

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

**In the Matter of:**

**CLAIMANT**

**and**

**SAN DIEGO REGIONAL CENTER, Service Agency**

**OAH No. 2020010366**

**DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 12, 2020, at San Diego Regional Center in San Diego, California.

Ronald R. House, Attorney at Law, represented San Diego Regional Center (SDRC).

Claimant represented herself. Claimant utilized a speech-to-speech interpreter to transliterate the hearing for her.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 12, 2020.

## **ISSUE**

Should SDRC provide accommodation for claimant in the form of: (1) providing all documents to her electronically as email attachments accessible with specific computer software from the San Diego Center for the Blind, and (2) providing augmented auxiliary communication support from an auxiliary aid, such as the aid utilized at this hearing to provide speech-to-speech interpretation for claimant, at all times for claimant to interact in the community?

### **Jurisdictional Matters**

1. Claimant is a 42-year-old consumer of services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq. Claimant is eligible for services based on her diagnosis of Autism Spectrum Disorder (ASD). Claimant is currently living independently.

2. On December 3, 2019, claimant sent an email to Neil McQuerter, claimant's service coordinator at SDRC, requesting as follows:

Under the ADA "auxiliary aids and services" I am requesting a qualified speech-to-speech transliterator [*sic*] (a person trained to recognize unclear speech and repeat it clearly) during the upcoming meeting. . . . As with any auxiliary aids and services, an ADA interpreter ensures that I have effective communication where receptive and expressive language is required of me.

3. On January 13, 2020, SDRC had not yet made a decision regarding claimant's request for speech-to-speech transliterator. On January 13, 2020, claimant filed a fair hearing request which stated in the reasons for requesting the hearing as follows:

I submitted a formal request for the ADA accommodations for my communication disability and visual impairment. Neither was officially approved, and the dept. is stalling on implementation causing me hardship and lack of support one week after surgery.

Claimant also wrote in the "describe what is needed to resolve your complaint" section as follows:

An ADA interpreter ensures that I have effective communication where receptive and expressive language is required of me in daily living and accessing medical and community resources effectively. Accessible notices for screen reader is also required.

4. On January 13, 2020, SDRC sent a letter to claimant in response to her fair hearing request informing her that the matter will proceed directly to fair hearing despite there having been no action or denial for claimant to appeal. This hearing followed.

### **SDRC's Evidence**

5. SDRC presented documentary evidence and the testimony of two witnesses at the hearing, specifically Ashley Duffy and Mr. McQuerter. Ms. Duffy has

been employed at SDRC as a Program Manager for one year. Prior to this position, Ms. Duffy worked at SDRC as an Intake Service Coordinator for two-and-a-half years. Ms. Duffy has a Master's degree in social work. Her duties as a Program Manager include overseeing a case management unit at SDRC and supervising 12 service coordinators, who assist clients with obtaining services, including generic, community, and school services. Ms. Duffy supervises Mr. McQuarter, who is claimant's service coordinator.

6. Ms. Duffy testified that the December 3, 2019, email from claimant was the first time she had ever seen such a request. She stated that neither she nor Mr. McQuarter had ever heard of a transliterator or a speech-to-speech translator. After speaking to Mr. McQuarter about claimant's request, Ms. Duffy did some research to learn about transliterators and what services they provide. Through her research, Ms. Duffy learned that a transliterator is typically used with people who are deaf or hard of hearing and the transliterator repeats words that are spoken in order to help an individual understand the communication. Ms. Duffy contacted all of the speech vendors with SDRC to request information regarding a transliterator and none of the speech vendors were familiar with the service. Ms. Duffy researched further to find any provider of the service and was only able to locate two speech-to-speech transliterators in the State of California, and both of those were located in Northern California. Finally, Mr. McQuarter contacted Deaf Community Services and was able to locate Jennifer Pelloni, a provider of transliterate services. Ms. Pelloni provided transliterate speech-to-speech services to claimant at this hearing.

7. Ms. Duffy explained that before a service, particularly an unusual service such as transliteration services, is provided by SDRC, she must consult with the directors and executive officers of SDRC to determine if the service is an appropriate accommodation. If so, then she follows the SDRC purchase of service policy and meets

with her planning team to make a determination on whether SDRC will provide the service. SDRC had not completed the evaluation process to determine if the transliteration service was an appropriate accommodation for claimant before claimant filed her fair hearing request.

8. Mr. McQuerter is employed by SDRC as a service coordinator, a position he has held since 1993. Mr. McQuerter has been a licensed Marriage and Family Counselor in California since 1985. He received his Master's degree in Marriage and Family Counseling from the University of La Verne. Mr. McQuerter has been claimant's service coordinator at SDRC for the past year-and-a-half. When Mr. McQuerter first started working with claimant, she had difficulty sustaining direct service providers for In-Home Support Services (IHSS) and other agencies. Mr. McQuerter was "working as a mediator" to help claimant gain or keep those services. Mr. McQuerter first learned of claimant's request for a transliterator in December 2019; he had never heard of such a service. Mr. McQuerter proposed to claimant the use of an Independent Living Skills (ILS) manager to assist claimant, but claimant stated this would not meet her needs. Mr. McQuerter asked claimant if she had a person in mind to provide transliterator services and claimant mentioned a person named Paula, who is living out-of-state and previously assisted claimant over the phone. Mr. McQuerter explained to claimant that because Paula resides out-of-state, SDRC would not be able to retain Paula as a service provider. Thereafter, Mr. McQuerter worked with Ms. Duffy to try to find a transliterator service provider in the local area. After a significant amount of research, Mr. McQuerter was able to find Ms. Pelloni through the Deaf Community Services. Mr. McQuerter and Ms. Duffy had a conference call with both Ms. Pelloni and claimant to discuss the possibility of Ms. Pelloni providing transliterator services for claimant.

Mr. McQuerter explained that the transliterator services are an atypical service never before provided by SDRC. Accordingly, in such circumstances, SDRC must evaluate the appropriateness of the service to determine whether SDRC can pay for the service under its purchase of service policies. As part of that process, Mr. McQuerter consults with Ms. Duffy and the executive office of SDRC, and the SDRC client. Mr. McQuerter explained that for a service as unusual as transliteration, it is essential to obtain an assessment from the transliterator describing claimant's needs and how the transliterator services are useful and necessary for claimant. After the conference call with Ms. Pelloni and claimant, SDRC approved payment to Ms. Pelloni to provide an assessment report for transliterator services for claimant so that SDRC can determine whether SDRC payment for the transliterator services is appropriate. Mr. McQuerter testified that Ms. Pelloni has already been paid by SDRC to provide the assessment report, but SDRC has not yet received it to perform an evaluation of the service. According to Mr. McQuerter, claimant filed her fair hearing request prior to SDRC completing its evaluation of whether SDRC's payment for transliterator services are appropriate for claimant.

9. With regard to the issue of whether SDRC should provide all documents to claimant electronically as email attachments accessible with specific computer software from the San Diego Center for the Blind, SDRC argued that this is a non-issue because SDRC will provide documents to claimant in whatever format she requests. Furthermore, SDRC stated that the documents for this hearing were provided to claimant electronically on a thumb-drive as previously approved by claimant, but if she requires the documents as an email attachment, SDRC will also do that.

## **Claimant's Evidence**

10. Claimant testified with the assistance of her transliterator, Ms. Pelloni who also testified. Claimant also provided documentary evidence to support her arguments. Claimant first began receiving services from SDRC approximately 18 months ago, but she received services from a regional center in Northern California for three-and-a-half years prior to moving to San Diego. Claimant lived out-of-state prior to that. Claimant testified she was diagnosed with ASD for the first time as an adult when she lived out-of-state. Claimant established, and provided documents to support, that she has been diagnosed, at least as early as 2013, if not earlier, with expressive and receptive speech and communication deficits. Claimant stated that she has provided all of her medical records to SDRC regarding her speech and communication deficit issues. She also testified that she has been requesting transliteration services from SDRC for many years. In support of that argument, claimant produced a Notice of Proposed Action dated December 5, 2016, from the Regional Center of East Bay (RCEB) wherein RCEB proposed action was as follows:

Denial of client's request for RCEB to fund a "social worker, psychologist, or licensed professional who is trained in social pragmatic language disorders so they can help (1) understand what my needs are when I relay it to them, and then (2) complete the task on my behalf such as referrals, refills, and similar medical needs."

Claimant provided no evidence she had asked SDRC, as opposed to RCEB, to provide transliterator services to her prior to her December 3, 2019, email.

11. Claimant also testified she has exhausted her generic resources for transliterator services. In support for that argument claimant provided a June 24, 2014, letter titled "Final Adverse Determination" from an insurance company addressed to claimant at an out-of-state address wherein the letter provided in part:

This letter is in response to your member appeal disrupting  
... [Health Plan] ... medical necessity denial for speech  
therapy.

Notably, this letter is approximately six-years-old, from when claimant lived out-of-state and pertains to speech therapy, not transliterator services.

12. Claimant also provided a decision dated May 7, 2019, issued after a fair hearing, wherein an Administrative Law Judge's ordered SDRC to "fund personal assistant services that meet the needs of claimant that include specific instructions for the personal assistant." Claimant argued that this order established that SDRC must provide her with transliterator services. However, the May 7, 2019, decision specifically addresses the use of a personal assistant rather than transliterator services. The May 7, 2019, decision with that order also states:

Claimant has medical conditions that require that she  
access services in the medical community. She has had  
difficulty doing so, even with the assistance of ILS. Under  
the circumstances, personal assistant services are a  
reasonable alternative, as long as the provider has specific  
instructions regarding scheduling and attending medical  
appointments and obtaining prescriptions from the  
pharmacy. However, in order to provide the service, it is



necessary that claimant cooperate by providing the information necessary to implement the service and cooperating with the personal assistant.

13. Over the past two years, claimant has utilized a social worker and ILS workers to provide personal assistance, and Mr. McQuarter has attempted to help claimant to obtain and retain services. However, none of these individuals have been able to meet the needs of claimant because of the complexity and nature of her disability. Claimant also attempted to utilize case management from her healthcare provider, but was informed she could not do so more than once per month.

14. Ms. Pelloni testified that she has been paid by SDRC to provide an assessment report regarding claimant's needs and how transliterator services will assist claimant. Ms. Pelloni completed the assessment the week before the hearing, but has not yet provided it to SDRC. Ms. Pelloni stated that Mr. McQuarter does not have the appropriate training to work with a person with ASD and, as a result, he has had multiple miscommunications with claimant. Also, there have been multiple distractions with Mr. McQuarter, such as when his cell phone will ring, which is distracting to claimant and "made her ill." Ms. Pelloni testified that claimant requires documents, or anything in black and white, to be condensed and smaller for claimant to read because of her ASD. Ms. Pelloni also stated that any service provider for claimant must not wear perfume, jewelry, or make loud noises, all of which claimant finds distracting.

15. Ms. Pelloni stated that claimant was language deprived until the age of five, and because of her ASD and cognitive issues, she would benefit from tactile sign language due to her vision impairment, hearing loss, and processing disorder. Ms. Pelloni will include all this information in her assessment report she intends to provide to SDRC in the future.

## **LEGAL CONCLUSIONS**

### **The Burden and Standard of Proof**

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to receive funding from SDRC to pay for transliterator services, as well as for all documents from SDRC to be provided to her in electronic form as an attachment to an email.

2. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### **The Lanterman Act**

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial

statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. . . .”

6. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“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 independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, day care, special living arrangements,

. . .protective and other social and sociolegal services,  
information and referral services, . . . [and] supported living  
arrangements, . . . .

7. 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.) A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. 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.)

8. In order to be authorized, a service or support must be included in the consumer's individual program plan (IPP). (Welf. & Inst. Code, § 4512, subd. (b).) In implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

9. "Natural Supports" is defined in the Lanterman Act as "personal associations and relationships typically developed in the family and community that enhance or maintain the quality and security of life for people." (Welf. & Inst. Code, § 4512, subd. (e).)

10. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible.

(Welf. & Inst. Code, § 4648, subd. (a)(1).) The regional center 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. (Welf. & Inst. Code, § 4646.4.)

11. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.)

12. Welfare and Institutions Code section 4659, subdivision (c), prohibits SDRC from purchasing services available from generic resources. Welfare and Institutions Code section 4659, subdivision (c), states as follows:

Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

13. Welfare and Institutions Code Section 4646.4, subdivision (a), requires SDRC to adhere to its Purchase of Service Standards (POS) when determining what services it will fund. A regional center's POS is approved by its board of directors and the Department of Developmental Services (DDS). The POS identifies what services SDRC will fund for its consumers. As SDRC's POS is currently written, SDRC is not specifically authorized to fund transliteration services for its consumers.

## **Evaluation**

14. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating she is currently entitled to transliterator services, and claimant did not meet that burden primarily because SDRC has not yet had the opportunity to assess and evaluate claimant's specific needs regarding transliterator services, how those services will benefit claimant, and if those services are available from generic resources or an otherwise cost effective manner. The evidence established that claimant is generally independent, but requires assistance with expressive and receptive communication. However, SDRC must first evaluate claimant's needs regarding this service, and if the service is more appropriately provided through a generic resource. Ms. Pelloni's assessment report is critical information for SDRC for that assessment, but SDRC does not yet have that report. Contrary to claimant's assertions, SDRC first learned of claimant's request for transliterator services on December 3, 2019, and not years ago. Claimant's communications with RCEB were not communicated to SDRC and even if they were, claimant did not provide any evidence that she ever specifically requested transliterator services prior to December 3, 2019. SDRC simply has had insufficient time to evaluate and process claimant's request for transliterator services.

Claimant's request for SDRC to provide her with all documents to her in electronic format as attachments to emails accessible through computer software from the San Diego Center for the Blind is well received. However, SDRC argued that claimant had already agreed to receive documents in electronic format on a thumb drive. Accordingly, that is how SDRC provided claimant documents for this hearing. SDRC agreed that there is no issue with providing claimant documents in the electronic format of her choice, but SDRC must know what that format is prior to providing the documents.

## **ORDER**

(1) Claimant's appeal regarding transliterator services is denied as premature. SDRC must continue to evaluate claimant's needs and the funding available for transliterator services and provide its decision regarding her request for transliterator services in a timely manner.

(2) Claimant's appeal regarding her request to receive all documents from SDRC in an electronic format as attachments to emails assessable through a specific software is granted. However, in order to effectuate this order, claimant must provide SDRC with specific instructions regarding the exact format she seeks for the electronic documents prior to SDRC's requirement to send documents to her in that format.

DATE: February 25, 2020

DEBRA D. NYE-PERKINS  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision.**