

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER**

**OAH No. 2021060796 (Primary)**

**OAH No. 2021080715 (Secondary)**

**DECISION**

These consolidated matters were heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconference on November 2, 2021. The record was closed, and the matters were submitted for decision at the conclusion of the hearing.

Claimant was represented by his parents.<sup>1</sup>

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<sup>1</sup> Claimant and his family members' names are omitted to protect their privacy.

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (service agency).

## **ISSUES**

Shall the service agency fund for claimant to receive ongoing additional hours of Supported Employment Program Individual Placement job coaching services? (Primary case.)

Shall the service agency fund for claimant to have transportation to the Rose Bowl Aquatic Center, Gym, Golf, and Special Olympics? (Secondary case.)

## **EVIDENCE RELIED ON**

In making this Decision, the ALJ relied on service agency exhibits 1 through 9 and 11 through 17 (exhibit 10 was withdrawn); claimant exhibits A through W; as well as the testimony of Service Coordinator Angela Avelar, Dr. Rodrigo Rocha, Brian Whelan, and claimant's parents.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. The service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a 37-year-old man who is eligible for services under the Lanterman Act based on his qualifying diagnosis of Mild Intellectual Disability. (Ex. 5.)

3. As described in more detail below, claimant has participated in the Self-Determination Program (SDP) since at least 2020. The SDP process includes creating an annual budget for services and supports funded by the service agency. In the process of creating claimant's SDP budget for the 2021/2022 fiscal year, claimant's parents requested additional services and supports and increased funding for existing ones. (See, e.g., Exs. 9, 16 & T.)

4. By no later than May 28, 2021, claimant's parents requested the service agency fund for claimant to have specialized transportation to take him to swim classes at the Rose Bowl Aquatic Center, a personal trainer at a local gym, golf lessons, and athletic events operated by Special Olympics Southern California. (Exs. 3 & F.)

5. On June 2, 2021, the service agency issued a Notice of Proposed Action (or NOPA) advising claimant's parents that their transportation funding request was denied. (Exs. 3 & F.) The reasons stated in the NOPA for the denial of funding was that claimant must consider and explore available generic resources to support with transportation; and the service agency would fund an assessment of claimant's mobility and travel training needs. (*Ibid.*) This is the underlying dispute of the Secondary case.<sup>2</sup>

6. On June 18, 2021, claimant's parents submitted a Fair Hearing Request (FHR), which contained a demand for a hearing to challenge the service agency's

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<sup>2</sup> This NOPA also addressed claimant's parents' request for funding for driver training, but claimant's parents subsequently abandoned that funding request.

denial of the transportation funding. (Ex. 4.) Claimant's parents contend in the FHR the funding is necessary to help in reducing claimant's obesity and keep him healthy and fit, which are goals stated in his operative Individual Program Plan (IPP). (*Ibid.*)

7. By no later than June 7, 2021, claimant's parents also requested the service agency fund for claimant to receive ongoing additional hours of Supported Employment Program Individual Placement job coaching services. (Exs. 1 & G.)

8. On June 14, 2021, the service agency issued a NOPA advising claimant's parents it would fund 100 percent of claimant's job coaching hours for 60 days (or 36 hours), but their request for ongoing additional job coaching as a permanent part of his SDP budget was denied. (Exs. 1 & G.) The reason stated in the NOPA for the denial of ongoing and permanent job coaching funding was that claimant must first exhaust available generic funding for such job coaching. (*Ibid.*) This is the underlying dispute of the Primary case.

9. On June 17, 2021, claimant's parents submitted an FHR, which contained a demand for a hearing to challenge the service agency's denial of the job coaching funding. (Ex. 2.) Claimant's parents contend in the FHR the additional job coaching funding is necessary to address training claimant receives at work for COVID-19 protocols and workplace violence. (*Ibid.*) Claimant's parents had previously told the service agency this additional job coaching also was necessary to help claimant either identify and advocate for a more challenging position with his current employer or to find a new job with another employer. (See, e.g., Exs. 5-7, 13-14 & 17.)

10. On August 5, 2021, the service agency conducted an informal meeting with claimant's parents by videoconference to discuss both FHRs. (Ex. I.) No resolution was reached. (*Ibid.*) However, related to that process, the service agency agreed to

provide funding for an additional 60 days of 100 percent job coaching (or 36 hours), for a total of 120 days and 72 hours. (Ex. 16, p. 6.)

11. Official notice is taken that on August 25, 2021, the service agency moved to consolidate both cases for hearing. Claimant's parents joined the motion and, in doing so, executed a written waiver of the time limit prescribed by law for holding the hearing and for the administrative law judge to issue a decision. The motion was granted, the two cases were consolidated for hearing, and the hearing for both cases was moved to a date later than the initial hearing date set for the Primary case.

## **Claimant's Background Information**

### **PERSONAL INFORMATION**

12. Claimant is a single man who is conserved. His parents are his limited conservators.

13. Claimant lives alone in an apartment but receives service agency funding for supported living services (SLS).

14. As described in more detail below, for the past several years claimant has worked at a local grocery store. He usually walks to and from work, unless the weather is bad, in which case he is driven by his parents or SLS staff.

### **INDIVIDUAL PROGRAM PLAN**

15. A. The parties did not submit the IPP operative in 2020 when claimant's first SDP budget was created. However, the IPP operative in 2021 was submitted, as

well as consumer transaction notes from 2018, and those items can be used somewhat to reconstruct service and support funding claimant received in 2020.

B. Pertinent to these consolidated cases, claimant in 2020 received service agency funding for a job coach to help him at work. Claimant also received funding for swim classes two or three times per week (reduced during the COVID-19 pandemic) at the Rose Bowl Aquatic Center, to meet with a personal trainer at a local gym, and to take golf lessons at a golf club. Claimant also participated in athletic events organized by the Special Olympics Southern California, which is a generic service not funded by the service agency.

C. As a result of an FHR the family filed in 2018, the service agency has funded specialized transportation to one of claimant's weekly swim classes. The service agency has not provided specialized transportation funding for the other physical activities. Claimant is usually driven to these activities by his parents or his SLS staff.

### **SELF-DETERMINATION PROGRAM**

16. Claimant is one of the service agency's first consumers to participate in the SDP. Claimant's Service Coordinator, Angela Avelar, testified the centerpiece of the SDP is the annual budget created by the parties. The consumer has wide discretion in using funding in the budget for the various services and supports identified therein as he or she sees fit. Ms. Avelar testified that flexibility allows the consumer to reprioritize services and supports throughout the fiscal year, and reallocate spending among the various services and supports as needs arise.

17. A. Claimant's first SDP budget covered the period from July 2020 through June 2021. (Ex. 9.)

B. The budget for that initial year of participation in the SDP (or Year One Budget) was \$49,211.72, which was based on the total amount spent by the service agency during the prior 12-month period (\$18,243.83) plus the costs of newly identified needs (\$30,967.89). The Year One Budget includes a little over \$1,100 per year for mileage reimbursement for non-medical transportation. (Ex. 9.) It appears that on June 1, 2021, the Year One Budget was increased to \$50,561.72. (Ex. B, p. 25.)

C. The newly identified needs specified in the Year One Budget were 69 hours per month of SLS personal support services and 16 hours per month of job coaching. (Ex. 9.)

18. A. Claimant's second SDP budget covers the period from July 2021 through June 2022 (or Year Two Budget). This is the budget subject to the current disputes. (Exs. T.b., 9 & 16.)

B. The parties have been working with budget tools to create claimant's Year Two Budget, which has ranged between \$55,677.80 and just over \$60,000. The Year Two Budget still includes a little over \$1,100 per year of non-medical transportation mileage reimbursement. (Exs. T.b.-T.i., 9 & 16.)

C. Newly identified needs listed in the proposed Year Two Budget are nine additional hours per month of SLS personal support services and the 72 hours per month of job coaching offered by the service agency in response to one of the involved FHRs, which is specified as a one-time fee not to be included in the next budget. (Exs. T.b. & 16.)

## **Job Coaching**

19. Since October 2013, claimant has worked as a courtesy clerk/bagger for a local grocery store. He works from 12 to 16 hours per week, depending on the store's scheduling needs. (Testimony [Test.] claimant's parents.)

20. For many years, the service agency has funded a job coach to be with claimant at work. Claimant's Year One Budget included a job coach for 30 percent of his work hours. Since claimant works on average 14 hours per week, 30 percent of those weekly work hours equates to 16 hours per month of funded job coaching. Unfortunately, claimant was without a job coach for much of the COVID-19 pandemic due to a staffing shortage. A new job coach recently was hired for him. (Test. claimant's parents.)

21. A. Claimant's parents have requested his job coaching be increased to 100 percent of his work hours, meaning he would have a job coach with him every hour he works. (Test. claimant's parents.)

B. One of the reasons for the increased funding request is the need to address COVID-19 health requirements, such as making sure claimant always wears a mask when in the store and keeps a safe social distance from others. (*Ibid.*)

C. Another reason for the increased funding request is that claimant has had computer-based training at work on workplace violence, such as an active shooter situation, and he has struggled to learn in that mode. (*Ibid.*)

D. Another reason for the increased funding request is claimant's recent desire for upward job advancement. Claimant is becoming bored with his current job, which he has done for several years. He would either like to find another position at

his current employer or find another job with another employer. Claimant's parents believe a job coach is necessary to help claimant identify and advocate for a new position or job that is more challenging to him; once a new position or job is obtained, claimant will need help learning how to perform his new duties. (*Ibid.*)

E. Claimant's parents request 100 percent job coaching for now and then at least the first nine months after a new position or job is obtained, followed by six months at 50 percent, and thereafter 30 percent. (*Ibid.*)

22. The service agency's Purchase of Service Policy for employment training and support services requires the service agency to first make a referral for this service funding to either the California Department of Rehabilitation (DOR), supported work programs, or work activity programs. (Ex. 12, pp. 10-11.) "DOR is required to fund supported work services until the adult [consumer] is stabilized in a specific job. Upon stabilization, usually within six months, DOR notifies the regional center at least 15 days in advance of the transition of the funding to regional center. The regional center can then continue to purchase supported work services." (*Ibid.*)

23. In this case, consistent with its policy, the service agency referred claimant's parents to DOR for assistance with additional job coaching. (Ex. V.)

24. A. Claimant's parents applied to DOR. Initially, DOR denied the request, stating on-the-job training support should be provided by claimant's current employer, and that DOR services are not available because claimant already has a job. (Ex. V.)

B. After more discussion between the parties, DOR deemed claimant eligible for services as of August 25, 2021. An Individualized Plan for Employment (IPE) for Customized Employment (CE) was signed on October 20, 2021. (*Ibid.*)

C. Claimant will be supported in his CE by Easterseals Southern California. The CE will be a four-part process, comprised of assessing claimant's skills and looking for suitable jobs, developing new skills, placing him in a new job, and job coaching once the new job is obtained. (Exs. W.i. & 17, p. 218.) This four-step process has not begun for claimant.

25. To bridge the gap until DOR begins providing employment services to claimant, the service agency, as discussed above, has added four months of 100 percent job coaching to claimant's Year Two Budget. No evidence indicates claimant has begun to utilize the additional job coaching hours.

26. Claimant's parents are worried he will not be able to remain COVID-19 safe while at work without constant job coaching. However, claimant has been at work during the entire COVID-19 pandemic, often without a job coach. Claimant's parents describe the COVID-19 requirements at work as constantly changing, but they provided no specifics. No evidence presented indicates claimant has had any problem complying with COVID-19 work safety requirements or encountered any risk concerning his health at work. During the hearing, claimant's parents did not articulate an effective answer to the service agency's position that claimant can be adequately served by his current job coach also handling COVID-19 safety awareness.

27. Safety and community awareness are concerns stated in claimant's IPP. Claimant also struggles with computer-based training. He needed his supervisor's help in completing the recent workplace violence computer training. Nonetheless, claimant completed the training. When asked to provide the primary lessons he learned from the training, claimant gave an appropriate response. Claimant's parents worry the training was too abstract, given claimant's mild intellectual disability. They seize on one comment claimant made when articulating the lessons he learned from the

training, i.e., “he needs to take away the guns and tie up the shooter.” However, that was the last of the three lessons claimant described in decreasing priority, after calling 911 and getting away to a safe location. Here too claimant’s parents did not articulate an effective answer to the service agency’s position that claimant would be adequately served by his current job coach also addressing safety awareness and workplace violence.

28. In terms of upward mobility, claimant loves his current job and employer. But he wants a more challenging position there, such as in the bakery department or doing merchandise stocking. Claimant has not yet asked his employer about a new position, mainly because he has not had a job coach until recently. Claimant also is amenable to working for another employer if he can find a more challenging job. Claimant’s parents did not articulate an effective answer to the service agency’s position that claimant would be adequately served by his current job coach helping him identify and advocate for a new position with his current employer.

### **Transportation to Physical Activity Locations**

29. Claimant has always enjoyed participating and competing in a variety of physical activities and sports. (Test. claimant’s parents; Ex. B.)

30. Since 2013, the service agency has provided funding for claimant to participate in adaptive swim classes provided by the Rose Bowl Aquatic Center (RBAC). Claimant’s Year One and Year Two Budgets include his attending two classes per week at RBAC. (Ex. M.) As discussed above, the service agency has provided funding for claimant to be transported to one swim class per week. (Test. claimant’s father; Ex. E.) Claimant is usually transported to the other swim class by his parents or an SLS worker. (Ex. M.)

31. Claimant's Year One and Year Two Budgets include funding for claimant to have a gym membership at Foothill Gym and to meet with a personal trainer there twice per week. (Ex. L.) Claimant had previously worked out at another gym before injuring himself using weights. The owner of Foothill Gym, Brian Whelan, testified the focus of activity during the personal training sessions is weight training and nutrition. Currently, claimant is taken to the gym by either his parents or an SLS worker. Official notice is taken that claimant lives less than 1.5 miles from Foothill Gym. It is reasonable to assume he could walk or ride a bike to the gym in under 20 minutes, or that he could take one bus and get there in 30 minutes or less.

32. Claimant's Year One and Year Two Budgets include funding for him to take golf lessons at the Lion Golf Academy in Pomona. While claimant regularly attends the golf lessons, it is not clear from the record how often he does. He is transported there either by his parents or an SLS worker.

33. Since 2006, claimant has participated in the Special Olympics Southern California (SOSC) program. This is a generic program not funded by the service agency. Claimant participates in various sports, depending on the season, including soccer, floor hockey, track and field, golf, bocce, and bowling. Currently, claimant is involved in SOSC soccer, with practices and games in Bell Gardens, which is a 40-mile round-trip commute. He is transported there by either his parents or an SLS worker.

34. For the past several years claimant has been overweight and struggled with overeating. The service agency arranged for him to visit with a nutritionist and have asked his SLS workers to monitor his diet. (See, e.g., Exs. 11, p. 282; 14, p. 9.) Claimant also has a family history of cardiovascular problems. Family friend Dr. Rodrigo Rocha testified that because of his weight gain claimant is becoming at-risk for diabetes.

35. Claimant's parents' request for specialized transportation to all of claimant's above-described physical activities (RBAC, Foothill Gym, golf lessons, and SOSOC) is due to their concern for claimant's health and weight problem. They testified keeping claimant physically active is an important way of addressing his obesity.

36. Claimant's parents' concerns about their son's health and his need for physical activity is supported by letters from Dr. Alexander Linna (Ex. J), his treating physician; Dr. Rocha (Ex. K); Mr. Whelan of the Foothill Gym (Ex. L); and Kandis Pulliam (Ex. M), a coach and manager at RBAC. Each author describes in his or her letter the importance of physical activity to claimant's health. Notably absent, however, was evidence describing claimant's activity at golf lessons.

37. In his testimony, Dr. Rocha described how important cardiovascular exercise is to claimant's health, given his increasing glucose levels, obesity, and family history of cardiovascular disease. Dr. Rocha testified claimant needs at least one hour of cardiovascular exercise two or three times per week.

38. Claimant's parents testified they provide most of the transportation to these physical activities. Claimant's father testified the \$1,100 of mileage reimbursement in the budget is not enough to provide all of the transportation in question. Claimant's parents also testified they are getting older and are no longer interested in transporting their son to these physical activities.

39. The service agency's Purchase of Service policy for specialized transportation (Ex. 12) provides it "may purchase transportation services from available public transportation systems (in the form of a bus pass or Access [a generic paratransit company] coupons) or purchase private transportation companies vendored by the regional center, or family members may become vendored for

reimbursement of mileage costs." (*Id.*, p. 36.) In addition, the service agency may purchase mobility training for adults, when appropriate, so they can utilize public transportation. (*Ibid.*) If there is no appropriate or available public paratransit or generic transportation, the service agency may purchase vendored specialized transportation services for adults to attend the most appropriate, closest day services and supports, and if so, it shall purchase the least expensive transportation modality that meets the consumer's needs. (*Ibid.*)

40. A. The service agency primarily denied the request for specialized transportation to claimant's physical activities because staff believes claimant can either take public transportation or Access.

B. While public transportation may be a viable option to take claimant to the Foothill Gym (as discussed above), it is not an option for RBAC, golf, or SOSC, because those trips would take 1.5 to 2.0 hours each way, and would involve so many transfers as to be too confusing for claimant. Also, some of the walking for a trip to RBAC would be in a dangerous area without sidewalks. Finally, no bus route can take claimant to golf. (Exs. O-R.)

C. Access is not a viable transportation option for any of claimant's physical activities discussed above. Each such activity is scheduled to begin at a precise time. Access has an hour window for pick-ups and drop-offs and is often late, meaning it cannot reliably drop-off claimant in time for any of his physical activity appointments. (Ex. N; test. claimant's father.)

41. Claimant has received mobility training in terms of how to use public transportation. However, he still needs support if a trip requires transfers or for claimant to use an unfamiliar bus route. The record includes references to a mobility

assessment being conducted, but no results were found in the record. For example, Exhibit U is a general assessment and not specifically focused on mobility.

42. Claimant's father testified a mobility assessment showed claimant requires 41 hours per month of support but that the service agency has only approved nine hours per month. Some documents submitted indicate claimant's parents also may have requested an increase to the mileage reimbursement amount. (Ex. H.)<sup>3</sup>

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.)<sup>4</sup> Claimant's parents timely appealed the

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<sup>3</sup> Claimant's parents also requested funding increases for mobility training and mileage reimbursement. However, such issues were not addressed in the service agency's NOPA dated June 2, 2021 (Ex. 3), and thus jurisdiction does not exist to consider them. (Welf. & Inst. Code, §§ 4710, 4710.5, subd. (a).) Even if jurisdiction exists, neither party presented sufficient evidence to allow a meaningful decision of such issues. Therefore, this decision is limited to funding specialized transportation to the physical activity locations in question, without prejudice to claimant or his parents pursuing funding for other transportation-related issues in the future.

<sup>4</sup> Undesignated statutory references are to the Welfare and Institutions Code.

service agency's denials of their service requests, and therefore jurisdiction exists for this appeal. (Factual Findings 1-11.)

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.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant is requesting increases in his current funding, or new funding, and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to such funding.

### **Applicable Provisions of the Lanterman Act**

4. A. Section 4685.8 governs regional center consumers participating in the SDP. The purpose of the SDP is to provide consumers (also referred to as participants) and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. (*Id.*, subd. (a).)

B. "Self-determination" is defined in the statute as a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. (§ 4685.8, subd. (c)(6).)

C. When developing the individual budget, the IPP team determines the services, supports, and goods necessary for each consumer, based on the needs and preferences of the consumer, and when appropriate the consumer's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in section 4648, subdivision (a)(6)(D). (§ 4685.8, subd. (b)(2)(H)(i).)

D. The participant also shall utilize the services and supports available within the SDP only when generic services and supports are not available. (§ 4685.8, subd. (d)(3)(B).)

5. Pursuant to section 4685.8, subdivision (n)(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.

(A)(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.

6. A. In requiring a regional center to certify its expenditures would have occurred regardless of the consumer's participation in the SDP, it is clear that other provisions of the Lanterman Act not expressly exempted in section 4685.8 still apply to funding determinations within the SDP process.

B. For example, there is nothing in section 4685.8 making inapplicable the Legislature's intention set forth in section 4646, subdivision (a), "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."

C. Nor is there anything making inapplicable to the SDP section 4648.35 pertaining to transportation funding. Subdivision (a) of that statute prohibits regional center funding of private specialized transportation services for an adult consumer who can safely access and utilize available public transportation. Subdivision (b) likewise requires regional centers to fund the least expensive transportation modality that meets the consumer's needs.

## **Disposition**

### **JOB COACHING**

7. A. Section 4685.8, subdivision (c), requires consumers participating in the SDP to first utilize available generic resources. The service agency's applicable Purchase of Service Policy echoes this statutory requirement.

B. Claimant's parents' request for additional job coaching hours falls squarely within the purview of services and supports provided by DOR, an available generic resource. DOR is in the process of evaluating claimant's skills and other viable job opportunities. While that process continues, the service agency has agreed to provide four months of 100 percent job coaching to bridge the gap. In the interim, claimant's job coach can help him address required on-the-job training in his current job, as well as identify and advocate for new positions with his existing employer.

C. Under these circumstances, claimant has not met his burden of proving he requires 100 percent job coaching while he works with DOR. Claimant's future job coaching needs can be addressed if he obtains a new position or job. (Factual Findings 19-27; Legal Conclusions 1-4.)

### **TRANSPORTATION**

8. The service agency failed to show claimant's transportation needs can be addressed by public transportation or available generic resources. Claimant cannot use Access for transportation to any of the four activities, and public transportation is not viable for three of the four. Therefore, neither section 4648.35 nor the service agency's applicable Purchase of Service Policy prohibits funding for most of claimant's transportation funding requests. While a mobility assessment was apparently done, the

results are not in the record and therefore cannot support denial of the funding requested. However, these are not the only considerations, and each of the four involved physical activities must be analyzed on their own merits.

9. RBAC. Since 2018, claimant's request for swim class funding has been tied to his health and helping him combat obesity. The service agency has provided transportation for one of claimant's swim classes. Claimant established swimming provides an effective means of cardiovascular activity that will help him combat his weight and related health problems. Pursuant to section 4685.8, subdivision (n), claimant's parents' decision to no longer provide transportation to claimant's physical activities is a change of resources supporting an adjustment to his Year Two Budget. No more cost-effective means of transportation to that activity is known. Therefore, claimant met his burden of proving this increased funding request is warranted. (Factual Findings 29-42; Legal Conclusions 1-6.)

10. Gym. The Foothill Gym is located close to claimant's home. It is such a short commute that claimant can either get there on his own power or take a short bus route in a reasonable length of time. Thus, public transportation is available to him. Sections 4685.8, subdivision (d), and 4648.35, subdivision (a), prohibit funding for transportation to this physical activity. (Factual Findings 29-42; Legal Conclusions 1-6.)

11. Golf. Claimant has requested transportation to his physical activity locations to better his health. Dr. Rocha testified claimant needs cardiovascular activity to meet his health needs. No evidence was presented from claimant's golf coach, or about this activity, indicating a golf lesson provides any cardiovascular benefit. Pursuant to sections 4685.8, subdivision (b), and 4646, subdivision (a), claimant failed to prove this funding request would be effective in meeting a goal specified in his IPP.

Therefore, the funding request is not warranted. (Factual Findings 29-42; Legal Conclusions 1-6.)

12. SOSC. The service agency is not funding the underlying generic activity. Having the service agency pay for transportation would be a fair allocation of resources. Since many of SOSC's sports involve cardiovascular activity, such as soccer, floor hockey, and track and field, funding transportation for this activity is just as warranted as transportation to the swim classes. For the same reason, claimant's parents' decision to no longer provide transportation to this activity is a change in resources allowing an adjustment of claimant's Year Two Budget. However, there are many activities offered by SOSC that do not provide cardiovascular exercise, such as bocce, golf, and bowling. There is insufficient evidence in the record to determine the percentage of SOSC activities involving cardiovascular exercise. Nor does the record show how often claimant attends SOSC activities. Requiring the service agency to provide the same transportation funding to SOSC activities as to the swim classes is the only known way of bridging this gap in the record. Therefore, the service agency shall provide transportation funding for claimant to attend two SOSC activities per week. (Factual Findings 29-42; Legal Conclusions 1-6.)

## **ORDER**

The service agency shall not fund for claimant to receive ongoing additional hours of Supported Employment Program Individual Placement job coaching services, other than the 72 hours of 100 percent job coaching offered before the hearing of these matters.

The service agency shall fund for claimant to have transportation to the Rose Bowl Aquatic Center and Special Olympics Southern California twice per week, but shall not fund for transportation to the gym or golf lessons.

DATE:

ERIC SAWYER

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.