

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2021030967

DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 3, 2021.

Claimant,¹ who was not present, was represented by Jane Dubovy, Attorney at Law.

¹ Claimant and his parents are identified by titles to protect their privacy.

North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Catherine Peterson, Contract Officer.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 3, 2021.

ISSUES

Should Service Agency reimburse the cost of Claimant's vocational program at Exceptional Minds for the 2018-2019 school year?

Should Service Agency reimburse the cost of Claimant's vocational program at Exceptional Minds for the 2019-2020 school years?

EVIDENCE

Documentary: Service Agency's exhibits 1, 4, 7, 11, 13, 15, 17, and 22; Claimant's exhibits Y, Z, AA, EE, and GG.

Testimonial: Erin Broughton-Rodriguez, M.A., Resource Developer; Silvia Renteria-Haro, Self-Determination Program (SDP) Supervisor; and Claimant's mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 23-year-old non-conserved male. On a date not made clear by the record, he was found eligible for regional center services based on a qualifying diagnosis of autism spectrum disorder.

2. On February 17, 2021, Service Agency sent a letter and a Notice of Proposed Action to Claimant's parents informing them of its decision to deny their request for retroactive payment for Claimant's "participation in a non-vendored vocational program called Exceptional Minds, located in Sherman Oaks for the school years 2018-2019 and 2019-2020." (Ex. 1, p. A14.)

3. On March 19, 2021, Claimant's parents filed a Fair Hearing Request on their Claimant's behalf to appeal the denial of their request for reimbursement. On April 22, 2021, Service Agency held a virtual informal meeting with Claimant's parents. On May 10, 2021, Service Agency notified Claimant's parents of its decision to affirm denial of their request for reimbursement for Claimant's participation in the Exceptional Minds program. On August 31, 2021, Service Agency notified Claimant's parents of its decision to affirm denial of their reimbursement request because it did not have a mechanism to reimburse tuition expenditures, the Financial Management Service (FMS)² chosen by the Claimant under the Self-Determination Program may

² The ALJ takes official notice that the SDP requires participants to use an FMS to pay for services on their behalf. The FMS is completely independent of the Regional

only pay the service provider directly, barring reimbursement to families or consumers, and Claimant enrolled in the Exceptional Minds when he received services through the traditional service model and Exceptional Minds is not vendored by the regional center. This hearing ensued.

Self-Determination Program

4. The Self-Determination Program (SDP) allows program participants to control a budgeted amount of money to purchase needed services and supports. The participant's budget amount is based upon the regional center's expenditures during the prior 12 months for supports and services listed in the participant's Individual Program Plan (IPP). The regional center certifies the expenditures used to calculate the participant's budget amount.

5. After the budget is determined, the participant must develop a spending plan to use the available funds to meet the goals and objectives outlined in the IPP. IPPs must be developed using a person-centered planning process. SDP funds can only be used for services approved by the federal Centers for Medicare and Medicaid Services (CMS) and the services must not be available through other funding sources such as schools or Medi-Cal. Services may be provided by entities not vendored with the regional center. The FMS is the only entity required to be vendored with the regional centers under the SDP.

Center, but it is required that an FMS be a service vendored through a local regional center.

Claimant's IPP Meetings and NLACRC's Implementation of the SDP³

6. At Claimant's May 20, 2018 IPP meeting, Claimant's parents requested funding for the Exceptional Minds program. Exceptional Minds is a three-year vocational program that prepares young adults on the autism spectrum for careers in digital animation and visual effects. Paul Ramos, Claimant's Service Coordinator (SC) at the time, informed Claimant's parents that they would need to exhaust all other funding options first, specifically funding by the Department of Rehabilitation and scholarships offered by ExceptionalMinds. Claimant was denied funding by those entities.

7. SC Ramos then suggested that Claimant apply for the SDP as a way to obtain funding for Exceptional Minds. Claimant submitted an application in August 2018 and was accepted into the SDP on October 3, 2018.

8. Participants in the SDP must attend an orientation meeting prior to proceeding with other program steps. Although NLACRC could have had an orientation meeting in January 2019, it did not offer an orientation to its SDP participants until May 14, 2019. Claimant's mother attended that meeting, where she was informed that SDP service providers must be vendored by the regional center. That information was incorrect.

9. At Claimant's May 16, 2019 IPP meeting, Claimant's discussed funding for the Exceptional Minds program with Claimant's new Service Coordinator, Cristina

³ Factual Findings 6-19 are based on the stipulation of the parties.

Williams. On June 3, 2019, SC Williams informed Claimant's parents that NLACRC does not fund the program but that the Department of Rehabilitation might.

10. On June 3, 2019, Claimant's parents asked SC Williams how Claimant's SDP budget would be developed since he had not received regional center services during the previous 12 months. SC Williams discussed the budget issue as well as funding for Exceptional Minds with Sheila Calove, NLACRC Consumer Services Director. Ms. Calove instructed SC Williams that Claimant's budget could be developed based on unmet needs and a determination whether there were generic resources available to meet that need.

11. On October 16, 2019, SC Williams contacted her supervisor to discuss options for Claimant including community integration training and Exceptional Minds. SC Williams' supervisor advised her to consult with Silvia Renteria-Haro, NLACRC SDP Supervisor, who worked in the NLACRC Adult Unit because SDP Renteria-Haro had experience with Exceptional Minds.

12. On October 30, 2019, SC Williams was advised to draft a Notice of Action (NOA) denying funding for Exceptional Minds on the grounds that Claimant had previous college experience, there were alternate programs available to meet his needs, and Exceptional Minds is not vendored with the regional center. The NOA was sent to Claimant's parents on December 18, 2019. Meanwhile, NLACRC staff members continued to meet regarding Claimant's case.

13. On June 9, 2020, Dianne Lotivio, NLACRC SDP Specialist, prepared an initial SDP budget for SC Williams to review. On June 26, 2020, SC Williams noted that Claimant's parents continued to express interest in funding for Exceptional Minds. Claimant's parents requested an update regarding Claimant's SDP on July 13, 2020.

SDP Supervisor Renteria-Haro informed SC Williams that she was seeking further direction regarding funding for Exceptional Minds through the SDP.

14. On August 10, 2020, SC Williams informed Claimant's parents that NLACRC was seeking further guidance on funding Exceptional Minds through the SDP.

15. Claimant's parents requested an update on August 13, 2020. In response, SC. Williams informed them on August 19, 2020, that the NLACRC Accounting Department had not certified Claimant's budget, and that the budget was pending approval by both NLACRC's Accounting Director and Chief of Program Services.

16. On September 14, 2020, Claimant's parents requested an update on the SDP and inquired about reimbursement of the payments they had made to Exceptional Minds. Claimant's parents paid Exceptional Minds \$36,843.76 in 2018, \$33,350 in 2019, and \$11,500 in 2020.

17. On September 17, 2020, SC Williams informed Claimant's parents that funds are granted based on the date of transition into the SDP, and not acceptance in the program. Claimant's parents disagreed with that information and noted that they had attended all required meetings and repeatedly inquired about holding an SDP meeting. SC Williams responded that no SDP budget meeting was held because Claimant had no pre-existing budget.

18. At Claimant's October 23, 2020 IPP meeting, Claimant's parents discussed Claimant's attendance in the Exceptional Minds program. They explained that Claimant intends to obtain a certificate so that he can pursue a career in film restoration. The IPP also states that "Once transitioned into SDP, he plans to continue attending Exceptional Minds." (Ex. Y, p. B130.) Claimant's SDP budget was certified on October 23, 2020.

19. Claimant transitioned into the SDP on November 1, 2020.

Regional Center's Evidence

20. Erin Broughton-Rodriguez, M.A., has been employed as a Resource Developer (RD) at NLACRC for six years. Her job duties include developing programs for consumers and ensuring vendors meet requirements for vendorization.

21. RD Rodriguez's testimony established that NLACRC could only fund services provided by Exceptional Minds under the traditional model of services if Exceptional Minds was vendored.

22. On a date not made clear by the record, Exceptional Minds began the vendorization process. On August 18, 2021, RD Rodriguez notified Exceptional Minds that NLACRC was unable to continue the vendorization process because Exceptional Minds had not submitted a revised program design, revised course description, revised course catalog, and a creative arts program design checklist. As of the date of the hearing, Exceptional Minds still had not submitted the documentation to NLACRC. Exceptional Minds was not a regional center vendor in 2018, 2019, 2020, or 2021.

23. RD Rodriguez asserted that NLACRC cannot reimburse consumers who received services from non-vendored providers under the traditional model of services.

24. RD Rodriguez is aware that NLACRC has funded services provided by Exceptional Minds for other consumers under the traditional service model, subject to court orders. She explained that the court orders were consumer specific and not broadly applicable to other consumers.

25. SDP Supervisor Renteria-Haro oversees the implementation of the SDP and supervises four SDP specialists who assist consumers transition from the traditional service model to the SDP.

26. The SDP allows families the flexibility to access services not traditionally funded. The families are given a budget and can utilize providers that are vendored or non-vendored. Exceptional Minds can be paid using SDP funds.

27. In order to fund services through the SDP program, families must attend an orientation that outlines consumers' responsibilities, develop a person-centered plan, and attend a budget meeting to determine how much funding will be provided by the regional center. Once the budget is certified, the family is provided a budget tool, the family attends an IPP meeting, and authorization for the FMS is requested.

28. Once a consumer is enrolled in the SDP, they and can access services on the first of the month after the date of date of the consumer's transition into the SDP.

29. Regional centers began funding the SDP program in 2018. According to SDP Supervisor Renteria-Haro, funding for the SDP program should have been operational in January 2019. It typically takes two to three months from when a family attends an orientation, for the consumer to be transitioned into the SDP and their account to be funded an available for use. Accordingly, if NLACRC had provided an opportunity for Claimant's parents to attend an orientation in January 2019, March 1, 2019, was the earliest Claimant's SDP account could have been funded and available for use.

30. Here, Claimant was enrolled in the SDP in October 2018, and but was not transitioned into the SDP until November 1, 2020. He accessed services under the traditional model until that date. SDP Supervisor Renteria-Haro explained that the

delay in transitioning Claimant into the SDP was caused by the need for NLACRC's staff to undergo training about the SDP. Claimant was negatively impacted by NLACRC's learning curve. Claimant's former service coordinators did not understand that Exceptional Minds is a program that can be funded under the SDP. Because Claimant did not transition into the SDP until November 1, 2020, he was unable to access SDP funds before that date.

31. It is SDP Supervisor Renteria-Haro's understanding that the FMS agency cannot directly reimburse consumers' parents, there are no statutes that govern reimbursing families, and there is no mechanism for retroactive payments using SDP funds.

32. Because Claimant's mother attended the May 2019 orientation, the earliest Claimant could have transitioned into the SDP program was July 2019, assuming the FMS agency selected by Claimant's family was vendored at that time.

33. NLACRC has funded Claimant's participation in the Exceptional Minds program since November 2020 through the SDP.

Claimant's Evidence

34. Claimant's mother testified that she repeatedly asked Claimant's service coordinator what to do following the May 2019 orientation, maintained constant communication about the SDP program, and inquired constantly about what steps she need to take to move forward in the SDP. However, Claimant's service coordinator constantly told her that it was not time to take additional steps.

35. Claimant's mother was confused and surprised to learn from NLACRC at the orientation that Exceptional Minds was considered an educational program and

not a vocational program, and that Exceptional Minds needed to be vendored in order for the program to be funded by the SDP.

36. No one informed Claimant's family about the need for a budget until June 3, 2019, and they received no help creating a budget nor were they told who could help prepare it. Ms. Calove's indication that Claimant needed to demonstrate an unmet need caused further confusion for Claimant's family.

37. Claimant's family discussed Claimant's need for an appropriate vocational program during Claimant's 2017 IPP meeting, and those discussions continued in 2018 through 2020. Claimant has tried independent living skills and social skills programs without success. In addition, he enrolled at Woodbury University (Woodbury) in the Fall of 2017. However, things did go well for Claimant, he became depressed, and he stopped attending Woodbury in October. Claimant attended Moorpark Community College (Moorpark) but was unsuccessful and stopped attending Moorpark after a few days. Day programs are inappropriate for Claimant because he is high functioning.

38. Claimant's parents discovered Exceptional Minds, and Claimant spent a year taking art and other preparatory classes to obtain the skills required for admission. Claimant attends Exceptional Minds' visual effects program five days per week, six hours per day. Claimant will obtain a certificate at the end of the year which will qualify him for employment in the visual effect industry and allow him to live on his own.

LEGAL CONCLUSIONS

The Lanterman Act

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (Welfare & Inst. Code,⁴ § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s denial of reimbursement for the Exceptional Minds program. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his funding request.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. 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

⁴ All further statutory references are to the Welfare and Institutions Code (Code) unless otherwise indicated.

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.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Code, § 4501.)

4. 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. (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." (Code, § 4620, subd. (a).)

5. A consumer's needs and goals, and the services and supports to address them determined through the IPP process. The services and supports are described generally in Code section 4512, subdivision (b), which states in part:

"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 an independent, productive, and normal life. 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.

6. Use of the IPP process to determine the services to meet the needs of a consumer is referenced in Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in Code section 4659, subdivision (a), that the regional center “shall identify and pursue all possible sources of funding,” including governmental programs such as Medi-Cal and school districts, and private entities such as insurance. (*Id.*, subdivision (a)(1) and (2).)

8. Code section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources. And under Code section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

9. Further, NLACRC is mandated to ensure the effective and efficient use of public resources and detect and prevent waste and abuse in the utilization of public funds.

10. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in section 4659. (Code, § 4646.4, subd. (a).) NLACRC 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. (*Ibid.*)

11. 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. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

The Self-Determination Program

12. 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. Self-determination gives the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Code, § 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (Code, § 4685.8, subd. (b)(2)(G).)

14. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Code, § 4685.8, subd. (d)(3)(B).)

15. The SDP requires participants to “only purchase services and supports necessary to implement his or her IPP” (Code, § 4685.8, subd. (d)(3)(C).)

16. When a consumer is in the SDP, the IPP team is to develop the plan, utilizing the person-centered planning process. (Code, § 4685.8, subd. (j).)

17. Code section 4685.8, subdivision (l) provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5.⁵ A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

18. Code section 4685.8, subdivision (m), 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.

⁵ Under Code section 4648.5, regional centers' ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended.

(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).

19. SDP participants and their families have the authority to make decisions about the services and support they need in their lives (Code, § 4685.8, subd. (z)(B))

and the SDP allows the participant to decide how they want to spend their time.
(Code, § 4685.8, subd. (x)(3)(A).)

Claimant's Request for Reimbursement for the Exceptional Minds Program for the 2018-2019 and 2019-2020 School Year

20. The Service agency contends that there is no mechanism to reimburse Claimant's family under the SDP and the FMS agency is prohibited from paying parents directly. However, the Service Agency did not cite any statute or regulation in support of its allegation.

21. The Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384 (*Association for Retarded Citizens*).)

22. Reimbursement of the out-of-pocket costs already incurred by Claimant's family for the cost of services provided by Exceptional Minds is appropriate where such reimbursement is consistent with the purposes of the Lanterman Act. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 393.) Here, Claimant's family brought up funding for the service during 2017 IPP meeting and has continuously sought funding

for the program every year thereafter. Exceptional Minds is an effective program that provides a cost-effective means of meeting Claimant's established needs. This is especially true in light of Claimant's lack of success in college and day programs are not appropriate. Given that Service Agency: a) incorrectly informed Claimant's parents that Exceptional Minds needed to be vendored with the regional center although Claimant was accepted in the SDP and vendorization is not required; and b) caused an extraordinary delay in assisting Claimant's family with the budget process and transitioning Claimant into the SDP, it is appropriate to order Service Agency to reimburse Claimant's family for the out-of-pocket costs they have paid for part of Claimant's participation in the program as explained in Legal Conclusion 23, below.

23. The earliest NLACRC could have transitioned Claimant into the SDP and made funds available was July 2019, given Claimant's family's participation in the May 2019 orientation. Accordingly, Service Agency shall reimburse Claimant's family for the costs of the Exceptional Minds program from July 2019 to November 1, 2020. Because Claimant could not have transitioned to the SDP prior to July 2019 and because Exceptional Minds is not vendored through the regional center's traditional service model, Claimant's appeal with respect to the 2018-2019 school year is denied.

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ORDER

1. Claimant's appeal is granted in part, as set forth in this Decision.
2. Service Agency shall reimburse Claimant's family for the cost of the services provided by Exceptional Minds from July 1, 2019, through November 1, 2020, upon the family's provision of documentary proof satisfactory to the Service Agency.
3. Claimant's appeal is denied in all other respects.

DATE:

CARMEN D. SNUGGS-SPRAGGINS
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.