

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

In the Matter of the Fair Hearing Requests of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2021020591 (Primary)

OAH No. 2021030880 (Secondary)

DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on May 12 and 13, and June 2, 2021.

Keith Dobyms, Attorney at Law, represented the Regional Center of Orange County (Service Agency or RCOC). Claimant was represented by Carla Lehmann, advocate. Spanish interpretation was provided for Claimant's mother. (Titles are used to protect confidentiality.)

Oral and documentary evidence was received. The record remained open until June 16, 2021, for filing of closing briefs, which were received and marked for identification as follows: Service Agency, Exhibit 24, and Claimant, Exhibit XX. The record closed and the matter was submitted for decision on June 16, 2021.

During the hearing, the ALJ informed the parties that translations from Spanish to English of several exhibits would be added to the record when received. More specifically, the translated versions of exhibits 1, 2, B, C, D, and E have been added to the original versions of these exhibits.

ISSUES PRESENTED

1. Should the Service Agency provide extra funding for 40 extra hours of respite related to Claimant's mother's emergency travel week and time for quarantine?
2. May Claimant use funds from the approved Self-Determination Plan certified budget to purchase a trampoline, a treadmill, and an iPad?

EVIDENCE RELIED UPON

RCOC's exhibits 1-24, Claimants' exhibits A-P, AA-TT, VV, and XX, and testimony of Linda Arango, Verina Rocero, Veronica Tafolla Ramirez, Keli Radford, Lourdes Gomez, Carla Lehmann, and Claimants' mother.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 11 and a half years old. He is a consumer of the Service Agency who lives in the family home with his mother, father, and two older siblings. Based on his diagnosis of autism, Claimant receives services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act).¹

2. In emails in December 2020 and a planning team meeting on January 15, 2021, mother requested funding for 40 hours of respite related to her trip to Peru from December 28, 2020, through January 3, 2021, and time for quarantine upon her return.

3. On January 25, 2021, RCOC sent a Notice of Proposed Action (NOPA) and a letter to mother indicating the request for respite was denied, for the reasons discussed below. (Exhibit 4.)

4. On February 9, 2021, mother filed a Fair Hearing Request for Claimant. (Exhibit 1.)

5. On February 5 and 9, 2021, mother requested funding for purchase of a trampoline, a treadmill, and an iPad for Claimant.

¹ All further statutory references are to the Welfare and Institutions Code (Code) unless otherwise indicated.

6. On February 26, 2021, RCOC sent a NOPA and a letter to mother indicating the request for funding to purchase a trampoline, a treadmill, and an iPad was denied, for the reasons discussed below. (Exhibit 5.)

7. On February 22, 2021, mother filed a Fair Hearing Request for Claimant. (Exhibit 2.) The matters were consolidated for hearing.

Claimant and the Self-Determination Program

8. Claimant's requests for services are to be viewed in the context of his participation in the Self-Determination Program (SDP) for receipt of services from RCOC. After Claimant was chosen for participation in the SDP, a spending plan was initially prepared, and the plan was approved by his parents on August 19, 2020. (Exhibits 17, FF.) The concept of the SDP is to take the total amount paid by the Service Agency for services for the prior year and allow the family to determine how that same amount would be spent for services for the next year. RCOC expenditures for Claimant from October 2018 to September 2019 were for in home respite only, in the total amount of \$12,252.07. (See Exhibit GG.) According to Claimant's Individual Program Plan (IPP) from a meeting on December 13, 2019, the services he was receiving were ABA in-home behavioral services funded by private insurance, a special education program from his school district, In-Home Support Services (IHSS) with protective supervision of 230 hours per month with his mother as the provider, and agency respite of 30 hours per month funded by RCOC. (Exhibit 6.)

9. A series of planning team meetings and addenda to the IPP occurred from March through September 2020, effectively increasing and extending respite and adding other services as Claimant was transitioning into the SDP. (Exhibits 7 through 12.) Respite services were increased due to changed circumstances including the

effects of COVID-19, Claimant's challenging behaviors and increased need justifying behavioral respite, and a gap before extended school year services from his school district. An IPP addendum approved increasing payment for Ms. Lehmann to serve as Claimant's Person Centered Planner. The IPP Addendum dated September 4, 2020, which coincided with the start of Claimant's participation in the SDP, included Service Agency funding for behavioral respite, in-home respite by an agency and an individual, transportation, financial management service (FMS) fees, community integration supports, independent facilitator fees, personal emergency response systems, and family/person served training, in a budget not to exceed \$30,210.68. (Exhibit 13.)

10. Claimant's initial spending plan, as of August 19, 2020, was based on a budget of \$30,250.22.² (Exhibits 17, G, FF.) Expected expenditures are listed in budget categories. As relevant to these matters, respite was divided into two categories, one for respite provided by an agency (\$7,488 allocated for 312 hours at \$24 per hour per 12 months), and the other for respite provided by an individual (\$7,731.98 allocated for 312 hours at \$21 per hour per 12 months). The category of Employment & Community Participation included the description of Community Integration and Supports for several activities, including but not limited to: swimming class, \$2,148.26; equine therapy, \$1,300; trampoline park, \$480; individual [otherwise not described], \$4,602.44, and sports class, \$960.

² The difference of \$39.54 between the submitted budget and the approved spending plan was not completely explained. Keli Radford, RCOC's Director of Services and Supports, testified it meant \$39.54 was budgeted but not utilized in the spending plan.

11. The FMS prepared a Monthly Budget Report for the month of December 2020, indicating the amount used to that point, about four months into the SDP, of \$6,343.93, and a remaining, unused budget of \$23,866.75. (Exhibit I.) As relevant here, for respite, \$5,585.77 had been used of an authorized total of \$15,219.98, and for Community Integration Supports, \$333.16 had been used of an authorized total of \$11,050.70.

12. The FMS prepared a Monthly Budget Report dated May 7, 2021, indicating the amount used to that point, about eight months into the 12-month SDP, of \$16,226.19, with a remaining, unused budget of \$13,984.49. (Exhibit O.) As relevant here, for respite, \$11,497.25 had been used of an authorized total of \$15,219.98. The remaining, unused total for respite was \$3,722.73. For Community Integration Supports, \$2,040.19 had been used of the authorized total of \$11,050.70, leaving an unused remainder of \$9,010.51.

Respite Request Related to Mother's Trip and Quarantine

13. In March 2020, Claimant's mother learned that her mother, Claimant's grandmother was ill. Grandmother lives in Peru and in August 2020 mother purchased a ticket for airfare. Due to the pandemic mother changed the flight and flew to Peru December 28, 2020, returning on January 3, 2021. On December 14, 2020, mother requested added respite, seven days, ten hours per day, for her time away. (Exhibit C.) Before mother returned, the Los Angeles County Department of Public Health imposed a requirement for travelers to quarantine for 10 days upon arriving in Los Angeles County, effective December 30, 2020. (Exhibit G.) Upon mother's return she was required to quarantine, increasing her time away from her family. After a negative COVID test, mother returned to the family on January 9, 2021.

14. Mother contends 95 hours of respite had been used from December 28, 2020, through January 8, 2021, not including weekends (January 2 and 3, 2021) and holidays (January 1, 2021). The family requested RCOC to “return” or “reimburse” Claimant’s budget for 40 hours of the respite; the family first contended it used Claimant’s budget to fund 45 hours of the 95-hour total amount, but, inconsistently, the family claimed they assumed responsibility for the 45 hours. (Claimant’s Closing Brief, Exhibit XX, p. 2.) RCOC requested documentation of the hours used/paid, but no documentation was submitted by the family until May 2021, when the exhibits were exchanged for the hearing. Claimant submitted exhibit P, a schedule of hours of respite used from December 28, 2020, to January 9, 2021, showing 49 hours provided by “Agency” and 40 hours provided by “Aveanna.” (“Aveanna” is the FMS; it is inferred that this is in the category in Claimant’s spending plan for respite provided by an individual.) RCOC noted that the schedule was not provided timely and does not include sufficient detail. RCOC requested time sheets or other payroll records to support the respite hours for which Claimant seeks extra funding. No additional documents were provided by Claimant.

15. Claimant requested the 40 hours of respite based on an emergency and based on a change of circumstances. In the past, mother requested and received 40 extra hours of respite in December 2018 for her emergency travel. (Exhibit E.)

16. A planning team meeting was convened on January 15, 2021, and the respite request was discussed. As noted in the letter accompanying the NOPA, RCOC had reviewed budget reports from September through December 2020 and noted there were unused funds in the categories for respite and community integration. (Exhibit 4.) RCOC recommended those funds be used to cover respite for the period of mother’s trip. The family agreed to provide the schedule for the respite that was used

and for which reimbursement was requested. RCOC informed parents if they were going to run short of respite funding towards the end of the budget year (August 2021), RCOC could revisit the request for extra respite funds at that time. Further, RCOC agreed to add respite funds for 10 hours of support for Claimant due to his school conducting a week of distance learning for the five days from January 4 to 8, 2021, two hours per day. However, this amount was never added to Claimant's budget in the form of respite. Rather, Claimant proposed to use these and other extra funds to purchase equipment (see more detail below).

17. At a date not established by the evidence, RCOC approved adding about \$5,000 to Claimant's budget for additional support because Claimant's school district continued his distance learning.³ In a proposed spending plan budget dated January 27, 2021, with a total budget amount of \$35,540.11, Claimant added funds for respite, and to purchase an iPad, trampoline, and treadmill. (Exhibit 15.) More specifically, for the remaining nine months of the budget, proposed funds for respite (Agency) were \$9,120, with \$2,208 listed as "used," and proposed funds for respite (Individual) were \$9,762.70, with \$1,302.43 listed as "used." There was no testimony with any more explanation of these budget categories and amounts, and it cannot be determined

³ Although written budget adjustments that added over \$5,000 to Claimant's budget were approved by RCOC on February 10, 2021 (see Factual Finding 18), Claimant's parents added over \$5,000 to the proposed plan budget in January 2021, as noted here, and for different uses. The evidence at the hearing did not explain how parents became aware of the extra funds in January before RCOC certified the budget adjustments in February.

how much respite funding was added to the prior budget amounts.⁴ This proposed budget also had entries under the category "Employment & Community Participation," including \$1,200 for classes (sports, swimming, piano, equine therapy), \$1,200 for an iPad and accessories, \$3,000 for a trampoline and accessories, and \$800 for a treadmill and accessories. The classes were similar to entries in the previously approved budget (see Factual Finding 10). The iPad, trampoline, and treadmill were included for the first time, and were assigned service code 333 for Participant-Directed Goods and Services, discussed further below.

18. On February 10, 2021, RCOC certified adjustments to Claimant's annual budget which increased the total budget amount from \$30,250.22 to \$35,807.42. (Exhibit GG.) The adjustments followed planning team meetings/IPP meetings February 5 and 9, 2021. Of relevance are four services listed in a budget category titled "Change in Need": (A) "Personal Assistance," explained as an increase from 30 to 43 hours per month of support, which appears to relate to an increase in behavioral respite; (B) "Personal Assistance," explained as respite, eight hours per week; (C) "In-Home Respite Agency-Loss of Generic Res," explained as 10 hours per week for the months September through November 2020 due to the loss of school as a generic resource; and (D) "In-Home Respite Agency," described as adding 10 hours for distance learning for the period January 4 through 8, 2021.

⁴ The initial budget approved in August 2020 included a total of \$15,219.98 for 12 months of planned respite. (Factual Finding 10.) This new budget in January 2021 included a total of \$18,882.70 for the remaining nine months of the budget, with some described as "used."

19. In his closing brief, Claimant raises the concern that, at his current rate of use of respite funds, the unused total for respite of \$3,722.73 as of the beginning of May 2021 would not cover his needs for respite for the last four months of his SDP.⁵ Claimant relied upon the Monthly Budget Report dated May 7, 2021 for this amount. (See Factual Finding 12.) However, the increased amounts of respite funding included in the adjustments certified by RCOC in February 2021 (see Factual Finding 18) are not included in Claimant's computation of the remaining respite funds. As depicted in their proposed spending plan budget in January 2021, Claimant's parents did not agree to utilize the funds in the manner included in the adjustments certified by RCOC in February 2021.

20. RCOC contends Claimant is able to request more respite if/when the budget amount is expended, and also, under the SDP, Claimant has the ability to transfer up to 10 percent of the budgeted amount for Community Integration Supports (i.e., \$1,050) unilaterally, without RCOC approval, to the respite category, under Code section 4685.8, subdivision (o). As noted above, and discussed in more detail below, Claimant has other plans for the unused funds in the Community Integration Supports category, including new services and the purchase of an iPad, a trampoline, and a treadmill.

⁵ Claimant did not submit detailed evidence of his then-current rate of use of respite funds. Based on the annual spending plan described in Factual Finding 10, total annual respite funds (\$15,219.98) divided by 12 months computes to an average of \$1,268.33 per month, or \$5,073.32 for the four months (May through August 2021) until the end of the annual spending plan. However, the May 2021 report indicated only \$3,722.73 remained unused.

Request for iPad, Trampoline, and Treadmill

21. In the letter accompanying the NOPA, RCOC noted the requests for an iPad, trampoline, and treadmill were included in the family's proposed budget in January 2021 and were discussed at IPP meetings on February 5 and 9, 2021. (Exhibit 5.) The letter reflects the trampoline is used for fun and reinforcement, as Claimant enjoys it. The family had purchased a trampoline, but it was described as old and damaged. A membership in a trampoline park also allowed for recreation, exercise and socialization. Claimant used the treadmill to relax before going to bed and for help with sleeping difficulties during the night. The treadmill had been given by a friend, but it no longer worked and was discarded. The current iPad was old and could not accommodate new applications, such as a desire to use Face-Time to communicate with family members.

22. In the letter accompanying the NOPA, RCOC denied funding because Claimant's IPP and his Person Centered Plan indicated he already had the equipment; he had the use of an iPad from his school and used a treadmill at school; the equipment was considered a regular parental responsibility; the equipment was not specialized or adapted Claimant's specific use; the equipment was not identified as part of a systematic plan to address Claimant's unique needs related to his disability; and the expenses for the trampoline and treadmill did not comply with the Home and Community-Based Services Waiver Final Rule, as they would be used in a private home.

THE IPAD

23. Claimant uses iPads for different purposes. His school district provides an iPad mini with an assistive communication program, described generally as an

augmented alternative communication device. There was conflicting evidence, some indicating Claimant brings the iPad mini home, other evidence that it stays at school. The school district has understandably blocked loading any other programs on the iPad mini other than as approved by the district. At school, use of the iPad mini is also part of the Behavioral Intervention Plan for Claimant. (Exhibit LL.)

24. Claimant's parents have purchased several iPads for him over the years, as Claimant's needs and capabilities have changed and as the technology has changed. His current personal iPad is described as old and obsolete, without room for more programs or applications. Removing existing applications, to make room, is not preferred, as Claimant gets upset if an application he wants to use is missing. Claimant's parents would like to purchase a larger iPad as it would be easier for Claimant to see the screen, and a new model with increased memory would allow more programs to be used.

25. There are several uses for Claimant's iPad. He is better able to regulate his maladaptive behaviors if the iPad is available for him. Therefore, it is easier to take Claimant in the car or into the community. It is also a preferred activity used to motivate positive behavior. For example, the iPad is used by therapists during Claimant's ABA therapy, along with other reinforcers. It is used to prompt a request from Claimant, and to teach patience, such as to increase his use of his eyeglasses. Mother stated if Claimant had a new iPad, she would have used it to communicate with Claimant while she was in Peru.

26. Claimant contends his family cannot afford to purchase a new iPad (or trampoline or treadmill) and lists several reasons in his Closing Brief. (Exhibit XX, p. 10.) Unfortunately, other than a reference to Claimant's parents' divorce and his father

starting a new job, there was no evidence submitted to support the other claims of financial strain listed in the brief.

27. In its closing brief, RCOC contends it cannot provide funds for the iPad because (A) it is not specialized or adapted for Claimant's developmental disability, (B) it is a usual parental responsibility to provide such technology for a child, and (C) iPads are utilized by Claimant's school and in his ABA therapy, so generic resources such as the school district and his Medi-Cal coverage had to be exhausted first before RCOC could consider providing funding. RCOC contends further the iPad, trampoline, and treadmill do not meet the requirements of permissible Participant Directed Good and Services in an SDP, discussed in more detail below.

THE TRAMPOLINE

28. Claimant uses a trampoline at home and in school for different purposes. Claimant's special education teacher, Verina Rocero, testified to the educational benefit in school and recommended its use at home in an email. (Exhibit II.) Claimant's ABA therapist, Board Certified Behavior Analyst Linda Arango, testified that the trampoline was used as a reward tool to obtain compliance and achievement and for other purposes during ABA therapy.

29. Claimant's parents purchased their first home trampoline about seven years ago. The present trampoline is about three years' old. It has been used for different purposes, some unrelated to school and ABA. It provides recreation and exercise and is an activity favored by Claimant. Claimant has gained weight, was diagnosed with medical conditions, and will benefit from increased physical activity. The trampoline is old, worn, and has a hole in the surface. Claimant's parents would like to purchase a trampoline that is larger and has safety features such as covers for

the springs and safety netting, and a cover to prevent exposure. There was no evidence of a particular model of trampoline or any adaptations specific to Claimant's disability.

30. In its closing brief, RCOC contends it cannot provide funds for the trampoline because (A) it is not specialized or adapted for Claimant's developmental disability, (B) it is a usual parental responsibility to provide such equipment for a child, (C) there was insufficient evidence the family lacks the funds to purchase the equipment, and (D) the trampoline is used for purposes listed in Claimant's school program and as a resource for his ABA therapy, and the family has not requested funding from the school district or Medi-Cal.

THE TREADMILL

31. Claimant uses a treadmill at home and in school for different purposes. Claimant's special education teacher testified to the educational benefit in school and recommended its use at home. (Exhibit II.)

32. The family received a used treadmill from a friend. Claimant would use the treadmill before going to bed and also when he woke up in the middle of the night. The treadmill became non-functioning and was removed from the home. The family is concerned that it is not safe for Claimant to walk outside the home, and Claimant has a fear of the dark. Further, Claimant has better control of his activity, weight, and snacking when he is able to use a treadmill.

33. There was no evidence of a particular model of treadmill or any adaptations specific to Claimant's disability.

34. In its closing brief, RCOC contends it cannot provide funds for the treadmill because (A) it is not specialized or adapted for Claimant's developmental disability, (B) it is a usual parental responsibility to provide such equipment for a child, (C) there was insufficient evidence the family lacks the funds to purchase the equipment, and (D) the treadmill is used for purposes listed in Claimant's school program, and the family has not requested funding from the school district.

Claimant's IPP

35. Claimant's most recent IPP in evidence is dated February 5, 2021. (Exhibits K, DD, 14.) It is unsigned. Plans in the IPP include using Claimant's self-determination budget to purchase an iPad, trampoline, and treadmill.

36. In the section "How I Have Fun," the IPP refers to Claimant's use of the iPad and its benefits. (*Id.* at pp. 11-12.) The iPad is over four years' old and programs cannot be added or updated. Claimant uses the iPad to help him relax, reinforce behaviors, practice vocabulary and forming sentences, and for help in finding other ways to communicate. Due to astigmatism, he needs a larger screen. Desired outcomes include using Face-Time to socialize with family and friends.

37. In the section "Health," the IPP refers to Claimant's use of the trampoline and its benefits. (*Id.* at pp. 5-6.) Claimant's father informed RCOC the family could not afford to buy a trampoline. When RCOC questioned the inclusion of the trampoline purchase in the category of community participation because a trampoline at home would not encourage community participation, the facilitator stated the category would be changed to health and safety. The desired outcome includes use of the trampoline to increase Claimant's physical activity and decrease his anxiety and his need to snack during the day.

38. In the section "Self Direction," the IPP refers to Claimant's use of the treadmill and its benefits, which are noted above. (*Id.* at pp. 10-11.) After the treadmill was removed, father would walk outside with Claimant when he was available, but due to Claimant's maladaptive behaviors, a second person is needed to accompany Claimant in the community. Claimant is afraid of the dark, and walking at night is not safe, which limits walks outside the home. Having a treadmill would decrease non-compliance, elopement, and resistive behaviors.

"Welcome to Self-Determination" Booklet

39. A booklet titled "Welcome to Self-Determination" includes basic descriptions and definitions designed to assist in understanding and implementing the SDP. (Exhibit 23.) It is instructive on some subjects relevant to this matter. Under Code section 4685.8, subdivision (s), DDS was required to develop informational materials about the SDP.

40. In Module 4: My Individual Budget, changes to the budget are described as the result of an unmet need or a change in circumstance. (*Id.* at p. 71-73.) Unmet needs include needs not addressed in the IPP, which might result in an IPP meeting and an increase in the budget based on an identified service need. A change in circumstance is described as a change in life resulting in a change in needs.

41. Module 5 addresses services and the spending plan, including budget categories. (*Id.* at pp. 89-146.) To be included in a spending plan, a service must be approved. Generic services are defined as free services to those who qualify and are available from school districts, insurance or Medi-Cal, or other listed sources. The participant must try to get generic resources first, which is the same requirement as in

the traditional regional center system. It might be necessary to produce a letter to show the participant pursued a generic resource. (*Id.* at pp. 93-95.)

42. The three budget categories are Living Arrangement (supports in the home), Employment & Community Participation (supports in the community), and Health & Safety (services to keep the person healthy and safe). (*Id.* at pp. 99-146.) Each category has services that are assigned service codes. iPads can be included in the category Employment & Community Participation under the service of Technology, code 338. Also in the category Employment & Community Participation under service code 333 are Participant-Directed Goods and Services, which includes equipment not otherwise provided through the SDP Waiver or Medicaid that addresses an identified need in the IPP and that meet these requirements: the item would decrease the need for other Medicaid services; promote interdependence, inclusion in the community, and increase the person's safety in the home; and there are insufficient personal funds for purchase and the item is not available through another funding source. There is no specific reference to items such as a trampoline or treadmill in any budget category.

43. Under the Home and Community-Based Services "Final Rule" Requirement, the services must be provided in places where the participant is included in the community. (*Id.* at pp. 102-105.)

44. In his proposed spending plan signed January 27, 2021 (Exhibit 15), Claimant proposes to add the iPad, trampoline, and treadmill under service code 333, which, as noted above, can be used for Participant-Directed Goods and Services.

Claimant's Additional Contentions, and Other Evidence

45. In the closing brief, Claimant refers to a directive from the Department of Developmental Services (DDS) dated January 11, 2019. (Exhibit XX, pp. 3-4.) This directive was not submitted as evidence at the hearing.

46. Claimant has many maladaptive and severe behaviors. He also has other limitations based on his disability, and has medical conditions including pre-diabetes, obesity, and fatty liver. The school district and RCOC have performed assessments and evaluations, and plans have been instituted to address Claimant's behaviors and limitations, including different interventions. The school district addresses use of the iPad, treadmill, and trampoline. When the home trampoline became damaged and could not be used, Claimant did not understand why and became frustrated.

47. Due to pandemic restrictions, Claimant could not attend some activities included in the spending plan and budget. Claimant's mother testified they do not want to reallocate the unspent budget amounts because activities began to open again in April and May 2021. Also, the family wants some funds available for Claimant to use the Neurofit program and other possible, but unspecified, integrations into the community.

48. The trampoline park was closed during the pandemic and Claimant could not use his budgeted membership. Since reopening, Claimant's parents have taken Claimant there but experienced problems. Claimant is not vaccinated, and his parents express concern he is at risk of contracting COVID-19. Other children at the trampoline park do not consistently wear masks. Claimant removes his mask or won't wear it, and he touches many surfaces and puts his fingers in his mouth. Parents are therefore

unwilling to use the trampoline park membership as they had before the pandemic began.

49. Claimant contends the iPad, trampoline and treadmill are not available from generic sources but has not requested the school district or Medi-Cal to provide the equipment.

50. Claimant contends the equipment complies with the Home and Community-Based Setting (HCBS) final rule (Exhibit VV), and that RCOC has no authority to deny purchasing these items unless it violates the HCBS rule or there is a health and safety concern.

51. Claimant contends the equipment is included under the SDP and can be purchased under the SDP waiver. The SDP waiver for individuals with developmental disabilities offers home and community-based services not otherwise available through a participant's Medicaid program, serving participants in their homes and communities as an alternative to receiving services in a care facility.

52. Mother expressed reasonable concerns about her son's services and supports. She is knowledgeable about his rights and works actively to support the community of individuals with developmental disabilities.

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LEGAL CONCLUSIONS

The Lanterman Act

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s denial of funding for extra respite hours and for purchase of equipment. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his funding requests.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) 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.” (Code, § 4501.)

4. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as regional centers, to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Code, § 4620.)

5. A consumer’s needs and goals, and the services and supports to address them determined through the IPP process, are described generally in Code section 4512, subdivision (b), which states in part:

“Services and supports for persons with developmental disabilities” means specialized 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 an independent, productive, and normal life. 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.

6. Use of the IPP process to determine the services to meet the needs of a consumer is referenced in Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan 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 provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in Code section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and school districts, and private entities such as insurance. (*Id.*, subdivision (a)(1) and (2).)

Code section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources. And under Code section 4648, subdivision (a)(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.

Further, RCOG is mandated to ensure the effective and efficient use of public resources and detect and prevent waste and abuse in the utilization of public funds. (Code, § 4620.3, subdivision (b).)

8. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in section 4659. (Code, § 4646.4, subd. (a).) RCOG is also required 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. (*Ibid.*)

9. Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

The Self-Determination Program

10. Code section 4685.8, subdivision (a), provides:

The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. . . .

11. Self-determination gives the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Code, § 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (Code, § 4685.8, subd. (b)(2)(F).)

12. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Code, § 4685.8, subd. (d)(3)(B).)

13. The SDP requires participants to “only purchase services and supports necessary to implement his or her IPP” (Code, § 4685.8, subd. (d)(3)(C).)

14. When a consumer is in the SDP, the IPP team is to develop the plan, utilizing the person-centered planning process. (Code, § 4685.8, subd. (k).)

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15. Code section 4685.8, subdivision (l) provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5.⁶ A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

16. Code section 4685.8, subdivision (n), provides:

(1) The IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A) (i) Except as specified in clause (ii), for a participant who is a current consumer of the regional center, their individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant.

⁶ Under Code section 4648.5, regional centers' ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended.

(ii) An adjustment may be made to the amount specified in clause (i) if both of the following occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the Self-Determination Program.

[¶] . . . [¶]

(2) The amount of the individual budget shall be available to the participant each year for the purchase of program services and supports. An individual budget shall be calculated no more than once in a 12-month period, unless revised to reflect a change in circumstances, needs, or resources of the participant using the process specified in clause (ii) of subparagraph (A) of paragraph (1).

17. SDP participants and their families have the authority to make decisions about the services and support they need in their lives (Code, § 4685.8, subd. (z)(B))

and allow the participant to decide how they want to spend their time. (Code, § 4685.8, subd. (z)(3)(A).)

Claimant's Request for Respite Funds

18. Claimant did not submit sufficient evidence to support extra funding for 40 hours of respite related to Claimant's mother's travel week and time for quarantine, for several reasons.

19. First, the respite request was not accompanied by sufficient and consistent documents and explanations. At the IPP meetings in February 2021, the family agreed to submit a schedule of respite hours used so RCOC could analyze the basis for the request. However, no schedule was provided until May 2021 as a possible exhibit for the fair hearing. Although parents claim a total of 95 hours of respite was provided, the schedule depicts 89 hours of respite. The family stated at one point it was paying for the portion of respite it did not request from RCOC, however the schedule indicates payment for that portion came from Claimant's SDP budget.

20. The claim that Claimant was using respite funds at a rate whereby the budget set aside for respite would be exhausted was also not supported by sufficient evidence. There was no explanation of Claimant's increased need for respite and no documentation relating to it other than the May 2021 monthly budget report.

21. As noted by RCOC, Claimant is able to move up to 10 percent of a budgeted amount from one category to another, which could permit funds to be transferred for respite. If Claimant was still in need of additional respite funds after the transfer, a request could be made to RCOC for this purpose.

22. The addition of over \$5,000 to Claimant's approved funds in January/February 2021 was for different categories of respite. However, Claimant did not propose to spend those funds for respite, instead budgeting the funds to purchase equipment.

23. Claimant did not establish the circumstances related to mother's travel were a change in Claimant's circumstances such as would support added services. As described in the Welcome to Self-Determination booklet, a change in circumstances is of a more permanent nature affecting an ongoing change in Claimant's needs.

Claimant's Request for Funds to Purchase Equipment

24. Claimant did not submit sufficient evidence to support funding for purchase of an iPad, a trampoline, and a treadmill.

25. Claimant's assertion that RCOC can approve the SDP budget without requiring him to first seek authorization from generic or available resources is incorrect based on Code section 4686.8, under which a certified and adjusted SDP budget should not include supports and services that generic resources must fund. This adjusted SDP budget may only include RCOC "purchase of services expenditures." (Code, § 4648.8 subd. (n)(1)(A)(ii)(I).) Section 4686.8 does not exempt SDP program participants from the requirement that consumers must seek out such resources before regional centers are required to authorize services or supports available to a consumer as "other resources" under Code section 4659, subdivision (c). These other resources include the school district, Medi-Cal and private insurance. (*Ibid.*)

26. Code section 4685.8's legislative scheme is clear: A regional center is to base the SDP budget on expenditures a regional center is authorized to make consistent with the Code section 4659 "generic resource" mandate. Under Code

section 4685.8, the regional center sets “the individual budget” “as the total amount of the most recently available 12 months of purchase of service expenditures for the participant.” (Code, § 4685.8, subd. (n)(1)(A)(i).) A regional center may adjust this 12-month period amount if the regional center finds in the IPP a change in circumstances based on unaddressed prior needs “which would have resulted in an increase or decrease in purchase of services expenditures.” (Code, § 4685.8 subd. (n)(1)(A)(ii)(I).) Impliedly, this “purchase of services expenditures” language can only be understood to mean *authorized* purchase of services expenditures that would have been available to claimant under the traditional delivery of service model.

27. Claimant’s assertion that his school district or Medicaid insurance will not purchase the equipment is not sufficient. The equipment purchases must be requested from generic resources, and denied by them, before RCOG can consider their purchase.

28. The iPad, trampoline, and treadmill are not specialized adaptations under Code section 4512, subdivision (b), and may not be considered as supports that RCOG may procure, except under limited circumstances, discussed below. Concerning the iPad, there is a conflict between this language and the inclusion of iPads in the category of Technology under the SDP. Without resolving the conflict, it is noted Claimant’s parents did not list the iPad under the correct service code in the proposed budget. More specifically, code 338 is assigned to Technology, but parents used service code 333, for Participant-Directed Goods and Services, for the iPad, trampoline, and treadmill. Under Code section 4685.8, subdivision (n)(3), budget items “shall be assigned to uniform budget categories” developed by DDS.

29. If parents want the iPad, trampoline, and treadmill to be considered as Participant-Directed Goods and Services, they must meet the stated requirements that

the goods “decrease the need for other Medicaid services; promote interdependence and inclusion in the community; increase the person’s safety in the home environment; and evidence a lack of funds to purchase the item.” (Exhibit 23, p. 128.)⁷

30. Claimant has not established the equipment will decrease his need for other Medicaid services. In his brief, Claimant contends they will because, with added exercise, he will have a healthier lifestyle. However, the evidence established that Claimant has used an iPad, a trampoline, and a treadmill at home and in school and nevertheless has health issues, including obesity, pre-diabetes, and a fatty liver. Although use of the iPad, trampoline, and treadmill may help Claimant regulate his behavior and thereby promote his interdependence and inclusion in the community, it is equally true that use of a trampoline and treadmill in his home removes Claimant from the community while he pursues those activities. The use of the equipment will increase Claimant’s safety in his home environment. There was insufficient evidence to establish the family’s lack of funds to purchase the items. Claimant has not established he meets the requirements for the equipment to be properly considered Participant-Directed Goods and Services.

31. Mother is an active and involved parent and advocate for her children and for others in the community. She and RCOC should continue to work collaboratively for the benefit of Claimant. In this instance, Claimant did not submit sufficient evidence to support the conclusion RCOC should have provided additional funding for 40 hours of respite or that Claimant may use funds from the approved SDP

⁷ Both parties refer to the “Welcome to Self-Determination” booklet, exhibit 23, for this language and did not provide any other citation.

certified budget to purchase a trampoline, a treadmill, and an iPad. The appeals of the RCOC denials of those subjects are therefore denied.

ORDER

The appeal by Claimant of the Service Agency's decision to deny additional funding for 40 hours of respite is denied.

The appeal by Claimant of the Service Agency's decision to deny Claimant the use of funds from the approved SDP certified budget to purchase an iPad, a trampoline, and a treadmill, is denied.

DATE:

DAVID B. ROSENMAN

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 90 days.