

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2020050491

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on October 19, 2020, pursuant to Executive Orders N-25-20, N-33-20, and N-63-20 pertaining to the COVID-19 pandemic.

Stephanie Zermeño, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant with the assistance of a court-certified Spanish language interpreter.

The record was closed, and the matter submitted for decision on October 19, 2020.

ISSUE

Should IRC increase claimant's Self Determination Program budget to include tuition at the Musicians Institute, vocal coach lessons, studio headphones, a microphone, a computer for editing music and videos, and a gym membership with personal training?

FACTUAL FINDINGS

Background

1. Claimant is a 21-year-old conserved male who is eligible for IRC services based on a diagnosis of autism spectrum disorder.

2. Claimant was selected by the Department of Developmental Services (DDS) 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 support, 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 individual program plan (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.

3. On February 19, 2020, a meeting was held between IRC and Premier Healthcare, claimant's Financial Management Services (FMS) provider, to review claimant's SDP budget. IRC reviewed claimant's purchase of service expenditures for the previous 12 months (March 1, 2019, through February 29, 2020), which totaled \$38,677.98. Based on the previous year's expenditures, and approved unmet needs, IRC calculated claimant's annual budget in the amount of \$40,120.68. Claimant submitted a budget request of \$113,148.36. The budget increase included a request for tuition to attend the Musicians Institute (4 quarters at \$8,220 per quarter), vocal coach lessons (\$4,800), studio headphones (\$538.70), a microphone (\$3,879), a computer for editing music (\$15,644), and a gym membership (\$503.88) and personal training (\$3,600).

4. On March 20, 2020, IRC issued a Notice of Proposed Action denying claimant's request for the additional funds to be included in claimant's budget.

5. On May 11, 2020, claimant filed a Fair Hearing Request.¹

¹ The request was in Spanish and there was no translated version in the record.

6. On June 1, 2020, claimant's parents attended an informal meeting with IRC representatives. At the meeting, claimant's parents provided information about the Musicians Institute, a music college located in Hollywood, which provides certificates and confers degrees useful for obtaining employment in the music industry. Claimant's parents reported that they had contacted the Department of Rehabilitation (DOR) but were informed it would not cover the tuition. The headphones, microphone, and computer were items needed for the school. Regarding the gym membership and personal training, claimant's parents reported that claimant has gained weight, is seeing a nutritionist, and the gym is for his health. Following the meeting, IRC adhered to its original determination that it could not increase the SDP budget to cover these expenses. Under the SDP, a budget cannot be increased to cover services that would not be covered under the traditional model and the services requested do not constitute an "unmet need."

IRC's Evidence

7. IRC Training and Development Program Manager Jonathan Eckrich, Program Manager Anthony Duenas, and Consumer Services Coordinator Clemencia Ruiz testified at the hearing. Their testimony is summarized as follows: Presently, IRC funds claimant with 48 hours per month of respite services, with a temporary increase to 60 hours per month due to COVID-19; 7 hours per month for a personal assistant; 3 days per week for a day program (with transportation), which claimant currently attends virtually; and various conferences for claimant's mother. As of September 29, 2020, claimant's total budget is \$90,700.56, which reflects the temporary increase for COVID-19 respite and transportation. The SDP budget is \$64,012.56.

8. Under SDP, a family can have an FMS agency assist with developing a spending plan for the SDP budget. Premier Healthcare was claimant's FMS agency that

submitted a spending plan in February. Since then, claimant has a new FMS agency, the Autism Society of Los Angeles, which has submitted a new spending plan. After the Notice of Action, IRC has approved an increase in the SDP budget from the \$40,128 originally listed in the Notice of Action, to \$64,012.56. These increases reflect other adjustments not related to the requests for tuition, music equipment, or a gym membership. Additionally, IRC is in the process of considering other increases to the budget, which are not within the scope of this hearing.

9. IRC denied claimant's request to increase the SDP budget because there are no changes in circumstances and attendance at a music college, vocal lessons, music/computer equipment, and a gym membership/personal training are not specialized services related to a developmental disability. As IRC could not fund these services under the traditional model, they cannot be used to support an increase of an SDP budget.

Claimant's Evidence

10. Claimant's parents both testified at the hearing. Claimant was accepted into the Musicians Institute, which can provide vocational training and result in employment in the music industry. Claimant's parents spoke generally about the benefits of the program for claimant.

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.

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.

9. 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.)

10. The regional center is 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).) A regional center is 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).)

11. Welfare and Institutions Code section 4648.5, subdivision (a), prohibits a regional center from purchasing certain services, such as specialized recreation. An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs. (*Id.* subd. (b).)

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. Claimant failed to establish that IRC is required to increase his SDP budget to include tuition at a music college, vocal lessons, specialized headphones, a microphone, and a computer. First, none of these items constitutes "services and supports for persons with developmental disabilities" as defined in Section 4512, subdivision (b), because they are not specialized services, or special adaptations of generic services. Attendance at a music college, singing lessons, and sound equipment are general resources with no direct nexus to claimant's developmental disability. Moreover, IRC is prohibited from purchasing services available from generic resources, including other governmental agencies. (Welf. and Inst. Code, § 4659, subd. (a).) DOR is the governmental agency responsible for providing vocational rehabilitation services for individuals with disabilities. Although claimant's parents informed IRC at the informal meeting that DOR denied claimant's request for tuition assistance, there was insufficient evidence presented that DOR would not provide the type of vocational assistance claimant is seeking from IRC, namely tuition to attend a music college. Finally, IRC's purchase of services must be cost-effective. Claimant failed to establish that there would not be more cost-effective options, such as classes offered at a community college.

The gym membership and personal training requested by claimant falls within the category of nonmedical therapies, including specialized recreation, that IRC is prohibited from purchasing pursuant to Welfare and Institutions Code section 4648.5, subdivision (a) The exemption provided in subdivision (c), does not apply in this case

because it was not established that the exercise services and facilities provided by a gym membership and personal training are a primary or critical means to ameliorate the effects of claimant's developmental disability of autism or necessary to enable claimant to remain in his home.

In sum, because IRC would be prohibited from funding the above items in its traditional delivery of service model, it is prohibited from adjusting the SDP budget to include these additional expenditures. (Welf. & Inst. Code, § 4685.8, subd. (n).)

ORDER

Claimant's appeal from Inland Regional Center's determination that it would not increase claimant's Self-Determination Program individual budget to include tuition to the Musicians Institute, singing lessons, studio headphones, microphone, a computer and gym membership/personal training is denied.

DATE: October 28, 2020

ADAM L. BERG

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.