

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**OAH No. 2022070648**

**DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video/telephone conference on August 22, 2022.

Claimant's mother represented claimant, who was not present.

Jennifer Cummings, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

## **ISSUE**

Did IRC improperly deny claimant's request to increase her Self-Determination Program (SDP) budget for a Starfish Pro Shower/Bath Chair and a solar battery system?

## **SUMMARY**

Claimant failed to prove by a preponderance of the evidence that IRC acted improperly when it denied claimant's request to increase her SDP budget to fund the Starfish Pro Shower/Bath Chair and a solar battery system. IRC requires additional information regarding the appropriateness, cost effectiveness, and the availability of generic resources before a final decision can be made whether the SDP budget should be increased to fund both items. Based upon the evidence of record, claimant's appeal is denied.

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 13-year-old girl who has a diagnosis of Trisomy 18 and is eligible for regional center services. Due to her compromised immune system, claimant is at sustained risk for infection and, as a result, she does not attend school. While at home, she requires constant supervision during waking hours to prevent injury/harm in all settings.

2. Claimant is eligible to receive 283 hours per month of In-Home Supportive Services. She is Medi-Cal eligible and receives services under The Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program. Claimant is a participant in the HCBS Waiver program. Through the SDP, as detailed below, IRC funds a number of supports and services.

### **Summary of IRC's Proposed Action**

3. IRC issued a Notice of Proposed Action (NOPA) June 21, 2022, which denied claimant's request for an increase in her SDP budget by an additional \$45,136 for two items: Starfish Pro Shower/Bath Chair and a solar battery system. IRC gave these reasons for its proposed action: With respect to the Starfish Pro Shower/Bath Chair, IRC stated it was unable to ascertain the safety, appropriateness, and necessity of the item. Further, IRC said it was unable to communicate with the vendor of the item, National Seating & Mobility, to review the equipment request.

With respect to the solar battery system, IRC stated it unable to ascertain the appropriateness, necessity, and cost-effectiveness of the item.

IRC determined that these items did not warrant an adjustment to the SDP budget as unmet needs that would have been funded regardless of claimant's participation in the SDP program through the traditional regional center delivery process.

4. Claimant submitted a fair hearing request on July 7, 2022. In her request she demanded IRC's full and complete compliance with federal and state regulations/guidelines in developing claimant's April 13, 2022, Individual Program Plan (IPP) and 2022-2023 SDP budget. She attached to her request a two-page document in which she made a number of assertions regarding IRC's purported failure to follow

applicable laws and regulations related to the development of claimant's 2022-2023 SDP budget. To the extent these assertions relate to the issue to be decided, namely, whether IRC improperly failed to increase the SDP budget to authorize a Starfish Pro Shower/Bath Chair and a solar battery system, these assertions are considered as argument.

## **The Self-Determination Program**

5. The SDP in which claimant participates is designed to allow families to access services not authorized under the traditional service model. The SDP is a voluntary alternative to the traditional way regional centers provide services and supports, and it is designed to offer consumers and their families more freedom and control in choosing their services and supports. In addition to the increased flexibility and control, many consumers are able to receive services that regional centers are not ordinarily allowed to fund due to changes in state law.

Participants have the authority to control a certain amount of money, also known as an individual budget, to purchase needed services and supports. The individual budget is the total amount of regional center funds available to the SDP participant each year and is based upon the amount of purchase of service funds used by the individual in the most recent 12-months. This amount can be adjusted, up or down, if the individual program planning team determines that the individual's needs, circumstances, or resources have changed.

Additionally, the individual program planning team may adjust the budget to support any prior needs or resources that were not addressed in the IPP. Examples of when an adjustment to the individual budget amount may be necessary include, but are not limited to, recent/pending change in living situation; services received

previously that are no longer needed; and services included in the IPP that were not used due to illness or lack of provider availability, thus no costs were incurred.

## **Claimant's SDP Budget and Spending Plan and Modifications to the Plan**

6. Claimant has participated in the SDP program for the last two years. For the 2021-2022 year, her SDP budget was certified by IRC's Director of Children's Services, Felipe Garcia, on May 5, 2021, in the amount of \$43,283.04. Pursuant to Welfare and Institutions Code 4685.8, subdivision (n)(1),<sup>1</sup> Mr. Garcia certified that the expenditures for this budget, including any adjustments, would have occurred regardless of the individual's participation in the SDP program. Claimant's mother signed the budget to indicate she had an opportunity to review it on April 29, 2021. Subsequently, claimant submitted a spending plan which her mother signed on May 25, 2021, which Mr. Garcia in turn signed on May 27, 2021.

7. As documented in claimant's April 13, 2022, IPP, the Spending Plan amounts agreed to on May 7, 2021, were identified as follows:<sup>2</sup>

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<sup>1</sup> The correct citation now is Welfare and Institutions Code section 4685.8, subdivision (m)(1).

<sup>2</sup> The May 7, 2021, reference in the IPP appears to be an error. Mr. Garcia signed the spending plan on May 27, 2021.

- Respite Services under SDP service code<sup>3</sup> 310 in the amount \$15,000 for an LVN Nurse
- Homemaker services under code 313 in the amount of \$1,440 for heavy cleaning
- Environmental Accessibility under code 356 in the amount of \$20,000 for bathroom rehabilitation (ADA Compliance)
- Specialized Medical Equipment under code 365 in the amount of \$1,983.04 for incontinence supplies
- Participant Directed Goods and Services under code 333 in the amount of \$2,880 for personal care attendant
- Financial Manager Services (FMS) Co-employer under code 316 in the amount of \$1,980 for FMS fees<sup>4</sup>

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<sup>3</sup> The service codes are not identified except by their code number and except where relevant to the issue to be decided in this matter.

<sup>4</sup> As discussed in more detail below, DDS has directed regional centers to waive FMS fees and to reallocate any non-waived fees to services and supports in a participant's budget. Claimant's mother asked that this FMS sum from the Spending Plan be reallocated to services for the 2022-2023 budget, but IRC rejected that request because the \$1,980 was not added to claimant's 2021-2023 budget.

8. After this, at claimant's request, her Spending Plan has been modified to allocate and reallocate funds to different categories, again as documented in claimant's April 13, 2022, IPP.

9. On August 24, 2021, claimant asked that the FMS fee of \$1,980 be removed and reallocated to her bathroom rehabilitation under Department of Developmental Services (DDS) Directive 01-111920. Claimant agreed to an Amended Spending Plan with the following itemized amounts to be paid in a 12-month period between July 1, 2021, and June 30, 2022:

- Respite services \$15,000
- Homemaker services \$1,440
- Incontinence supplies \$1,983.04
- Personal care attendant \$2,880
- FMS co-employer \$1,980 (moved to code 356)

10. On October 10, 2021, claimant asked to transfer 10 percent from each of her budget categories to Code 356 to cover a \$5,534 invoice for claimant's bathroom rehabilitation. The amounts were modified at claimant's request as follows:

- Respite services \$13,500 (\$1,500 moved to Code 356)
- Homemaker services \$1,296 (\$144 moved to Code 356)
- Environmental accessibility (\$23,912)
- Incontinence supplies \$1,983.04

- Personal care attendant \$2,592 (\$288 moved to Code 356)

11. On December 7, 2021, claimant asked that \$5,000 be moved from Living Arrangements (Respite Services Code 310) to code 356; and \$697 be moved from Code 365 to code 356. This resulted in the modified Spending Plan as follows:

- Respite services \$8,500
- Homemaker services \$1,296
- Environmental accessibility \$29,609
- Incontinence supplies \$1,286.04
- Personal Care Attendant \$2,592

12. On April 26, 2022, claimant asked that \$6,454.76 be reallocated from respite services to environmental accessibility for further home modifications. This resulted in the modified Spending Plan as follows:

- Respite services \$2,045.24 (\$6,454.76 moved to Code 356)
- Homemaker services \$1,296
- Environmental accessibility \$36,063.7
- Incontinence supplies \$1,286.04
- Personal Care Attendant \$2,592



## **Claimant's April 13, 2022, Individual Program Plan Meeting**

13. At claimant's April 13, 2022, IPP meeting, claimant discussed her concerns regarding Southern California Edison (SCE) power shutoffs as well as the increased costs of utilities due to claimant's reliance on powered medical equipment. Claimant's mother testified that the monthly utility cost is \$700. SCE warned claimant that they would experience up to five rolling blackouts in their area in the coming year. Claimant's mother was concerned about the impact such blackouts would have on claimant's health and safety. Claimant documented her concerns about such blackouts with copies of SCE shutoff notices advising consumers of possible shutoffs in the coming year.

Claimant asked that a backup power supply be added to claimant's IPP as a new need for claimant's 2022-2023 SDP budget. Claimant's mother identified from information she obtained from SCE a three-battery solar system at \$35,850 and asked that that the budget be increased by that amount. Per SCE, in a one-page informational display, the battery system provides seven days of backup power during outages.

14. In addition to this item, claimant asked at the April 13, 2022, IPP meeting that IRC meet as a newly identified need and fund a Starfish Pro Shower chair in the amount of \$9,286. Claimant provided her Kaiser health plan pediatrician's prescription signed April 18, 2022, for the Starfish Shower Chair. She also provided a letter from her Kaiser private insurance denying the chair as a covered benefit. Kaiser, in a notice dated March 17, 2022, denied claimant's request for the chair on the basis that it was not a Medi-Cal Kaiser covered benefit because as stated in the letter, the item is related to comfort, convenience, or luxury. In an email dated April 27, 2022, to claimant's Case Services Coordinator (CSC) Brandon Smalley, claimant's mother asked

that the shower chair be included as an item in the SDP 2022-2023 budget. As recorded in an IPP Summary Sheet claimant's mother signed May 9, 2022, the Shower Chair was a new request.

15. With regards to the shower chair, Mr. Smalley brought claimant's request for this item to IRC's Clinical Team. This team on May 23, 2022, requested more information regarding the chair from the vendor National Seating and asked claimant's mother to sign a release so that IRC could discuss the chair with the vendor. Claimant's mother did not sign the release.

16. The Clinical Team noted that "[g]eneric coverage need [*sic*] to be used. "The team noted that claimant has California Children's Services (CCS) and Medi-Cal through Kaiser and private insurance through Kaiser. Claimant was provided a release for CCS for the purpose of "case management service coordination and interdisciplinary planning." The team also asked that claimant sign IRC 202 authorization forms to obtain records from CCS. In addition, the team asked for an Occupational Therapist (OT)/Physical Therapist (PT) evaluation. (In Mr. Smalley's May 23, 2022, note he wrote to claimant's mother that the shower chair was denied. Amy Clark, IRC Program Manager, who supervised Mr. Smalley, testified that this was a misstatement. IRC at that point had not denied the request for the shower chair and it not considered a denial for purposes of this decision.)

The Clinical Team did not complete, it appears, a document related to its review of the solar battery. Mr. Smalley wrote in his case notes that the Clinical Team stated that it needed additional information.

## **Email Communications Between IRC and Claimant Regarding Development of the Budget and Other Issues**

17. Following the April 13, 2022, IPP, the parties communicated through a series of email communications regarding the battery system and rolling chair as well as the development of claimant's 2022-2023 budget and spending plan. Some of their communications are recorded in claimant's case notes. The relevant emails are summarized as follows:

18. Mr. Smalley emailed claimant's mother on May 25, 2022, to obtain a release per the clinical team's request to speak with National Seating as part of the OT/PT assessment. Per Mr. Smalley the team also wanted to obtain authorization to discuss with CCS "what they would be able to provide" with respect to authorizing the chair as a generic resource.

19. Claimant's mother did not sign the authorizations. In an email dated May 26, 2022, she expressed frustration that IRC was delaying authorizing the funding for the shower chair. Claimant's mother asked that IRC confirm IRC will agree to fund the shower chair and that that funding be added to claimant's 2022-2023 SDP budget.

In this email claimant's mother gave several reasons for her view: First, IRC had already agreed in the Office of Administrative Hearing (OAH) Decision dated January 25 2021, that a shower chair is needed per the PT/OT assessment with the installation of a ceiling track system. She asserted all generic resources have been exhausted citing denial letters from Kaiser and Medi-Cal. She cited her agreement in the Amended IPP (also known as the 35c form) to implement the Starfish Pro shower chair as a new service in claimant's 2022-2023 SDP budget; and on May 2, 2022, IRC emailed her a draft SDP budget worksheet which included the chair as a newly identified need.

20. With regards to CCS, claimant's mother stated that claimant does not receive CCS. Claimant's April 13, 2022, IPP does not identify CCS as a benefit claimant has.

21. Claimant's mother sent a second email to Mr. Smalley on May 26, 2022, in which she requested the following: Claimant's finalized April 13, 2022, IPP for her signature; the final version of the SDP budget worksheet for her review; and after an IRC Executive Director certifies the budget, claimant's 2022-2023 certified budget worksheet for her signature. Once she has this certified worksheet, she said she and the FMS will begin working on claimant's 2022-2023 SDP spending plan.

22. Ms. Clark responded soon after this email that day. Ms. Clark stated that she and Mr. Smalley would like to advocate as best as they can with the SDP Compliance Team, and they anticipate this team will have similar questions as the Clinical Team. Ms. Clark asked claimant's mother if she would allow IRC's OT to speak with National Seating. She also asked claimant's mother if she wanted the battery system in the budget since she did not mention this item in her May 26, 2022, emails.

23. Ms. Clark sent to claimant's mother on May 27, 2022, an SDP budget worksheet dated May 2, 2022, that claimant's mother received. This worksheet included the solar battery system and bath chair as "New Need" items. In her May 27, 2022, email, claimant's mother made changes to the worksheet relating to the ceiling track system that had been installed and the Scalamobil S35 stair chair that was also installed because IRC funded both these items in 2021. With these changes, she otherwise consented to the worksheet and asked that it be certified, and a copy provided to her.

24. In a subsequent email on June 1, 2022, claimant's mother made two corrections to the SDP worksheet. She asked that the new dollar amount for Environmental Accessibility for Section A of the worksheet be changed to \$67,192.67 to reflect the funding for the ceiling track system, the Scalamobil S35 chair, and door widening. She also asked that under Section A, \$2,326 be included to reflect IRC's payment under service Code 854.

25. On June 3, 2022, Mr. Smalley wrote to claimant's mother that IRC's OT and PT wanted to explore the appropriateness of the shower chair. As has been noted, claimant's mother did not authorize IRC's OT or PT to talk to National Seating.

26. Ms. Clark emailed claimant's mother on June 9, 2022. Ms. Clark noted that she had not responded to Mr. Smalley's request for additional information regarding the two items and it appeared she would not permit IRC's Occupational Therapist to discuss the bath chair specifics. Ms. Clark described the back and forth discussions, as she put it, between claimant's mother and IRC regarding the draft 2022 budget and how she wanted to ensure claimant's mother was in agreement, due to confusion regarding the home modifications and what should be included in the budget before she scheduled a meeting with SDP's Compliance Team. She inquired whether she wanted Mr. Smalley to present claimant's SDP draft budget to the SDP Compliance Team with the information she provided. For informational purposes Ms. Clark added that the FMS should be able to access the "ebilling" for the home modification changes that were approved the last month.

27. In an email dated June 15, 2022, Mr. Smalley advised claimant's mother the SDP review team approved the budget but with the shower chair and battery system removed. Subsequently, IRC also prepared a budget worksheet and budget dated June 28, 2022, that as Mr. Smalley indicated did not identify the shower chair or

solar battery system. Mr. Smalley advised claimant's mother, as he noted in his case notes, that a notice of action regarding this decision would be forwarded to her. That Notice of Proposed Action, as noted, was sent to claimant on June 21, 2022.

28. Mr. Smalley informed claimant's mother that one of the review team members recommended a Critical Care Backup Battery (CCBB) alternative to the solar battery system through Southern California Edison.<sup>5</sup> Mr. Smalley provided claimant with information about this item.

29. Claimant's mother in an email dated June 17, 2022, to Mr. Smalley expressed deep frustration with the process that led to IRC's decision with respect to claimant's 2022-2023 SDP budget. She noted among other points that the proposed budget "did not include agreed-upon services as discussed" at claimant's April 13, 2022, IPP meeting. She expressed concerns that the 2022-2023 budget would not be finalized until after the beginning of the budget year, which she said would cause delays and gaps in funding claimant's supports and services. She stated she would not sign the budget unless IRC funded all supports and services identified in claimant's IPP. She asked that this revised budget be provided to her by the next day.

30. In this email claimant's mother accused IRC of continuing to engage in unlawful practices that violated the rights of consumers. She argued that IRC violated claimant's rights when it sent the Amended IPP without providing her with a complete and finalized copy of the IPP to review before signing the IPP; she stated that IRC "will

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<sup>5</sup> As mentioned below, as documented in a letter SCE sent to claimant, claimant obtained this battery through SCE.

verbally agree” to new services and supports and then not document the agreed upon services and supports.

Claimant’s mother also asserted that SDP budget worksheets were not prepared in line with the “Self Determination Program Individual Budget Calculation and Certification Tool” per DDS’s January 28, 2022, directive to regional center directors. Specifically, the A and B line item sections were incorrect and did not correspond to the Annual Statement of Services Provided.

31. Ms. Clark addressed claimant’s mother’s concerns in an email she sent to her on June 21, 2022.

Ms. Clark noted that the SDP compliance protocol has not changed since claimant’s 2021-2022 budget. This protocol under the Participant Care Plan and/or IPP involves the identification of any new or unmet needs, and the completion of a budget draft under Section A (authorized and paid services), Section B (authorized and unpaid services), and Section C (newly identified or unmet needs). Ms. Clark noted that claimant’s mother requested the bath chair and battery system be added to the IPP and to the budget. Mr. Smalley documented these requests in the 35c form and in Section C of the budget draft that he forwarded to her.

With respect to claimant’s mother’s concerns regarding the Sections A and B line item sums, Ms. Clark acknowledged that the items were incorrect because the budget draft was based on the FMS expenditure report prior to the movement of monies. She said Mr. Smalley would be contacting the FMS to request the most recent expenditure report in order to add the correct amounts to the budget. Mr. Smalley contacted the FMS and it appears these correct sums were added to Sections A and B of the budget worksheet dated June 28, 2022.

Ms. Clark added as a comment in this email that claimant's mother did not authorize IRC's OT to talk to National Seating.

32. In her June 17, 2022, email, claimant's mother asked that IRC include the solar battery system as a "new service" in the IPP to require IRC to fund it. She argued that the solar battery system she identified is a fundable service under these SDP Service Categories: Environmental Accessibility which relates to "physical adaptations to the participant's home, required by the IPP, which are necessary to ensure the health, welfare and safety of the individual. . . "; and Personal Emergency Response Systems which includes "devices/services designed for emergency assistance" "to secure immediate assistance in the event of an emotional, physical or environmental emergency."

33. Claimant's mother further argued that the solar battery she identified is the appropriate battery for claimant for several reasons: She wrote that power outages have increased the last two years as have utility costs. Claimant's mother explored all generic resources to keep claimant's medical equipment operational and she contacted SCE two years ago to obtain a critical care backup battery. She said the critical care battery IRC identified would not work because it can only be used in one room and only offers limited power to claimant's medical equipment. Claimant's mother added that the battery is heavy which makes it difficult for her to transport. She said she applied through SCE for a low cost solar power system, but that program is not available in her area.

34. With regards to the shower chair, claimant's mother stated in this email that she pursued generic resources and provided IRC with both Kaiser and Medi-Cal denial letters. This item she wrote is needed like the solar battery system as a matter of claimant's health and safety.



35. On June 28, 2022, Ms. Clark sent to claimant's mother the budget worksheet with the shower chair and battery system not included.

36. On June 29, 2022, claimant's mother requested the FMS fees of \$1,980, which were identified in claimant's 2021-2022 budget, be reallocated to service Code 356 to cover the invoice amount of \$1,776.35 for Ingot Fabrications (related it appears to home modifications) and \$203.65 to cover the service provided in the service provider's June 2022 timesheet. She also asked to reallocate \$300 to service Code 333.

37. Ms. Clark, in an email dated June 29, 2022, responded that the \$1,980 in FMS fees could not be added to claimant's 2022-2023 budget because the \$1,980 sum in FMS fees was added to the 2021-2022 spending plan so that the fees would not come from claimant's budget. She noted that the difference between the spending plan and the budget accounted for the FMS fees of \$1,980. Thus, she said the FMS fees cannot be removed from the 2021-2022 spending plan and monies cannot be taken from that category to be moved to a different category. It is noted that claimant's mother signed an Amended Spending Plan as noted on April 27, 2022, which added to the Spending Plan the \$1,980 for FMS fees. The \$1,980 was not added to the budget.<sup>6</sup>

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<sup>6</sup> It is noted here that claimant's mother prepared, with the FMS, a Spending Plan on July 27, 2022, that includes this same waived FMS fee of \$1,980 (paid over 12 months), and like the 2021-2022 budget the 2022-2023 budget does not identify it as an expense that comes from claimant's budget. There seems to be an agreement that the \$1,980 fee identified in the Spending Plan does not in fact come from claimant's budget and is in fact waived.

(Thus, IRC's position that the FMS fees were in fact waived and not charged to claimant as part of her budget is correct.)

38. Claimant's mother in an email dated June 30, 2022, disagreed that the waived FMS fees could not be reallocated to services under the 2022-2023 budget. She cited DDS's February 3, 2021, Directive which she argued means that both the budget and spending plan should be increased to allow the SDP participant to utilize the waived FMS fees. The Directive she cited reads as follows:

If a participant chooses to utilize the funds allocated for FMS fees for different and/or additional services, . . . the regional center should increase the budget based on the number of months FMS fees will be repurposed. The spending plan should also be adjusted to reflect where the repurposed FMS fees will be used. . .<sup>7</sup>

39. Ms. Clark replied in an email on July 8, 2022, that she consulted with Alan Munoz, IRC's Participant Direct Services Coordinator, regarding her request and reading of the Directive. Based on that consult, they maintained that consistent with the purpose of the DDS Directive, claimant may not reallocate the \$1,980 for other services because claimant was able to use the entire amount of her 2021-2022 budget

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<sup>7</sup> IRC included in its exhibits a DDS Directive dated July 27, 2022, which identifies that SB 188 amended Welfare and Institutions Code section 4685.8, subdivision (c)(1), to remove the requirement that the cost of FMS be paid out of the participant's budget effective July 1, 2022. This statute supersedes DDS' COVID-19 Directive 01-111920.

for services and supports. Ms. Clark noted that no portion of the certified budget was used to pay for FMS fees. She invited claimant's mother to identify an unmet or change in circumstance that would require adding additional monies to the 2021-2022 budget.

40. On July 11, 2022, claimant's mother wrote Ms. Clark that she still wants IRC to reallocate the FMS fees she feels were not waived to service code 356 (in the amount of \$1,776.53) and service code 333 (in the amount of \$268.89).<sup>8</sup> She asked that the request be expedited so that the FMS can pay the service providers.

41. Claimant's mother in this same email commented that the SDP budget is still in draft form and has not been certified, and this draft budget will need to be addressed at the Fair Hearing. Claimant's mother asked for Ms. Clark to provide her with guidance regarding obtaining aid paid pending per Welfare and Institutions Code section 4715, subdivision (a), which details how supports and services are to be paid pending the resolution of the appeal.<sup>9</sup>

42. Ms. Clark, in an email dated July 14, 2022, said that IRC has certified the budget except for the solar battery system and shower chair. She apologized for her use of the word "draft" budget after the SDP team certified the budget. She asked claimant's mother to sign the certified budget so that the IRC Director may sign it. She then advised claimant's mother to work with the FMS to develop a spending plan. Ms.

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<sup>8</sup> The total amount is \$2,045.24 which is greater than the \$1,980 FMS fee claimant's mother feels was not waived.

<sup>9</sup> Post-hearing claimant's mother asked OAH to issue an aid paid order. In an order dated August 25, 2022, the motion was denied.

Clark emphasized that the issue of the solar battery system and shower chair are to be resolved at the hearing.

43. Claimant's mother completed with the FMS a Spending Plan dated July 27, 2022, and submitted it to IRC. Ms. Clark notified claimant's mother on August 8, 2022, that IRC approved claimant's adjusted Spending Plan effective August 3, 2022.

### **Claimant's Arguments with Regards to the Shower Chair and IRC's Response**

44. In her testimony and argument at the hearing, claimant's mother argued that she feels IRC is obligated to fund the shower chair without further review or delay.

Claimant's mother asserted she believes this because IRC agreed, as documented in OAH's decision dated January 19, 2021 (Consolidated Case Nos. 2020020712, 2020030220, and 2020030222), to fund this item. In that decision IRC was noted in its closing argument to have stated the following:

IRC added that if the ceiling lift is not purchased with traditional funds, it is willing to increase the SDP budget for a one-time expenditure for the purchase of a portable ceiling lift and sliding bath chair upstairs and a short linear ceiling track downstairs. IRC estimated the final cost of this equipment at approximately \$20,000.

45. Claimant's mother further cited the PT/OT assessment written by PT Michelle Knighten and OT Annette Richardson dated September 28, 2020/November 9, 2020. In that report they concluded that the upstairs part of claimant's house can be accessed with the portable ceiling lift and sliding bath chair at a cost of \$13,809.58.

However, they noted in the same report that a *sliding* bath chair is different than a *rolling* bath chair. They wrote the following in this regard: "The [sliding] chair allows for transfers using a lift system from bed to bathchair." (Exhibit D page 135 (B138).)

46. IRC called Ms. Knighten as a witness to respond to claimant's request for the shower chair. Ms. Knighten testified that claimant's bathroom was modified, and the modification allows for a rolling chair to use for the shower and there is no longer a tub that would require a lift system with the sliding bath chair that the prior OAH decision referenced. In response to a question on cross examination Ms. Knighten put it this way: claimant's needs changed since modifications to the bathroom make it so that the task is not to get her into a bathtub but to assist her to get her into the shower.

Ms. Knighten made it clear that she is not saying claimant does not need a bathchair. But she said other models than the one claimant identified, which Kaiser did not approve, can be authorized that would not be considered a "luxury" item as Kaiser found. To authorize this, an assessment needs to be done regarding cost-effectiveness and whether a chair meets claimant's needs.

### **Claimant's Arguments with Regards to the Solar Battery System and IRC's Response**

47. Claimant's mother testified that the solar battery system is needed because claimant's health and safety are at issue and all she knows is the information regarding the solar battery system SCE identified. She is concerned about the possibility of planned power shut offs. In her closing arguments she said she won't buy a gas-powered generator.

48. Ms. Knighten was also asked to address claimant's request for the solar battery system. She said she is not an electrician but she is familiar with different backup batteries and there are other battery options available, including the use of a transfer switch which can be plugged into the circuit breaker box, and gas powered generators which are much lower in costs.

49. Ms. Knighten added that SCE, as documented in a letter dated June 14, 2022, to claimant's mother (Exhibit F (part 1) B185), said that it had sent her a free portable backup battery through SCE's Critical Care Backup Battery (CCBB) program.<sup>10</sup> SCE advised claimant's mother that the battery is meant to provide temporary power for medical devices during outages.

### **Claimant's Mother's Testimony**

50. Claimant's mother testified she understands that IRC needs to evaluate the appropriateness and cost effectiveness of the solar battery in particular, but the battery is needed to prevent claimant's hospitalization, and the cost of the battery would be less expensive than the costs of any hospitalization. She also said the solar battery would remedy her utility bill costs and utility costs which, with discounts she has obtained, are \$700.

With respect to the shower chair, claimant's mother said IRC has agreed to fund the shower chair and she gave IRC the denial for the chair and other information.

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<sup>10</sup> This is the battery system it seems a member of IRC's Compliance Team recommended claimant obtain.

Claimant's mother expressed frustration with IRC's process for reviewing claimant's supports and services and the development of claimant's budget. She stated IRC has violated the rights of consumers under the Welfare and Institutions Code in the development of the SDP and IPP. Her testimony was consistent with her concerns documented in the emails summarized above.

## **Parties' Closing Arguments**

51. The parties' closing arguments are summarized as follows:

52. IRC argued in closing that it continues to be willing to assist claimant to access supports and services, but IRC must take into account available generic resources, including Medi-Cal, and consider the cost-effectiveness of the requested supports and services. Based on the evidence of record, claimant has not demonstrated that an adjustment to include the two items at issue in her SDP budget is warranted consistent with Welfare and Institutions Code section 4685.8, subdivisions (m)(1)(A)(i) and (ii),

53. Claimant's mother argued with respect to the shower chair the denials were provided to IRC and the National Seating therapist evaluated the need for the equipment. She said she has done her due diligence. Regarding the solar battery system, she feels this system is required as matter of claimant's health and safety. She said she cannot use a gas-powered generator as a matter of her health safety. She added that IRC has presented her with no alternatives.

Claimant's mother stressed the issues she has with IRC's process in developing claimant's IPP and SDP budget. She said decisions were made outside the SDP and IPP planning process regarding claimant's needs without her agreement in violation of the

Welfare and Institutions Code. As she put it, she does not agree with how they got here in terms of the process.

Claimant's mother further asserted she does now have a finalized IPP and claimant does not have a budget and there is no effort to get something done to get services for her.<sup>11</sup> She repeated claimant does not have "right now" any supports from IRC because IRC is claiming it has done what it was supposed to do.

## **LEGAL CONCLUSIONS**

### **Burden of Proof**

1. In a proceeding to determine whether a regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### **Relevant Law and Regulations**

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of 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. The purpose of the statutory scheme is twofold: To

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<sup>11</sup> This is incorrect. IRC approved the Spending Plan on August 3, 2022, except for the shower chair and battery system.



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.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The Department of Developmental Services (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. (Welf. & Inst. 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." (Welf. & Inst. Code, § 4620.)

4. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports for persons with developmental disabilities" 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. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulations, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

7. Welfare and Institutions 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. This section also requires regional centers to be fiscally responsible.

## **Statues Applicable to IRC Funding Services and Supports**

8. Regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental entities. (Welf. and Inst. Code, § 4659, subd. (a).) Regional centers are 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. (Welf. & Inst. Code, § 4646.4.) Regional center funds cannot 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. (Welf. & Inst. Code, § 4648, subd. (8).)

### **SELF-DETERMINATION PROGRAM**

9. Welfare and Institutions 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. . .

10. Welfare and Institutions Code section 4685.8, subdivisions (m)(1)(A)(i) and (ii), provide as follows:

(m) (1) Except as provided in paragraph (4), 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.

(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. When adjusting the budget, the IPP team shall document the specific reason for the adjustment in the IPP.

(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.

## Evaluation

11. Claimant did not prove by a preponderance of the evidence she is entitled to have, at this time, her SDP budget increased by \$45,136 to include a Starfish Pro Shower/Bath Chair and a solar battery system as unmet needs. To warrant this increase in the SDP budget for these two items, IRC must be able to certify pursuant to Welfare and Institutions Code section 4685.8, subdivisions (m)(1)(A)(ii), that regional center expenditures for the adjusted budget would have occurred regardless of the individual's participation in the Self-Determination Program. IRC correctly determined it was unable to certify this. Additional information is required to determine the cost-effectiveness of both items and whether generic resources are available to fund these items.

12. Claimant also did not prove by a preponderance of the evidence that IRC previously approved the Starfish Pro Shower/Bath Chair. The chair at issue in the previous matter was a sliding chair and not a rolling chair. IRC had stated it was willing to purchase the sliding chair as a one-time purchase but IRC stated this before modifications were made to the bathroom which now make a sliding chair unnecessary. The Starfish Pro Shower/Bath Chair is a rolling chair.

13. IRC does not dispute that some type of rolling chair and some type of electrical generator are needed for claimant's health and safety in the home. IRC indicated it is willing to evaluate claimant's request for these two items, but cannot without claimant's cooperation, which includes her executing the necessary releases so IRC can speak with appropriate vendors. Absent claimant doing that, IRC cannot determine if these items meet claimant's needs, are appropriate and cost-effective, and generic resources are not available to fund them. It is strongly encouraged that

the parties continue to work together to evaluate claimant's request for these items. However, on this record, claimant's request is denied.

## **ORDER**

Claimant's appeal of IRC's June 21, 2022, proposed action dated to increase her SDP budget by \$45,136 is denied.

DATE: September 2, 2022

ABRAHAM M. LEVY  
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.