

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

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency

OAH No. 2022030696

DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 21, 29, 30, and July 13, 2022, from Sacramento, California.

Legal Services Manager Robin Black represented Alta California Regional Center (Service Agency or Regional Center). Certified Independent Facilitator Hadassah Lynn Foster served as claimant's authorized representative.

Evidence was received and the record remained open at the conclusion of the hearing to allow the parties to submit written post-hearing briefs. The record closed August 22, 2022, and the matter submitted for decision.¹

ISSUE

Should Service Agency increase claimant’s Self-Determination Program budget to provide funding for the Living Learning Lab component of the University of California, Davis, Redwood SEED Scholar Program?

FACTUAL FINDINGS

Jurisdiction and Background

1. The State of California is responsible “for its developmentally disabled citizens and an obligation to them which it must discharge.” (Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code² section 4500 et. seq. (Lanterman Act).) The Department of Developmental Services (DDS) is the state agency with “jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons.” (§ 4416.) To comply with its

¹ Claimant submitted a written rebuttal brief on August 24, 2022. That brief was not considered, as it was submitted after the record closed.

² All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

statutory mandate, the DDS contracts with private non-profit community agencies, regional centers, to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (§ 4620.)

2. A service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Act.

3. Claimant is a 23-year-old female who graduated from Redlands High School in June 2021. She was recently deemed eligible for regional center services based on her diagnosis of mild intellectual disability. Claimant resides in a dormitory on the University of California, Davis (UC Davis), in Davis, California, as part of the Redwood SEED³ Scholar Program (SEED Program), a post-secondary education program at UC Davis.

4. Claimant is a participant in the Self-Determination Program (SDP). As described more fully below, the SDP process includes creating an annual budget for services and supports funded by Service Agency.

5. In December 2021, claimant requested that Service Agency increase her SDP budget to fund the Living Learning Lab component of the SEED Program. The Living Learning Lab is a dormitory living environment for the SEED Program students.

6. On January 31, 2022, Service Agency issued a Notice of Proposed Action (NOPA) denying claimant's request to increase her SDP budget to provide funding for the Living Learning Lab cost. The NOPA specifies the bases for denial as follows:

³ SEED stands for Supported Education to Elevate Diversity.

Dormitory residences and meal plan fees at a college are not specialized services or supports directed towards the alleviation of a developmental disability. Rather, those are costs which are the responsibility of any [of] their student[s] or parents when the student chooses to reside on a college campus, whether or not that student has a disability. And the cost of room and board on the UC Davis campus is the same for all college students. Nor is residing on the UC Davis campus a requirement to participate in the UC Davis SEED Scholars program.

Since [Regional Center] would not pay for your room and board if you were not participating in the Self-Determination Program, [Regional Center] cannot include funds to pay for room and board in your Self-Determination Program budget. And finally, all Self-Determination Program services must be HCBS compliant. However, the HCBS Waiver Final Rule specifically prohibits the purchase of room and board. It further appears that the UC Davis SEED Scholars Program itself is not HCBS compliant, since the Program places restrictions on participants' freedoms (e.g., required twice daily check-ins and dorm curfew.)

7. On March 14, 2022, claimant submitted a Fair Hearing Request, which contained a demand for a hearing to challenge Service Agency's refusal to increase claimant's SDP budget to fund the SEED Program Living Learning Lab and "fund [the] opportunity [for claimant] to live among same age peers on a college campus." A

Mediation was held on April 29, 2022, but the matter did not resolve and this hearing followed.

8. The state and federal statutory scheme governing claimant's request is extensive. To consider her request in context, a review of that authority and their integration is essential.

The Lanterman Act

9. The Lanterman Act is a comprehensive statutory scheme providing for the "facilities and services ... sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (*Assoc. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388 (*ARC*)). The Lanterman Act mandates an "array of services and supports ... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream life of the community." (§ 4501.) "Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (§§ 4642–4643); and, on an individual basis, selecting and providing services to meet such needs (§§ 4646–4647)." (*ARC, supra*, 38 Cal.3d at p. 388.) The fundamental purpose of the Lanterman Act is "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685), 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 (§§ 4501, 4750–4751)." (*Ibid.*)

Individual Program Plans

10. The rights of the developmentally disabled and the corresponding obligations of the state toward them under the Lanterman Act are implemented through Individual Program Plans (IPP). (*ARC, supra*, 38 Cal.3d at p. 391.) Regional centers are required to develop an IPP for each client. (§ 4647.)

The IPP must be prepared and reviewed and, if necessary, modified at least annually, and must include the following: an assessment of the client's capabilities and problems; a statement of time-limited objectives for improving his situation; a schedule of the type and amount of services necessary to achieve these objectives; and a schedule of periodic review to insure that the services have been provided and the objectives have been reached. (§ 4646.)

(*ARC, supra*, 38 Cal.3d at p. 391.)

11. To achieve the objectives of a consumer's IPP, the regional center will secure needed services and supports. However, "[r]egional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

The Self-Determination Program

12. Section 4685.8 governs regional center consumers participating in the SDP. "Self-determination" is defined as a voluntary delivery system consisting of a comprehensive mix of services and supports, selected, and directed by a participant

through person-centered planning, to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. (§ 4685.8, subd. (c)(6).)

13. The SDP provides consumers and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPPs. (*Id.*, subd. (a).) The SDP provides consumers wide discretion in using funding in the budget for the various services and supports as he or she sees fit. That flexibility allows the consumer to reprioritize services and supports throughout the fiscal year, and reallocate spending among the various services and supports as needs arise. SDP participants shall utilize the services and supports available within the SDP only when generic services and supports are not available. (§ 4685.8, subd. (d)(3)(B).)

14. When developing the individual budget for the SDP, the IPP team determines the services, supports, and goods necessary for each participant, based on the needs and preferences of the participant, and when appropriate the participant's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in section 4648, subdivision (a)(6)(D). (§ 4685.8, subd. (b)(2)(H)(i).)

15. Pursuant to section 4685.8, subdivision (m)(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.

(A)(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.

[¶] ... [¶]

(B) For a participant who is either newly eligible for regional center services or who does not have 12 months of purchase service expenditures, the participant's individual budget shall be calculated as follows:

(i) The IPP team shall identify the services and supports needed by the participant and available resources, as required by Section 4646.

(ii) The regional center shall calculate the cost of providing the services and supports to be purchased by the regional center by using the average cost paid by the regional center for each service or support unless the regional center determines that the consumer has a unique need that requires a higher or lower cost. The IPP team also shall document the specific reason for the adjustment in the IPP. The regional center shall certify on the individual budget document that this amount would have been expended using regional center purchase of service funds regardless of the individual's participation in the Self-Determination Program.

Home and Community-Based Services Waivers

16. Home and community-based services (HCBS) are long-term services and supports provided in home and community-based settings. Regional centers provide HCBS to people with significant physical and cognitive limitations, allowing them to remain living in their homes or home-like settings rather than being institutionalized. (Social Security Act § 1 et seq., codified at 42 U.S.C. § 1396n, subd. (c).) To be eligible, individuals must meet level-of-care standards required for institutionalization in the absence of HCBS. (42 U.S.C. § 1396n, subd. (c)(1).)

17. HCBS are funded via a Medicaid waiver under the Social Security Act. (42 U.S.C. § 1396n, subd. (c).) Any residential setting must comply with the HCBS Final Rule.

18. The HCBS Final Rule has many statutory requirements. (42 U.S.C. § 441.301, subd. (c)(4)–(5).) Pertinent to residential settings, the HCBS Final Rule requires a participant to have a choice about roommates; privacy in the room; control over schedule and activities; the ability to have visitors; freedom to furnish and decorate the room; and a lease or other legal agreement protecting from eviction.

19. Another component of the Final Rule critical to this action is that, generally, Medicaid waiver monies for HCBS can pay for case management, a home health aide and personal care, and adult day health, habilitation, and respite care. (42 U.S.C. § 1396n, subd. (c)(4)(B)). However, the Medicaid HCBS Final Rule specifically excludes the payment of room and board. (42 U.S.C. § 441.301(c)(4)–(5); § 1396n subd. (c)(1)). In essence, and with rare exception, waiver funds may not be used to pay for room and board expenses or to acquire goods and services which a household that does not include a person with a disability would be expected to pay as household expenses.

The SEED Program

20. The SEED Program is a four-year program specifically designed for students ages 18 to 23, with intellectual disabilities. Studies show that post-secondary education or completion of a college-transition program such as the SEED Program greatly increases an intellectually delayed person's future employability and self-sufficiency. Participants attend specially designed classes on the UC Davis campus, and are encouraged to live together in on-campus housing with degree-seeking peers.

Those who complete the SEED Program receive an integrated studies credential. The SEED Program provides:

Students live on campus in the dorms with the support of typical students. They take specialized foundational courses that have been developed for them so that they will have the skills needed to participate in typical classes on campus. They also take one to two typical courses on campus with academic support. In addition, students participate in any campus club or organization that interests them, with support as needed.

Students also have an employment opportunity each quarter, beginning in winter quarter or as students are ready. These employment opportunities are carefully created to offer a ladder of support and designed to build on the skill and interest levels of the student. Additionally, recognizing the health disparities of students with intellectual disabilities when compared to the typical population, we will have health and wellness mentors working with students on nutrition, exercise and general good health habits.

21. SEED Program students are strongly encouraged to live on-campus. “[T]he residential living piece of [the SEED] program is truly unique, and [program designers] believe a significant benefit for [SEED Program] students.” The designers of the SEED Program believe living on campus with typical students in dorms presents “a very special opportunity” and [they] encourage all students to “carefully consider that

portion of the experience [as the] program is holistically designed and living on campus is intentionally an important part of the design.”

THE LIVING LEARNING LAB

22. The SEED Program “has developed the residential living opportunity as a Living Learning Lab.” According to materials produced by program administrators “[t]o give a specific itemized cost breakdown of the UC Davis Redwood SEED Scholars Living Learning Lab,” the Lab costs \$3,870 per quarter, or \$11,610, annually. According to those and other materials produced by the SEED Program, the Living Learning Lab is more than simply housing and food. Instead, it provides:

[A]n opportunity for students with intellectual disabilities to live with same age peers in context and with meaningful relationships. These opportunities provide all independent living skills in context and with meaning. Hygiene, communication, daily planning, meal planning, collaboration, cleaning, traveling and transportation ... and many other skills are embedded in this opportunity.

23. SEED Program students not only share dorm rooms with each other, but also share bathrooms with other students assigned to the dorm floor and eat in the dining commons with typical UC Davis students. In addition, SEED Program students are required to check-in with a residential mentor at the beginning and end of each day. These mentors work to help with organization, scheduling, planning, and independent living in whatever areas of need the student has. Same-age peers model independent living skills and teach specific skills as needed.

Claimant's SEED Program Acceptance and Regional Center Eligibility

24. Claimant applied for the SEED Program and was accepted for its inaugural class beginning in the 2021 Fall quarter. Following her enrollment, claimant decided to make the City of Davis her permanent home. Claimant and her family learned from other SEED students that they and their families relied upon the Lanterman Act through the statewide system of regional centers for services and supports. They also learned that other SEED students and their families also relied on the flexibility of the SDP, funded through the Home and Community Based Services Waiver program, as opposed to the traditional service delivery model which relies on pre-approved companies to provide services. Claimant applied for and was subsequently deemed eligible for regional center services on October 26, 2021.

25. Claimant's initial IPP was completed November 23, 2021, when she was already enrolled in the SEED. Claimant lived on campus at UC Davis, while her parents lived in their home in Redlands, California. The IPP includes stated goals that claimant will: (1) live independently in the community; (2) maintain good physical, mental and dental health; and (3) obtain higher education. Claimant's IPP has many goals and outcomes aligned with her participation in the SEED Program. These include obtaining higher education and taking college classes; living independently in the community; obtaining funding for Independent Living Services (ILS) training based on assessment and need; and maintain good physical, mental and dental health.

26. On January 3, 2022, claimant informed Service Agency that she wanted to opt into the SDP. She was referred to Lighted Path Solutions to develop a Person-Centered Plan (PCP) to help create claimant's SDP budget and spending plan. The PCP specified that it was important to claimant to stay involved with her church and community; live on a college campus and safely access the community; stay connected

with family and friends; attend social recreational opportunities of interest; have mentor supports, college supports, and peer supports; and live independently in the community with a roommate after graduating from UC Davis.

27. Service Agency also contracted with Ability 2 Learn to perform an assessment to identify the needs and costs associated with claimant's desires for independent living. Claimant was ultimately approved for 35 hours of ILS services per month, the maximum amount permitted by Service Agency. Funding for these ILS costs are included in claimant's SDP budget.

Claimant's SEED Program Funding

28. Claimant is also a consumer of the Department of Rehabilitation (DOR). Because the SEED Program will help facilitate claimant's employability, DOR has agreed to fund claimant's tuition and computer fees for the SEED Program. Following her determination of eligibility, claimant requested Service Agency include funding in her SDP budget to cover SEED Program costs not covered by the generic resources, such as DOR.

29. When the SEED Program began providing services to the first cohort of scholars, tuition and computer fees were billed to DOR in the amount of \$17,500, through the UC Davis Department of Continuing and Professional Education. The cost of the Living Learning Lab, which includes room, board, and ostensibly any related mentoring paid by UC Davis, was billed through the UC Davis Housing department in the amount of \$5,967 per quarter, or \$17,901, annually, to participants. These Living Learning Lab costs were billed directly to claimant and her parents. The invoices admitted into evidence did not specify what item or items were paid for by the \$5,967 invoice. To add to the confusion, witnesses responsible for developing the SEED

Program and some SEED Program materials offered inconsistent cost information. However, claimant's father testified that his understanding was that the \$5,967 invoices from UC Davis Housing were to pay for claimant's on-campus housing and meal plan.

30. According to materials produced by the SEED Program, \$3,870 of the \$5,967 quarterly fee is allocated to the cost of the Living Learning Lab. The remaining \$2,097 is identical to the 7-day meal plan fees charged to typical UC Davis meal plan students on a quarterly basis during the 2021-2022 school year. The UC Davis Continuing and Professional Education department also identifies the costs associated with participating in the SEED Program on its website. With the exception of a nonrefundable application fee, the only costs identified for the SEED Program are "Tuition," and a "Housing and meal plan."

Analysis

31. Claimant seeks an increase in her SDP budget to pay for the Living Learning Lab component of the SEED Program. Despite the Service Agency's assertion that payment of room and board are expressly prohibited by the HCBS Waiver Final Rule, claimant argues that the fees charged for the Living Learning Lab are for more than expenses for room and board.

32. There is no question that claimant's IPP goals includes attending college and increasing her independent living skills. The SEED Program allows claimant to meet these goals. The evidence at hearing supports that the SEED Program is an outstanding four-year college program for intellectually delayed adults. It offers participants the opportunity to take college courses and experience dormitory living side-by-side with peers without intellectual disabilities, while enhancing their

independent living skills. There was significant evidence at hearing that the SEED Program is beneficial. Claimant and her parents have seen outstanding growth in claimant's independent living skills since joining the SEED Program. However, the issue for determination is not the benefits of the SEED Program, but whether funding for the SEED Program's Living Learning Lab should be included in claimant's SDP budget, given that Service Agency has determined that the cost of the Living Learning Lab constitutes room and board that cannot be included in an SDP budget.

33. Claimant primarily supported her argument that the Living Learning Lab is more than room and board by juxtaposing it against what UC Davis Housing generally provides to typical college students. She argued that typical students do not require the same supports as intellectually disabled students, due to the foundational nature of their K-12 education and participation in extracurricular activities like team sports, attending sleep-away camps, and holding after-school jobs. She argued that due to this experience, typical college students usually arrive at campus with the ability to find their way around campus and the local community, do laundry, purchase meals, check out books from the library, participate in academic advisement and registration, handle personal hygiene and time-management, make healthy meal choices, seek assistance during emotional challenges, and have the communication and social skills necessary to actively participate in classes.

34. Claimant argued that students with intellectual disabilities do not arrive to college with the same skillset as typical students, due to the segregated nature of their life experiences and education with little time spent independently or with their general education peers. Many skills learned by claimant and other SEED Program participants are encountered independently for the first time in their residence halls. This includes time-management, personal hygiene, caring for one's room and clothing,

stress management, social communication, and general problem-solving techniques that develop when typical problems arise associated with living away from your parents for the first time.

35. SEED Program peer mentors also provide far more support for participants than, for instance, a resident advisor would provide to a typical student. SEED Program mentors receive on-going and specialized training to assist program participants with basic life skills. They remind them to wake up on time, they remind them to brush their teeth, they remind them to complete their homework, and provide daily check-ins to make sure any unidentified needs are addressed.

36. Claimant argued that when typical UC Davis undergraduates pay housing department invoices, they are literally paying for nothing more than a shared bedroom in a residence hall and on-campus meal plan. However, she claimed that when SEED Program participants pay housing department invoices, in the exact same amount as typical students, they are paying for far more than room and board. She asserted SEED Program participants are also paying for peer mentoring, 24-hour on-call mental health supports, job coaching, twice-daily mentor check-ins, weekly meetings with the program director, referrals to internships, outside of classroom academic assistance, and assistance with campus social and recreational opportunities.

37. Service Agency argued that student housing and meal plans for college students constitute "room and board," under every reasonable definition of the phrase available, including the Merriam-Webster online dictionary.⁴ Service Agency noted that

⁴ Official notice is taken of the definitions for "room and board" specified in Service Agency's Reply to Claimant's Closing Brief and the sources specified therein.

claimant's father verified that he had been billed \$5,967 for a "meal plan" and for "housing" to allow claimant to live on campus at UC Davis. Service agency also noted that the only costs identified by the UC Davis School of Continuing Education for the SEED Program participants are "tuition and fees" and the "housing and meal plan." And, that the amounts charged for the housing and meal plan were \$3,870, and \$2,097, respectively, for a total of \$5,967.

38. Service Agency also noted that there was no evidence that any of the SEED Program mentors were paid mentors. Moreover, to the extent paid SEED Program mentors exist, there was no evidence they were paid from fees collected for the Living Learning Lab. Service Agency emphasized that, despite testimony from several witnesses regarding program costs, claimant was never able to establish that any other costs for the Living Learning Lab, other than housing and meals, were included in the \$5,967 invoice issued to claimant by UC Davis Housing.

39. When all the evidence is considered, claimant failed to establish that the Service Agency should include funding in her SDP budget for the Living Learning Lab. Claimant failed to establish that the invoices from UC Davis Housing department covers anything more than room and board. Although claimant convincingly argued that SEED Program scholars receive several program benefits not provided to typical UC Davis students, she provided no evidence those benefits are paid by program participants through the Living Learning Lab fees, as opposed to tuition, assuming the participants actually bear the costs of those benefits.

40. Claimant's argument that the Living Learning Lab provides more than room and board because it provides SEED Program participants with life skills typical students already possess, was not persuasive. While it may be true that typical college freshmen are likely more prepared to deal with the challenges of college and

independent living than intellectually delayed freshmen, that does not mean SEED Program students are billed to pay for mentors and other supports to address those challenges. There was no evidence that SEED Program participants were ever billed for these supports. Claimant already receives funding in her SDP budget for ILS services independent of any supports provided by the SEED Program. Moreover, the skills to cope with the challenges of independent living can often occur organically in shared living spaces, whether on a college campus or not, and may even occur at home as a person matures and becomes more independent. Claimant is encouraged but not required to live on-campus to participate in the SEED Program and has chosen to do so at her own discretion like many college students.

41. The evidence supports that the fees charged to SEED Program students for the Living Learning Lab constitute room and board. The cost of room and board are the same for all UC Davis college students. Room and board is not considered a service or support under the Lanterman Act. Since a regional center would not fund room and board, SDP funds cannot be used to pay for the same. Moreover, the Final Rule specifically excludes room and board (42 U.S.C. § 441.301, subd. (c)(4)–(5)).

42. Service Agency also specified in the NOPA, as an additional basis for the denial of claimant's request, that the SEED Program was not HCBS compliant due to restrictions the program places on participants. The evidence was unclear as to what restrictions and the extent of any restrictions placed on program participants. Therefore, this basis for denial was not sufficiently supported by the evidence.

43. Finally, Section 4689, subdivision (i)(1), which prohibits regional centers from making rent, mortgage, or lease payments on a supported living home, or paying for household expenses of consumers receiving supported living services, also

provides for an exception to this prohibition under certain exceptional circumstances described therein. None of those exceptional circumstances are present in this case.

44. In sum, as claimant failed to establish that fees charged for the Living Learning Lab constitute anything more than room and board, which may not be paid by Service Agency or any regional center but for exceptional circumstances that do not apply, her appeal must be denied.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal Service Agency’s denial of funding for the UC Davis Redwood SEED Program Living Learning Lab.

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. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Here, claimant bears the burden of proof regarding her funding requests.

3. Based on the Factual Findings as a whole, claimant did not establish that the Lanterman Act requires Service Agency to fund the Living Learning Lab, which provides room and board for Redwood SEED Scholars. Accordingly, her appeal must be denied.

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's decision to deny Claimant's request to fund the Living Learning Lab, is AFFIRMED.

DATE: September 6, 2022

ED WASHINGTON

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.