for 15 hours a week because the IPP planning team had not had an opportunity to meet and assess if TDS was the most appropriate program to meet claimant’s needs, discuss the plan for services, and/or discuss the IPP desired outcomes that a program would address. SDRC denied claimant’s request for eight hours each week of ILS for the same reason, but SDRC authorized claimant’s consumer services coordinator (CSC) to identify an ILS provider of claimant’s choice to work with claimant to complete an assessment of claimant’s service needs.

SDRC denied claimant’s request for reimbursement of expenses incurred while selecting TDS and ILS providers because those costs are not reimbursable. SDRC denied claimant’s request for reimbursement of expenses incurred to pay staff to provide services while claimant was not receiving TDS services funded through SDRC because those services were not rendered through SDRC and claimant’s decision to hire staff was

made outside the scope of the IPP planning team process. Additionally, SDRC further noted that it can only fund services by approved, vendored providers and claimant's family is not an SDRC vendor.

TESTIMONY OF THE WITNESSES

13. Linda Livingston, SDRC's resource coordinator, specializes in vendoring services at SDRC, knowing what services are supposed to be provided, and ensuring quality control. She testified that each regional center defines ILS and supported living services differently; SDRC authorizes supported living services (SLS) for consumers who do not live in their parent's home, but live independently; ILS can be provided for consumers who live in their parent's home. Here, claimant resides in his parent's home so would not qualify for SLS, but may be eligible for ILS. Ms. Livingston described the PowerPoint slide presentation used for training purposes to explain ILS. Ms. Livingston explained that ILS hours are determined based upon the skill that is going to be worked on with the consumer, the consumer's motivation and the number of hours appropriate to learn that skill. Ms. Livingston also described the vendorization program as provided in the Title 17 regulations and testified that claimant's parents are not vendored as ILS providers.

14. John Filley, SDRC's resource specialist, described the TDS program, which was created by a trailer bill in 2011. TDS was intended to provide a means for consumers to work and/or realize individualized goals and dreams rather than attending a day program. The TDS may not exceed 80 percent of the cost of a day program. The maximum number of TDS hours allowed is 15 hours per week and there are only two facilities that offer that program. Because the hourly rate is so low, those two facilities had difficulty recruiting and hiring staff and have ceased taking referrals of new clients. Currently, the maximum number of hours of TDS available is eight hours per week with

a cap of 37 hours per month. Mr. Filley described the TDS vendor program, noting that claimant's family is not a TDS vendor.

Mr. Filley described a planning meeting regarding claimant's difficulty attending college classes with Life of Liberty and that he wanted to switch to Mira Costa College. However, the other two SDRC consumers at Liberty did not want to participate in these classes.¹ Coincidentally, Mr. Filley had recently met with an individual who indicated that she was in the process of working with Mira Costa to provide a similar program at Mira Costa as was being offered at Liberty. However, she was still in the process of creating that program. Currently, the Liberty program is vendored by SDRC; there is no vendored program yet at Mira Costa. Mr. Filley sent a follow up e-mail about the possibility of a new program at Mira Costa and discussed the possibility of providing ILS hours to assist claimant during the transition while the parties worked together. At no time during his discussions with claimant was respite requested, the only services discussed were TDS and ILS; only a maximum 15 hours per week of TDS could be provided but the vendor did not have the staff to offer that service to claimant. Mr. Filley requested the Mira Costa Basic Academic Skills calendar referenced above but claimant did not attend those classes. The Mira Costa syllabus referenced above outlined the program in which claimant was enrolled that ended in December 2017.

15. Deatriz Cook, a SDRC Program Manager, testified about her involvement with this matter and her discussions with claimant's parents. Her testimony was consistent with the documents introduced. During the discussions, claimant's parents expressed how their son was more independent and needed different services so he

¹ It was not clearly established why the participation of the other two SDRC consumers would affect claimant's ability to participate at Mira Costa. However, that testimony did not factor into the decision reached herein.

became a client of E&CO, which was a better fit than his previous day program. All appeared to be going well until claimant wanted to attend Mira Costa College. At the time, he was in a group of three SDRC consumers and the other two consumers did not want to take those classes so claimant's request "could not happen." SDRC began looking for other classes for him but claimant's mother was insistent that she wanted him to attend Mira Costa College. Discussions evolved into investigating the possibility of ILS but the assessment determined that ILS would not meet claimant's needs. However, by the time of the assessment, claimant's parents had already pulled him out of E&CO and were requesting TDS and ILS even though there had not been a planning meeting to make that determination. After the planning team meeting on August 15, 2017, where the various programs were explained, Ms. Cook approved claimant's request for 15 hours per week of TDS without realizing that there was no such program available. Thereafter, as the e-mails documented, SDRC was trying to understand claimant's requests and looking for alternative programs, but none worked out. After learning of the unavailability of the various programs being researched, Ms. Cook requested a planning team meeting so they could determine services to meet claimant's needs, but they were not able to have that meeting.

Ms. Cook described the need to perform assessments before claimant could be enrolled in requested programs. She also described the need for an individual to be vendored in order for payments to be made. Claimant's family is not a vendor so his request for reimbursement for providing services to him was denied. Also, regional centers do not reimburse families for time spent researching available programs and services, so claimant's request for reimbursement for that time was also denied.

16. Claimant's parents described the great amount of time that they spent providing services for claimant since August and the many hours they have spent researching various agencies to provide services to their son and their follow-up with SDRC about services and programs. Claimant's father described the great stress the

family has experienced and the time he has missed from work in order to care for his son. He praised his wife for her service and described his great love for his son, whom he called a blessing. The parents described how claimant's day program was canceled so they requested additional TDS to meet his needs. They did not pull their son out of the day program; they received a certified letter indicating that his last day of services would be July 21, 2017. At the August 15, 2017, meeting, 15 hours of TDS were approved so they do not know why that service has not been provided. Claimant does not require any additional assessments before services are provided and they want the services he is entitled to receive implemented. They described their work with the agencies, mapping out a schedule for their son, and SDRC's refusal to fund those services. Claimant's mother described the hours of services approved, the hours she was seeking and how she calculated her request. She described the long delay in receiving services and how she calculated her request for reimbursement. Claimant's mother's testimony was consistent with the documents she introduced.

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LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive,

normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be 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 Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

5. Welfare and Institutions Code section 4646 provides in part:
 - (a) It is the intent of the Legislature to ensure that the [IPP] and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provisions of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices

of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

[] . . . []

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

[] . . . []

6. Welfare and Institutions Code section 4646.4 requires the regional center to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

7. Welfare and Institutions Code section 4646.5, subdivision (a), provides:

The planning process for the individual program plan described in Section 4646 shall include all the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increased control over his or her life, acquire increasingly

positive roles in community life, and develop competencies to help accomplish these goals.

8. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer's individual program plan. . .

[] . . . []

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, when appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

[] . . . []

(8) Regional Center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

[] . . . []

(16) Notwithstanding any other law or regulation, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. . . .

9. Welfare and Institutions Code section 4648.5 suspended the regional centers' authority to purchase various services including nonmedical therapies, which included but were not limited to, specialized recreation, art, dance, and music.

10. Welfare and Institutions Code section 4659 requires the regional center to identify and pursue all possible sources of funding including, but not limited to, governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, federal supplemental security income and the state supplementary program, and private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. Subject to certain limitations, regional centers shall not purchase any service that would

otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. This section "shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay."

11. Welfare and Institutions Code section 4688.21 provides in part:

(a) The Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. To further these goals, a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vendor day program, look-alike day program, supported employment program, or work activity program.

(b)(1) A tailored day service shall do both of the following:

(A) Include an individualized service design, as determined through the individual program plan (IPP) and approved by the regional center, that maximizes the consumer's

individualized choices and needs. This service is designed may include, but not be limited to, the following:

(i) Fewer days or hours than in the program's approved day program, look-alike day program, supported employment program, or work activity program design.

(ii) Flexibility in the duration and intensity of services to meet the consumer's individualized needs.

(B) Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life.

(2) The type and amount of tailored day service shall be determined through the IPP process, pursuant to Section 4646. . . .

(Emphasis added.)

EVALUATION

12. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating his need for the requested services. As to each issue the following determination is made:

Issue No. 1 – Claimant's request for 15 hours of TDS that were approved at the August 15, 2017, meeting with SDRC representatives:

Although the SDRC did not dispute that it authorized 15 hours of TDS, the evidence established that no program is available to provide that service. SDRC has been researching alternative options to no avail. In the interim, an ILS assessment documented claimant's extensive needs making a TDS program unsuitable. Claimant bore the burden of proof and did not demonstrate that a TDS program is currently available. Accordingly, claimant's request is denied.

Issue No. 2 – Claimant's request for reimbursement for all costs incurred since August 15, 2017, to procure or provide TDS:

The evidence did not establish that SDRC denied claimant's request, rather there was no program available. In that scenario, he would have no option but to provide the services himself. In addition, neither claimant nor his family is an SDRC vendor. Thus, they cannot be retroactively reimbursed for costs incurred. Accordingly, claimant's request is denied.

Issue No. 3 – Claimant's request for two TDS agencies to work with him for a total of 15 hours per week and/or SDRC fund two agencies to provide a total of 15 hours per week of tailored day services:

SDRC explained that it is prohibited from using two TDS agencies to provide TDS. Claimant bore the burden of demonstrating that SDRC can use two TDS agencies and failed to do so. Moreover, the purpose of TDS is to serve consumers who do not have as many needs as a day program consumer. The evidence established that claimant has significant needs that cannot be addressed by a TDS program. He is not suitable for a TDS program at this time. Accordingly, claimant's request is denied.

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Issue No. 4 – Claimant's request for an increase of five hours per week in his Independent Living Services:

The evidence established that claimant's needs preclude him from receiving ILS services at this time. Claimant bore the burden of demonstrating that he is eligible for ILS and failed to do so. Accordingly, claimant's request is denied.

Issue No. 5 – Claimant's request that SDRC fund an additional 20 hours per week of ILS funded as of October 3, 2017:

The evidence established that claimant's needs preclude him from receiving ILS services at this time. Claimant bore the burden of demonstrating that he is eligible for ILS and failed to do so. Accordingly, claimant's request is denied.

ORDER

Claimant's appeal from the San Diego Regional Center's determination regarding the five issues outlined above is denied. San Diego Regional Center shall not fund those requested services or reimburse claimant the requested costs/expenses.

DATED: January 9, 2018

MARY AGNES MATYSEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.