

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH Nos. 2020020712, 2020030220, and 2020030222

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters telephonically on June 15, 2020, August 26, 2020, and December 21 and 22, 2020, pursuant to OAH's June 1, 2020, order due to the COVID-19 pandemic.

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

Senait Teweldebran, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

At the close of the hearing the record was left open until the close of business on January 4, 2021, for the parties to submit written closing arguments. The parties were also asked to address whether an order remanding the matter for an additional Individual Program Plan (IPP) with specific instructions for the conduct of this IPP was

an appropriate remedy in light of the testimony of witnesses on the last day of the hearing. On December 31, 2020, IRC moved to extend the time for the submission of its brief to January 18, 2021, due the IRC representative's illness. Claimant opposed the motion in part. The motion was granted, and the deadline was extended to January 18, 2021. IRC made a second motion to extend the time to submit briefs due to the representative's illness which claimant again opposed. That motion was denied without prejudice. Both parties nevertheless submitted closing briefs, their arguments have been given due consideration, and the matter has been submitted for decision on January 18, 2021.

ISSUES

The following three issues are addressed in this decision:

1. Is claimant eligible to continue to participate in the Home and Community-Based Services (HCBS) Medicaid Waiver Program because her level of need exceeds the program requirements?
2. Should claimant's IRC-funded services as identified in her IPP be terminated because the parties were unable to reach final agreement on her most recent IPP, which was due in July 2019?
3. Should claimant's Self-Determination Program (SDP) Budget be increased?

FACTUAL FINDINGS

Background

1. Claimant is a 12-year-old girl who has a diagnosis of Trisomy 18 and is eligible for regional center services. Home health certifications document that she has primary pulmonary hypertension, ventricular septal defect, reflux, and cerebral palsy. She is at sustained risk should she acquire benign viruses. (Exhibit 33.) According to a report written by her physical therapist, Serwayna D. Aquino, RPT, claimant has muscle weakness, can sit alone with supervision, has difficulty keeping her balance and can walk with a gait trainer with pelvic and trunk supports in a crouched position from the family room to dining room. (Exhibit 78.)

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. IRC funds the following supports and services: 180 hours per quarter for LVN respite care, diaper reimbursement, and reimbursement of \$30 for a Person Center Planning conference effective June 24, 2019, and a two-hour pharmaceutical review with an IRC consultant.

The Self-Determination Program

3. In a letter dated October 3, 2018, signed by the Director of the Department of Developmental Services (DDS), claimant was selected to participate in the statewide pilot of the Self-Determination Program (SDP), which allows 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.

Summary of IRC's Proposed Actions

4. IRC issued three Notices of Proposed Action which claimant timely appealed. For organizational purposes the pertinent findings concerning the issues raised in each of these proposed actions are made under the identified proposed actions and as identified under their respective case numbers. The matters were consolidated for a single hearing. Due to technical issues with the parties' ability to connect to the telephonic platform for the hearing on June 15, 2020, the matters were

continued to August 26, 2020.¹ The parties were unable to complete their respective cases on this date, and after a phone conference with the parties on September 3, 2020, the hearing was continued to December 21 and 22, 2020.

5. After the June 15, 2020, attempted hearing, claimant sent a letter dated June 16, 2020, in which she expressed eight concerns regarding the conduct that occurred on June 15, 2020. In its order dated June 17, 2020, OAH sought to address claimant's concerns. Those concerns included the scope of the issues to be addressed in the hearing, including the issue of claimant's eligibility for the HCBS Waiver program, the poor sound quality of the telephonic hearing, and other matters. Claimant asked for "the intervention" of the Presiding ALJ as to how to proceed to ensure that she has a fair and impartial hearing. OAH, in this order, referred the matter to the hearing administrative law judge. With this noted, the concerns claimant expressed in her letter are addressed below in the evaluation of the issues.

6. From the documents the parties submitted into the record the following pertinent information has been obtained.

**NOTICE OF PROPOSED ACTION DATED JANUARY 23, 2020, (OAH
CASE No. 2020020712)**

7. IRC issued a Notice on January 23, 2020, signed by Amy Clark, IRC Program Manager, and in the attached letter dated January 21, 2020, IRC proposed to

¹ Claimant requested reimbursement for costs related to the submission of documents in support of her appeals. That request was denied. She also asked for permission to record the hearing. Her request was granted.

terminate claimant from her enrollment in the HCBS Medicaid Waiver Program effective February 29, 2020. IRC proposed this action because claimant's level of need, it asserted, exceeded the program requirements.

Claimant timely appealed IRC's action by submission on February 4, 2020. As a result, claimant remained in the waiver program as a matter of aid paid pending the resolution of this matter at hearing.

Claimant, in her letter attached to her fair hearing request, accused IRC of improperly seeking to end claimant's participation in the program and accused IRC of fraudulent conduct.

8. Before the matter proceeded to hearing on August 26, 2020, IRC rescinded its action and documented this in a letter to claimant written by IRC's consumer services coordinator dated April 15, 2020. (Exhibit 42 ("[Claimant] currently participates in Inland Regional Center's Home and Community-Based Services for the Developmentally Disabled (HCBS-DD). . . .").) Other documents IRC submitted into the record confirm that claimant remained under the Medi-Cal Aid Code 6V for DDS Waiver Medi-Cal. (Exhibits 70 and 74.)

9. Claimant did not dispute that IRC had rescinded its proposed action, but she argued IRC's proposed action was made in bad faith. In her closing brief she characterized her argument as follows:

It is the Claimant's position that the IRC purposely sought to wrongfully determine the Claimant's eligibility for the HCBS-DD Waiver program, in an attempt to affect the Claimant's eligibility in the other waiver programs that Claimant was currently participating in, which would

unilaterally result in the Claimant being denied funding and access to services and supports through other waiver programs.

Claimant asked for an order to investigate IRC's "unlawful and fraudulent activities in attempting to disqualify eligible IRC consumers from participation in the HCBS-DD Waiver program."

Regarding this request, it is beyond the scope of this proceeding for OAH to order an investigation into IRC's general practices due to IRC's *intention* to take an action. (See Section 4710.5 subdivision (a).) (Regardless of this conclusion, IRC submitted documents into the record that show that IRC's proposed action was not arbitrary or capricious. It was based on IRC's Medicaid Waiver Unit's annual review which assessed that claimant seemed to have a too high level of care because she was receiving more than 182.6 hours of EPSDT per month. (Exhibit 21.) Other documents record that IRC thoroughly assessed claimant's eligibility for the waiver program and claimant's level of care, and also that IRC responded promptly and appropriately to claimant regarding her participation in the HCBS-DD program.) (See also Exhibit 32.)

10. More fundamentally, to the extent claimant argues that the possibility of her loss of HCBS-DD Waiver program eligibility affected her ability to receive supports and services, claimant's participation in the HCBS Waiver program does not change the types of services and supports IRC must make available to her. These services and supports are determined through a needs-based assessment and documented in the IPP. (Welf. & Inst. §§ 4646-4648.) The HCBS Medicaid Waiver program provides federal financial support to the state's general fund, and these funds are used to support individuals with developmental disabilities who are served through the regional centers.

11. Thus, due to IRC's decision to rescind its proposed action to end claimant's participation in the HCBS Medicaid Waiver program, and based on the documentation IRC provided that claimant has been enrolled in the waiver program without interruption, claimant's appeal is deemed moot.^{2,3}

**NOTICE OF PROPOSED ACTION DATED FEBRUARY 11, 2020,
(OAH CASE No. 2020030220)**

12. IRC issued on February 11, 2020, a Notice signed by Ms. Clark, in which IRC proposed to terminate, effective March 31, 2020, IRC-funded services under the IPP, because the parties were unable to reach final agreement on claimant's most recent IPP, which was due in July 2019 after a meeting the parties held on August 27, 2019. IRC attached to the Notice a draft IPP and asked claimant to sign it or identify her disagreements with the IPP in the signature page in order that the parts of the IPP she agreed with could be implemented.

Claimant timely requested a hearing with the IRC-funded services remaining in place as a matter of aid paid pending. In her hearing request, claimant asserted that IRC violated various provisions of the Lanterman Act:

² Mootness describes the doctrine under which courts decline to hear a case because it does not present an existing controversy by the time for decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.)

³ For clarity an order is fashioned in this decision requiring that claimant remain in the HCBS Waiver program.

- IRC failed to assist claimant in securing and coordinating her supports and services as required under Section 4640.7;
- IRC failed to comply with Section 4646 to ensure that the IPP and its provisions are focused on claimant and claimant's family and in compliance with the HCBS Waiver;
- IRC failed to provide claimant at the August 27, 2019, meeting with a list of agreed-upon services and supports in violation of Section 4646, subdivision (f);
- IRC failed to offer claimant at the conclusion of the August 27, 2019, meeting, after a final agreement could not be reached, a meeting within 15 days or if not within 15 days a reason why such a meeting could not be held within 15 days per Section 4646 subdivision (g).⁴
- IRC failed to secure needed services for claimant as required under Section 4648 considering claimant's unique needs in compliance with the HCBS Waiver program;
- IRC failed to provide claimant the supports and services she needs due to gaps in the IPP as required under Section 4648, subdivision (g);
- IRC failed to assist claimant to identify all sources of funding as required under Section 4659, subdivision (a)(1), and when claimant asked for such assistance IRC failed to respond or offer assistance;

⁴ It does not appear that IRC complied with this requirement although IRC continued to communicate with claimant to address claimant's needs.

- IRC failed to develop and certify claimant's SPB Budget;
- IRC failed to transition claimant into the SPB program; and
- IRC failed to designate a Consumer Services Coordinator with the knowledge and expertise necessary to appropriately assist claimant with the required services and supports to meet her unique needs.

13. Claimant's arguments are considered in the context of the development of the SDP Budget within the IPP, which as the evidence of record shows, the parties were developing through the time of the February 11, 2020, Notice, at least. Up until that date, the parties were trying to reach agreement regarding the SDP budget in the context of the goals under claimant's IPP.

**THE NOTICE OF PROPOSED ACTION DATED FEBRUARY 24, 2020, REGARDING
THE SDP BUDGET (OAH No. 2020030222)**

14. In a Notice of Action dated February 24, 2020, signed by Ms. Clark, IRC denied claimant's request to increase the SDP Budget. As the basis for this proposed action, IRC stated that claimant refused to cooperate with IRC's physical and occupational therapists so that IRC could conduct an in-home durable medical equipment assessment, as a matter of claimant's unmet needs. IRC stated it might adjust the SDP budget pursuant to Section 4685.8, subdivision (n)(1)(A)(ii), only after the physical and occupational therapists conducted the in-home assessment. IRC asserted that claimant decided not to have the assessment conducted or provide IRC with additional documentation to support her requests.

15. Claimant timely appealed. Her argument, in essence, is that IRC's proposed action was premature because IRC failed to develop, as Section 4648.8

required IRC to do, claimant's SDP Budget within her IPP. Claimant's mother further denied in her testimony that she decided not to have the assessment conducted or not provide documentation to support her requests. More generally, claimant's mother argued, again in the context of developing the SDP budget, that IRC should have included the budget in the IPP, and the IPP cannot be finalized until this is done.

Summary of Communications Between the Parties Regarding the Development of Claimant's IPP and SDP Budget.

16. The following pertinent information is gleaned from the record:

17. Claimant's last IPP was completed July 24, 2018. The specific services that were proposed to be terminated included LVN respite, diaper reimbursement, reimbursement of \$30 for a Person Center Planning conference effective June 24, 2019, and a two-hour pharmaceutical review with an IRC consultant.

18. Jonathan Eckrich, IRC Training and Development Program Manager, in an email on August 9, 2019, to Ms. Clark, stated that claimant met "all [SDP] requirements and is ready to transition from Traditional services into Self Determination." Mr. Eckrich stated that claimant was able to proceed to the "next step" which involved Felipe Garcia "working with DDS" and "Don" "to identify a budget." (Exhibit K.) Mr. Garcia is IRC's Director of Children & Transition Services. "Don" refers to Don Meza. Claimant's SDP budget was not finalized in the August 27, 2019, IPP which was also not finalized on this date. A document used to calculate the SDP budget, the SDP "Self Determination Program Individual Budget Calculation and Certification Tool" with budgeting categories, was not attached to the draft August 27, 2019, IPP. (Exhibit 5.)

19. An IPP meeting was held on August 27, 2019. At that meeting claimant's mother refused to sign the IPP because, as she testified, the IPP was not finalized and

did not include the SDP budget. To support her position, claimant cited a January 11, 2019, DDS letter to regional center executive directors which states simply as follows: "The spending plan must be attached to the IPP."⁵ (Exhibit 46, IRC 531, Exhibit I.) Claimant continued to refuse to sign the IPP despite requests made to her by emails, which included the draft IPP as an attachment, on September 4, 2019, October 16, 2019, and January 27, 2020. Claimant also refused to sign a "ICRC 35c" or "Summary Sheet" dated October 8, 2019. Megan Patterson, claimant's Consumer Services Coordinator (CSC), in the October 8, 2019, Summary Sheet (form 35c), identified as a "new request" "on the IPP" the "SDP budget certification and spending plan." (Exhibit P, 146/329.) At the hearing Ms. Clark explained that the 35c document confirms that claimant accepts the IRC-funded services without waiving her right to request other services or dispute other matters in the IPP.

20. The services that remained in place were 180 hours of LVN respite care per quarter and Registered Nurse assessment at "[§]150.00/Fiscal year-incontinence." (Exhibits 5, IRC 055 and P, 146/329.) In the 35c form, Ms. Patterson summarized the procedural history of the IPP up to that point as follows: "IPP mtg was held 8/27/19. Mother requested a draft IPP. IPP draft was sent to mother 9/4/19. Mother provided

⁵ There are two parts to the development of the SDP budget, according to DDS: "The individual budget," which is the total amount of regional center funds available to the SDP participant each year, and the "spending plan," which details how the available funds will be used to purchase services and supports necessary to implement the IPP. (Exhibit 46, IRC 529, DDS's Letter to Regional Center Executive Directors dated January 11, 2019.) Both components are required for the SDP budget to be implemented.

suggested revisions 9/23/19. IPP was revised and updated 10/8/19 and 35c was sent to mother to sign." (*Ibid.*) Claimant emailed Ms. Patterson on October 10, 2019, regarding the 35c. She asked Ms. Patterson for a revised copy of the IPP and claimant's SDP budget "certificate and spending plan." (Exhibit Q.) She advised Ms. Patterson that as a final requirement for claimant's participation in the SDP program, she had hired a Financial Management Service (FMS) provider.

21. Before Ms. Patterson sent the 35c form to claimant, Ms. Clark sent claimant a draft of claimant's SDP budget in an email dated September 4, 2019. (Exhibit 12.) Ms. Clark attached to this email the "Self Determination Program Individual Budget Calculation and Certification Tool" document. (This document has in its right lower corner the date "08/07/2019" which appears to be the document's origination date.) Ms. Clark identified in this budget sheet a total of \$31,831.20 for claimant's SDP budget. The items identified included a "baseline" amount of \$7,853.36 and LVN-Respite in the amount of \$23,977.84 as authorized "paid" but "unfunded." It is noted that claimant's mother testified that it was difficult to obtain LVN respite services for claimant. Thus, it appears this sum represents funds that claimant was unable to use for LVN respite services.

22. In her email, Ms. Clark asked claimant to provide "the required amounts" in boxes 4, 6 and 7. Box 4 is a category marked "Newly Identified Needs" and includes medical supplies and community living supports such as camera surveillance monitoring, utility assistance, and house cleaning; Box 6 is a "Non-Continuing Services" category which includes "pre-voc supports SSI advocate," "Housing access, support-tactile wall, garage conversion, carpet removal w flooring installation, ceiling anchored for adaptive swing" and "Van modifications-pull up handles (side/rear)." Box

7 is identified as the category "Continued Services Handled Outside of Budget" and identifies "Dental services-copays."

23. In an email dated September 11, 2019, claimant identified in the SDP Budget Document in Box 4, and 12 items and the cost of each (totaling approximately \$10,000); in Box 6 for "Garage expansion" an \$86,000 to \$100,000 cost based on estimates she obtained which she attached, bedroom/carpet removal at a cost of \$1,500, installation of ceiling anchors at a cost of \$309, and as durable medical equipment the installation of a Scalamobil S35 Portable Stair Climber to be used to evacuate the upstairs bedroom in the case of an emergency at a cost of \$9,300; claimant also attached a Medi-Cal denial letter dated July 31, 2013. (Exhibit 12.) In addition, under Box 6 claimant identified a Therapy Tactile Sensory Wall at a cost of \$1,400. Under Box 7 claimant identified annual dental services copays to be \$200 a year based on past copayment amounts.

24. With respect to the Scalamobil S35, on October 10, 2019, claimant provided to CSC Patterson a "Letter of Medical Necessity," dated November 13, 2018, from her doctor, Chelsea Forbes, M.D., in which she stated claimant needs the equipment so she can be transported up and down stairs without being carried. (Exhibit 14, IRC 234.) Dr. Forbes noted that claimant was getting heavier and claimant's mother was having difficulty carrying her up and down the stairs. Dr. Forbes wrote that there is no alternative other than the StairLift, which requires permanent installation to the home's staircase.

25. Claimant also included a Medi-Cal letter dated July 31, 2013, that denied claimant's Treatment Authorization Request for the Scalamobil Chair Climber and frame.

26. Ms. Clark sent an email to Mr. Meza on September 26, 2019, to update him on claimant's matter. She copied Felipe Garcia and Marie Harris, another person at IRC, on this email. She thanked Mr. Meza for meeting with her and Mr. Garcia and attached the budget calculation and certification tool for claimant along with her itemized list and quotes for her SDP budget. She further advised Mr. Meza she will send him the IRC draft IPP and claimant's 48-page draft IPP. Ms. Clark added that she was going over claimant's draft to see "if it is appropriate and/or if changes need to be made." (Exhibit O "145/329".)

27. In an email dated October 18, 2019, Ms. Clark advised claimant that she had received claimant's requests for IRC's spending and budget plan. (Exhibit S 185/329.) She further advised claimant that she was waiting for "direction from the Directors at Regional Center" who, in turn, are "waiting on direction from DDS." She was unable to update the IPP with the 'type and amount of services and supports' until "the budget and spending plan are approved." (*Ibid.*) She added:

If/when your budget items are certified and your spending plan is approved we can add the language into the IPP outcome sections in the appropriate outcomes. The IPP is still in "draft" status which means we can continue to make changes to it. If you would like to dispute the language prior to moving forward with the budget certification and approved spending plan please let me now and I will provide you with a Notice of Action.

(Exhibit S 185/329.)

28. On October 18, 2019, claimant responded to Ms. Clark's email. (Exhibit T 187/329.) She stated IRC should have had her budget completed before drafting the 2019/2020 IPP. Claimant cited the directive in DDS's January 11, 2019, letter to regional center directors that stated: "The spending plan must be attached to the IPP" and: "The spending plan must identify the cost of each service and support that will be purchased with regional center funds." (See Exhibit 46, IRC 531, Exhibit I.) Claimant stated that because she did not have a signed "Person-Centered Planning IPP" for 2019/2020 or a certified budget, she was unable to meet with her FMS provider to prepare her 2019/2020 IPP.

29. In an October 30, 2019, email Ms. Clark advised claimant she was continuing to work with IRC's "Director and DDS" "towards the budget certification and spending plan." (Exhibit 15.) As noted above, there are two components of an SDP: The "individual budget," which is "the total amount of regional center funds available to the SDP participant each year," and the "spending plan," which details how the available funds will be used to purchase services and supports necessary to implement the IPP. (*Ibid.*, IRC 529; Exhibit 46, IRC 531, Exhibit I.)

In her email Ms. Clark stated that IRC was unable to come to "the unmet needs" part of the budget tool because IRC cannot increase the "unmet needs" portion of the budget if IRC cannot fund the services or supports under the traditional purchase of services guidelines. Because the van conversion and stair lifts were a "huge part" of claimant's budget, Ms. Clark stated that these items needed to go through "the clinical process" where claimant can provide prescriptions, denials from generic resources, and IRC's occupational and physical therapists could conduct an assessment. Ms. Clark asked claimant to provide a prescription from her provider and also requested she ask Medi-Cal to fund the requested services and supports. (Exhibit 15.)

30. On October 30, 2019, claimant provided a detailed email response to Ms. Clark's email. (Exhibit 16.) In this email, she made several arguments, which she also made during the hearing: She stated that once funding requests have met the required federal and state guidelines, IRC must purchase the services or supports to implement the IPP; IRC has not supported her needs; and she was not required to provide a copy of the treatment authorization request from Medi-Cal "for finalizing my daughter's IPP or her SDP individual budget." (*Ibid.*, IRC 242.)

31. On November 27, 2019, claimant filed a complaint under Section 4731 with DDS concerning IRC's development of claimant's IPP. IRC provided a detailed response to this complainant in a letter dated December 27, 2019. (Exhibit Y.) Claimant's Section 4731 complaint and IRC's response are considered only as background to the parties' efforts to develop the IPP and SDP. Ms. Clark sent claimant a letter dated December 10, 2019, in which she acknowledged the Section 4731 complaint, but noted that claimant's IPP was not finalized. (Exhibit 19.) Ms. Clark further stated that IRC was not aware that claimant had any disagreement with IRC regarding the revised August 2019 IPP, and she also noted since August 2019, claimant requested additional supports and services. Presumably, Ms. Clark was referring to the supports and services claimant identified in the self-determination program budget. She asked claimant to contact Ms. Patterson to schedule an IPP meeting.

32. On January 22, 2020, claimant provided a detailed response to statements made at the January 13, 2020, meeting. (Exhibit 23.) In addition, among other requests, she wanted confirmation that IRC's Directors had approved a protocol for IRC staff to follow to submit SDP budget proposals for certification. (Exhibit 23, IRC 336.)

33. In a letter dated December 17, 2019, regarding the Scalamobil Stair Chair and home modifications (tactile sensory wall, garage expansion, ceiling anchors for swing, carpet removal, and tile installation) and vehicle modifications made through the August 27, 2019 IPP, Ms. Clark asked claimant for her OT and PT progress notes. (Exhibit 20.) Ms. Clark stated she was making this request "via the [IPP] on August 27, 2019." (*Ibid.*) Earlier, in a November 26, 2019, email, she had made this same request. (Exhibit 18.) But, in that email request Ms. Clark also asked for reports/evaluations from California Children's Services. (*Ibid.*) In her December 17, 2019, letter Ms. Clark asked for claimant's availability for an IRC OT/PT assessment. She suggested January 13, 2020, as the date for this assessment. Ms. Clark asked for recent progress notes from claimant's OT and PT and for claimant to confirm she was available to allow Annette Richardson, an Occupational Therapist and IRC consultant, and Michelle Knighten, a Physical Therapist and IRC consultant, to conduct an in-home OT/PT assessment. Ms. Clark advised claimant that if IRC did not agree to "extend the time for us to make a determination we will be required to deny the requested service at this time." She further advised claimant that if she did not agree to extend the time, IRC would issue a Notice of Proposed Action.

34. Around this time, Ms. Richardson, Ms. Knighten, and Ms. Clark communicated with claimant to try to arrange a time for Ms. Richardson and Ms. Knighten to conduct the occupational and physical therapy assessments at claimant's home. (Exhibit 18, IRC 283-303.) IRC emphasized in the hearing the importance of these OT/PT assessments. For reasons not clear from the record, the parties were not able to agree on a time to meet.

35. In an email dated January 21, 2020, Ms. Clark provided claimant with a status report regarding the development of her SDP budget. (Exhibit 22.) She stated

she met with IRC's Director to update him regarding the new equipment, and how much claimant estimated it would cost based on claimant's meeting with Ms. Clark, Ms. Cummings and a DDS representative at claimant's home on January 13, 2020. Ms. Clark further added she will meet with both IRC Directors to review the budget "based on the unmet and new needs that you reported during our initial IPP visit and the recent visit on 1-13-2000."

The January 13, 2020, meeting was arranged in an effort to address claimant's concerns so that IRC may implement services set forth in the IPP. The DDS representative appeared by phone at this meeting. Claimant was advised at this meeting she can sign parts of the IPP she agreed with in order that those parts may be implemented. Claimant refused to sign any parts of the IPP, but she agreed verbally to allow IRC to fund LVN respite, diaper reimbursement, and conference reimbursement.

36. Claimant responded to Ms. Clark's update with a lengthy email dated January 22, 2020. (Exhibit 23.) In pertinent part, she wanted to know whether IRC's Directors had approved a protocol for IRC staff to follow regarding submission of an SDP budget, and she wanted a copy of the draft IPP and draft SDP budget.

37. On January 27, 2020, Ms. Clark provided claimant with the draft IPP dated August 27, 2019, and the "budget certification tool" or "Self Determination Program Individual Budget Calculation and Certification Tool" document. (Exhibit 24). In this document claimant's SDP "annual individual budget" was calculated at \$182,577.10. This figure included a baseline amount of \$12,709.44, \$19,341.96 for LVN respite, \$150 for incontinence reimbursement, and \$150,525.70 for "Newly identified Needs". This figure was based on a detailed calculation of needs in a document entitled "Newly Identified Needs Table" and included the estimated cost for durable medical equipment, garage expansion, carpet removal and tile installation, and modifications

to a vehicle. (Exhibit 24, IRC 378-379.) In a draft worksheet to determine claimant's SDP budget IRC identified the total amount as \$183,373.42 with a "baseline" amount of \$15,775.24 and \$167,597.18 in "Budget Adjustments." (Exhibit 30.)

38. Claimant sent an email to Ms. Clark on January 30, 2020, in which she stated she was reviewing the documents Ms. Clark sent to her and needed until February 3, 2020, to provide her response. (Exhibit 25.) On February 3, 2020, claimant sent Ms. Clark a follow-up email in which she stated she was still waiting on additional information from a service provider (*Ibid.*, IRC 381.)

39. In a letter dated February 14, 2020, to Ms. Clark, claimant faulted IRC for its development of claimant's IPP. She asked for a follow-up planning meeting to take place at her home with an IRC representative with decision-making authority. She advised IRC she would record the meeting. (Exhibit 26.)

40. Ms. Clark responded to claimant in a letter to her dated February 19, 2020. She stated that while claimant was selected to participate in the SDP program, she was not transitioned to it "until her IPP and budget and spending plan are approved." (Exhibit 27, IRC 389.) Ms. Clark stated that the budget and spending plan will be attached to the SDP IPP once approved. (*Ibid.*)

Ms. Clark further stated that she was agreeable to a meeting to finalize claimant's IPP, noting that claimant stated previously at the January 13, 2020, meeting she did not want to finalize the IPP without the spending plan and budget attached. Ms. Clark gave several dates in early March 2020 as times she was available to meet, and she added she also would audio record the meeting. Apparently, this meeting was set for March 5, 2020.

41. Claimant sent an email to Ms. Clark in which she cancelled that follow-up IPP meeting due to the February 24, 2020, Notice of Proposed Action in which IRC proposed ending claimant's IRC-funded services. (Exhibit 28.) She expressed again concerns about the development of claimant's IPP and accused IRC of "egregious acts of discrimination and harassment." In a letter dated March 2, 2020, claimant revoked her authorization for IRC to release confidential protective health information. (Exhibit 31.)

42. In a letter to claimant dated March 4, 2020, written by Ms. Clark, IRC certified the SDP budget in the amount of \$32,792.52. (Exhibits 32 and HH.) Under Section 4648.8, subdivision (n)(1)(ii)(II), a regional center is required to certify "that regional center expenditures for the individual budget, including any adjustments, would have occurred regardless of the individual's participation in the Self-Determination Program."

43. In this letter, Mrs. Clark stated the following:

I am writing to inform you that [claimant's] Self-Determination Budget has been certified in the amount of \$32,792.52.

Please provide this amount to [claimant's] Financial Management Service (FMS) vendor, Community Interface Services, so that you may begin to develop [claimant's] Self-Determination spending plan. . . .

(Exhibits 32 and HH.)

44. That IRC certified the SDP budget *after* it issued the February 24, 2020, Notice suggests IRC was still assessing claimant's SDP budget when it issued its February 24, 2020, Notice. Moreover, it is not clear from the record how IRC's compliance team reached the conclusion to certify claimant's SDP budget in the amount of \$32,792.52, or why IRC decided to certify the budget after it issued the February 24, 2020, Notice. Regardless, after this date, up to the last day of this hearing, the parties communicated extensively regarding the unmet needs component of the SDP budget, and, in particular, regarding claimant's urgent need for a lift to carry claimant, as discussed above and below. (Exhibit 79.)

45. The next notable communications between Ms. Clark and claimant occurred between June 16, 2020, through June 18, 2020. (Exhibits 53 and 54.) On these dates, claimant and Ms. Clark exchanged email communications regarding a revised SDP spending plan for the 2019-2020 calendar year prepared by claimant and an FMS IRC approved vendor, John Whiteman. The SDP spending plan is dated April 30, 2020, and signed by claimant's mother and Mr. Whiteman. (Exhibits 53, IRC 642-652.)

46. The revised SDP spending plan details how claimant intends to use available funds to purchase supports and services to implement the IPP under different categories. Claimant identified \$62,504.18 for "Living Arrangements" for respite, homemaker, financial management services, and "Community Living Supports." (Exhibit 53, IRC 642-652.) The last category identified "SureHands Patient Ceiling Track Lift System" at a cost of \$26,684.18. (*Ibid.*, IRC 642.) In addition to these items, the budget for "Community Participation" was identified as \$16,137.00 and the budget for "Health and Safety" was identified as \$37,160.30. (*Ibid.*, IRC 648.) Under each of the categories, the IPP outcome was referenced by paragraph numbers in the IPP. Claimant's total SDP Spending Plan sum was \$115,801.48.

47. Ms. Clark, in a June 16, 2020, email to claimant (Exhibit 53), asked claimant if she wanted to add items her health plan had not authorized in her August 2019 IPP and/or if she wanted any of the "previous items" identified removed.

48. Claimant responded in an email dated June 17, 2020. She stated she had repeatedly "requested all of [claimant's] unmet/new needs" to be included in her August 27, 2019, IPP. (Exhibit 54.)

She further added the following:

With regard to the physical therapy re-evaluation multiple denials from Kaiser and Medi-Cal and the TAR [Treatment Authorization Request] for incontinence supplies that you referenced in my Fair Hearing evidence documents it has always been my contention that these documents were not required in order to develop [claimant's] SDP budget or prior to requesting funding. Once [claimant's] 8-27-2019 IPP was finalized her SDP budget agreed to and certified and her SDP Spending Plan completed the FMS and I were going to provide these supporting documents to the IRC along with any funding requests.

(Exhibit 54 IRC 654-655.)

During the hearing, claimant emphasized this point as the basis of her fair hearing request. The merits of claimant's arguments are addressed below in the Legal Conclusion section of this decision.

49. On June 18, 2020, Ms. Clark emailed claimant to say she will “refer” to claimant’s June 16, 2020, email and her spending plan for “updates to [claimant’s 2019 IPP].” (Exhibit 54, IRC 654.) Ms. Clark added that she will forward to claimant a copy of the IPP draft once “the new draft is completed”. (*Ibid.*)

50. The next notable communication between claimant and Ms. Clark occurred on July 14, 2020, in an email Ms. Clark sent to claimant. Ms. Clark attached to the email an itemized SDP draft with newly identified items and updates to the amounts and pricing in claimant’s proposed spending plan. (Exhibit 63.) She noted she removed the garage modification at claimant’s request. The total spending budget was \$115,431.42. (*Ibid.*) In a July 15, 2020, email, Ms. Clark asked claimant to “provide your revisions in handwritten form directly onto the draft IPP and/or budget, or your typing revisions directly into the documents [to]. . . please highlight them for easier review and comparison.” (Exhibit 64.) Claimant provided these changes to the draft IPP on July 17, 2020, and Ms. Clark indicated it would take some time to review the changes because they were not highlighted so she would need to go through the 40-page document line by line. (Exhibit 65.)

51. The parties continued to communicate regarding changes to the draft IPP through July 21, 2020, with the aim, as claimant put it, to “finalize her SDP budget and transition her into the [SDP program] before the August 26, 2020 Fair Hearing.” (Exhibit 67.)

52. Around August 12, 2020, as documented in an email Ms. Clark sent Ms. Tweldebran, she presented claimant’s proposed budget to IRC’s executive “SDP compliance team” with the spending plan. (Exhibit 72.) Ms. Clark attached a Spending Plan proposed SDP budget document in the amount of \$115,531.42. This team denied

claimant's requested budget funding and determined that her budget should remain the same. The certification of the budget remained at \$32,796.72.

53. There is no written record of this compliance team's action or the basis of this action, a point claimant made during the hearing. This appears to be contrary to the Section 4648.8 requirement that: "The individual budget shall be determined using a fair, equitable, and *transparent* methodology." (Welf. & Inst. Code § 4648.8, subd. (c)(3), emphasis added; see also Exhibit 50, IRC's Compliance Review Procedures, which references a "Compliance Team" that "reviews and approved [*sic*] requests for purchase of services.")

54. Ms. Clark testified the executive committee wanted documentation that claimant applied for resources available to her, including private insurance and/or Medi-Cal for the durable medical equipment (DME) and other items. IRC emphasized in the hearing, and Mr. Eckrich emphasized this in his testimony, that these authorization request denials were required in order to authorize the equipment as unmet needs under claimant's SDP budget.

55. Regarding efforts to have other resources authorize various items including DME, claimant's doctor had asked her health plan to approve hand/grab rails, ceiling anchors, garage expansion, patient ceiling/tract lifting system, video monitoring unit, tactile and sensory wall panels, oral chew toy necklaces, and padded gymnastic/exercise floor mats. (Exhibit U.) Her health plan, in a letter to claimant dated November 13, 2019, denied her doctor's request that it approve these items because they are not a covered benefit under her healthcare plan. (*Ibid.*)

56. As discussed above, at the close of the hearing, the parties were trying to reach agreement concerning authorization for the track system as a matter of "urgent"

need due to the problems claimant's mother has had lifting and carrying claimant. (Exhibit 79.) In its closing brief, IRC stated the parties were close to an agreement regarding funding this item.

57. Claimant now weighs 60 pounds and claimant's mother has medically-documented restrictions that limit her ability to lift and carry claimant. To address this matter as an urgent need for IRC, Ms. Richardson and Ms. Knighten had prepared a draft Physical and Occupational Therapy Equipment Consult with the two dates September 28, 2020, and November 6, 2020, to assess the need for the ceiling lift. (Exhibit 79.) Ms. Richardson testified in this hearing and acknowledged the urgent nature of the request and was sympathetic to claimant's mother's situation. During a break in the hearing, at her initiative, she consulted with Clive Coogan, Mobility Design Consultant with Lift & Transfer Specialists, the contractor for the installation of the lift. After talking to Mr. Coogan, Ms. Richardson stated she was prepared to make recommendations to IRC regarding the lift. The parties stated they were trying to resolve the matter while the decision on the issues raised in this hearing is pending.

The Testimony of Claimant's Mother

58. Claimant's mother's hearing testimony is summarized as follows:

59. Claimant's mother denied that she decided not to have the OT/PT assessment conducted or provide documentation to support her requests for durable medical equipment and other supports and services. She noted that during this time she was coping with issues involving her mother's health; her mother entered hospice in September 2020 and passed away in October 2020. Once the COVID-19 pandemic struck in March 2020 and social restrictions were in place, she was reluctant to have individuals in her home due to her daughter's fragile health and susceptibility to

infections. She tried to take videos to record areas in her home so that Ms. Richardson and Ms. Knighten could perform their assessments.

60. Concerning the development of the SDP budget, IRC should have included the budget in the IPP, and the IPP cannot be finalized until this is done.

61. Claimant's mother expressed clear and understandable frustration regarding the resolution of this matter; she expressed willingness to have another IPP meeting to finalize the IPP. It is noted she cooperated with Ms. Richardson at the end of the hearing.

Parties' Closing Arguments

62. IRC argued in its closing brief that it acted in good faith and has reached an "impasse" with claimant. IRC asked that the SDP budget remain at \$32,792.52 for the reasons outlined in detail in IRC's February 24, 2020 notice.⁶ IRC did not recommend specific instructions in a prospective order for the conduct of an additional IPP meeting.

As mentioned above, IRC noted that it is close to reaching a final administrative decision regarding the ceiling track system that the parties discussed at the close of the hearing. 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 for this equipment at approximately \$20,000.

⁶ IRC's closing brief was submitted after the deadline on January 19, 2021. IRC asked that it be accepted notwithstanding its late submission. That request is granted.

63. Claimant, in her closing brief, argued that supports and services should be added to her SDP budget as a general matter and identified these categories in general. (Claimant's Closing Brief, pp. 9-10.) She asserted that an SDP Participant can purchase any services and supports identified in the SDP Waiver, even where such services and supports are not funded by generic resources. She further asked that "the State funding allocated to the IRC to support" "fund any urgently-needed services and supports (i.e., SureHands Ceiling Track Patient Lift System, the Scalamobil stair chair) so that the funds in claimant's SDP budget will not be readily depleted due to the funding of these urgently-needed . . . one-time supports."

In addition, claimant also accused IRC of acting in bad faith regarding its proposed action to discontinue her participation in the HCBS waiver program.

Regarding instructions for the conduct of a prospective IPP meeting, claimant asked that representatives with decision-making authority, IRC's program manager, and claimant's CSC attend any such meeting. She identified a number of persons, including claimant's special academic instructor, her physical therapist, and Mr. Coogan, who should attend any such meeting. Claimant also requested that persons she does not approve not be allowed to attend the meeting.

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 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. 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 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the

individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

Under Section 4646, subdivision (g), provides as follows:

If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. The list of the agreed-upon services and supports described in subdivision (f) and signed by the authorized representative of the regional center shall be provided, in writing or electronically, at the conclusion of the subsequent program plan meeting, and shall be provided in the native language of the consumer, or the consumer's parent, legal guardian, conservator, or authorized representative. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative.

7. 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.

8. 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.

Statutes Applicable to Funding under Generic Resources

9. Welfare and Institutions Code section 4644 provides as follows:

(a) In addition to any person eligible for initial intake or assessment services, regional centers may cause to be provided preventive services to any potential parent requesting these services and who is determined to be at high risk of parenting a developmentally disabled infant, or, at the request of the parent or guardian, to any infant at high risk of becoming developmentally disabled. It is the intent of the Legislature that preventive services shall be given equal priority with all other basic regional center services. These services shall, inasmuch as feasible, be provided by appropriate generic agencies, including, but not limited to, county departments of health, perinatal centers, and genetic centers. The department shall implement operating procedures to ensure that prevention activities are funded from regional center purchase of

service funds only when funding for these services is unavailable from local generic agencies. In no case, shall regional center funds be used to supplant funds budgeted by any agency which has a responsibility to provide prevention services to the general public.

(b) For purposes of this section, "generic agency" means any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

10. Regional centers are 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. 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 prohibited from purchasing services available from generic resources, including other governmental entities, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage." (*Id.* at subd. (c).)

SELF-DETERMINATION PROGRAM

12. 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. . .

13. Welfare and Institutions Code section 4685.8, subdivision (n), provides:

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

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

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

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

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

[¶] . . . [¶]

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

Evaluation

14. IRC's proposed action to end supportive services and supports for claimant per its February 11, 2020, Notice of Proposed Action because the parties failed to reach final agreement in the IPP is not sustained, and claimant's appeal of this action is granted. The evidence of record shows that since August 27, 2019, through the time of the hearing in this matter, the parties were in active discussions to finalize claimant's SDP budget and spending plan, and this SDP budget was an essential component of claimant's IPP. This budget was not attached to the August 27, 2019, IPP as DDS's January 11, 2019, letter to regional centers required it to be, and IRC did not certify the budget until after February 11, 2020, on March 4, 2020. The parties planned to meet, it is noted, on March 5, 2020, but claimant cancelled this meeting after she

received the February 11, 2020, Notice. Although claimant did not sign parts of the IPP she accepted, she verbally stated on January 13, 2020, before IRC representatives and a DDS representative, that she was in agreement that LVN respite and other supports and services should continue. Section 4646 which sets out the rights and responsibilities of the parties in the development of an IPP does not identify any consequences if the parties are unable to reach agreement in the IPP. In this matter, the parties were actively seeking to reach agreement and were so doing through the time of the hearing in this matter.

15. IRC's proposed action dated February 24, 2020, to deny claimant's request to adjust her SDP budget is also not sustained, and claimant's appeal of this proposed action is granted, in part. IRC's proposed action is premature. As of the date of this Notice, as noted immediately above, the parties were in discussions concerning the development of the SDP budget and spending plan, IRC did not certify the budget until after February 24, 2020, and IRC's compliance unit did not formally reject claimant's proposed budget until August 12, 2020.

Further, claimant showed by a preponderance of the evidence that she did not refuse to cooperate with OT and PT assessments. The record shows that in December 2019 and January 2020 the parties were trying to coordinate their schedules to allow these assessments to be done. Since March 2020, with the outbreak of the COVID-19 pandemic, this coordination is difficult especially considering claimant's fragile condition. Claimant's mother was also struggling with the illness of her mother who passed away in October 2020. In addition, at the close of the hearing, it is noted, claimant expressed her intent to cooperate with Ms. Richardson regarding the assessment for the durable medical equipment, and both parties displayed a general

desire to work together to assess the unmet needs component of claimant's proposed SDP budget and spending plan.

At the same time, no conclusion can be made regarding any adjustments to claimant's SDP budget, as IRC certified it on March 4, 2020. To warrant any adjustments, occupational and physical therapy assessments need to be completed and other resources for durable medical equipment and other requested supports need to be determined as not available as a matter of generic resources available to fund such supports.

On this last point, claimant's assertion that IRC can approve the SDP budget without requiring her to first seek authorization from generic or available resources is incorrect based on Section 4686.8.⁷ Section 4686.8 does not exempt SDP program

⁷ Claimant more subtly argued this point in an email she sent to Ms. Clark on June 17, 2020. (Exhibit 54, IRC 654-655.) As discussed above, in this email she claimed that confirming documents that show generic resources denied requests to fund supports and services are not required "*to develop* claimant's SDP budget or *prior to requesting* funding. . ." (Emphases added.) She added that "[o]nce [claimant's] 8-27-2019 IPP was finalized her SDP budget agreed to and certified and her SDP Spending Plan completed the FMS and I were going to provide these supporting documents to the IRC along with any funding requests." (*Ibid.*) Her assertion here is the same argument in a different form that the SDP budget may include services and supports IRC cannot fund. Quite simply, and it is worth repeating, under Section 4686.8 items for supports and services that generic resources must fund should not be in the certified and adjusted SDP budget. This adjusted SDP budget may only include IRC "purchase of services expenditures". (Welf. & Inst. Code § 4648.8 subd. (n)(1)(A)(ii)(I).)

participants from the requirement that consumers must seek out such resources before regional centers are required to authorize services or supports available to a consumer as “other resources” under Section 4659. (Welf. & Inst. Code § 4659, subd. (c).) These other resources include California Children’s Services, Medi-Cal and private insurance. (*Ibid.*)

Section 4648.6’s legislative scheme is clear: A regional center is to base the SDP budget on expenditures a regional center is authorized to make consistent with the Section 4659 “generic resource” mandate. Under Section 4686.8, the regional center sets “the individual budget” “as the total amount of the most recently available 12 months of purchase of service expenditures for the participant.” (Welf. & Inst. Code § 4648.8, subd. (n)(1)(A)(i).) A regional center may adjust this 12-month period amount *if* the regional center finds in the IPP a change in circumstances based on unaddressed prior needs “which would have resulted in an increase or decrease in purchase of services expenditures.” (Welf. & Inst. Code § 4648.8 subd. (n)(1)(A)(ii)(I); see also Exhibit 46, IRC 530, Letter to Regional Center Executive Directors dated January 11, 2019.) (“The regional center certifies the expenditures used to calculate the individual budget amount, including any adjustments, would have occurred regardless of the individual’s participation in the SDP.”) Impliedly, this “purchase of services expenditures” language can only be understood to mean *authorized* purchase of services expenditures that would have been available to claimant under the traditional delivery of service model.⁸

In view of these conclusions, at a mutually agreeable time, an additional IPP meeting will be scheduled to address claimant’s unmet needs, the SDP budget and

⁸ IRC’s Purchase of Service Policy, Section 1.2, articulates this requirement. (Exhibits 49 and NN)

claimant's spending plan, and to identify the steps both parties will take towards these goals in addition to the goals detailed in the draft August 27, 2019, IPP. These steps will require IRC to help claimant identify available resources and, as appropriate, assist claimant to apply for these resources and obtain documentation that these resources are or are not available. This additional IPP meeting should take place no later than 90 days from the date of this decision or at an otherwise time mutually agreeable to the parties. IRC will make its best efforts to have persons at this meeting with decision-making authority who have knowledge of claimant's needs. Because a DDS representative attended the January 13, 2020, meeting at claimant's home, a DDS representative should attend this meeting.

ORDER

1. Claimant's appeal from Inland Regional Center's proposed action to discontinue claimant's participation in the Home and Community-Based Services (HCBS) Medicaid Waiver Program because her level of need exceeded the program requirements is deemed moot. Claimant will continue to participate in this program.

2. Claimant's appeal of IRC's proposed action to terminate IRC-funded services as identified in her IPP is granted. Claimant will continue to receive IRC-funded services as identified in her most recent IPP.

3. Claimant's appeal of IRC's February 24, 2020, proposed action to maintain her SDP Budget at \$32,796.72 and not increase the SDP budget is granted, in part and denied in part.

In order to determine claimant's final SDP budget, including any adjustments to it, within 90 days of this decision, at a mutually agreeable time and by telephonic

conference, an IPP meeting will be held to address claimant's unmet needs within the IPP. IRC will be responsible to arrange the telephonic conference and assist claimant accordingly in this regard. At this meeting and to ensure the parties can meaningfully address claimant's needs, for purposes of finalizing the SDP budget consistent with Welfare and Institutions Code section 4685.8, IRC will make its best efforts to ensure that the following persons are in attendance: Program Manager Amy Clark, claimant's current CSC, a member of IRC's Compliance Team, and a representative from DDS. IRC can include other persons it feels would facilitate a meaningful discussion concerning claimant's unmet needs and SDP's budget. At her election claimant may have in attendance Mr. Coogan, claimant's FMS, or other persons she believes would assist the parties in arriving at a final SDP budget. Claimant, however, will be responsible to arrange for the attendance of these persons at this meeting. Given the COVID-19 pandemic, all of these persons may attend by telephone or videoconference.

DATE: January 26, 2021

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.