

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

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency

OAH No. 2021090413

DECISION

Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 22, 2021 from Sacramento.

Robin Black, Legal Services Manager, represented Alta California Regional Center (Alta or Regional Center). Claimant's father and authorized representative (Father) represented Claimant.

Evidence was received, the record closed, and the matter submitted for decision on November 22, 2021.

ISSUES

1. Should Alta pay for the dormitory housing and daily meal plan associated with Claimant's participation in the University of California, Davis (UC Davis) Redwood SEED¹ Scholar Program (Redwood SEED)?
2. Should Alta increase claimant's Self-Determination Program (SDP) budget in order for Claimant to pay for the dormitory housing and daily meal plan associated with her participation in Redwood SEED?

FACTUAL FINDINGS

Jurisdiction

1. The State of California is responsible "for its developmentally disabled citizens and an obligation to them which it must discharge." (Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code² section 4500 et. seq. (Lanterman Act), esp. § 4501.) The Department of Developmental Services (DDS) is the state agency with "jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons." (§ 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, regional centers, to provide the developmentally disabled with

¹ Supported Education to Elevate Diversity

² All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

"access to the services and supports best suited to them throughout their lifetime." (§ 4620.)

2. Claimant is a 21-year-old female. She is eligible for regional center services based upon her diagnosis of Down Syndrome. Claimant is seeking funding from Alta for Redwood SEED, a post-secondary education program at UC Davis.

THE LANTERMAN ACT

3. The Lanterman Act is a comprehensive statutory scheme providing for the "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." (*Assoc. for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388 (ARC).) More specifically, the Lanterman Act mandates an "array of services and supports . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) "Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (§§ 4642-4643); and, on an individual basis, selecting and providing services to meet such needs (§§ 4646-4647)." (*ARC, supra*, 38 Cal.3d at p. 388.) The underlying purpose of the Lanterman Act is "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685), 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 (§§ 4501, 4750-4751)." (*Ibid.*)

4. In practice, "[t]he rights of developmentally disabled persons and the corresponding obligations of the state toward them under the Lanterman Act are

implemented in the Individual Program Plan (IPP) procedure.” (*ARC, supra*, 38 Cal.3d at p. 391.) Regional centers are required to develop an IPP for each client. (§ 4647.)

The IPP must be prepared and reviewed and, if necessary, modified at least annually, and must include the following: an assessment of the client's capabilities and problems; a statement of time-limited objectives for improving his situation; a schedule of the type and amount of services necessary to achieve these objectives; and a schedule of periodic review to insure that the services have been provided and the objectives have been reached. (§ 4646.)

(*ARC, supra*, 38 Cal.3d at p. 391.)

5. In order to achieve the stated objectives of a consumer's IPP, the regional center will secure needed services and supports; however, “[r]egional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” (Welf. & Inst. Code, § 4648, subd. (a)(8).)

IDEA

6. The Individuals with Disabilities Education Act, 20 United States Code section 1400 et seq. (IDEA), is a comprehensive federal framework guaranteeing the provision of educational services to children with disabilities. California has adopted its own comprehensive statutory scheme, consistent with the requirements of the IDEA, providing “all individuals with exceptional needs . . . [the] right to participate in free appropriate public education and special educational instruction and services . . . in order to ensure the right to an appropriate educational opportunity to meet their

unique needs.” (See Ed. Code, §§ 56000, subd. (a), 56026, subds. (a)-(d), 56303; *Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 183.) In sum, education law guarantees a “free appropriate public education” or FAPE to “all individuals with exceptional needs.”

7. Using state educational standards, a FAPE is provided to a child with disabilities, under public supervision and direction, in the special education program. The education and related services are provided at public expense and without charge to eligible children's parents. (20 U.S.C. §§ 1401(9) (A)-(D), 1414(d); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) “Special education” is instruction specifically designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services,” including transportation and supportive services, must be provided if they are necessary to enable an eligible child with a disability to benefit from his/her special education program. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In California, local education agencies (LEAs), under the responsibility of the State Department of Education (DOE), are tasked with furnishing special education services to all eligible children. (20 U.S.C §§ 1401(9), (29), 1412(a)(1)(A); Ed. Code, §§ 56000, et. seq., esp. § 56040, subd. (a).) The special education program provides programming for K-12 students and an adult transition program for students to learn job and life skills thereafter.

8. In practice, the rights of a disabled child and the corresponding obligations of the LEA are implemented in an Individualized Education Plan (IEP). (*B.H. v. Manhattan Beach Unified School Dist.* (2019) 35 Cal.App.5th 563, 570, reh'g denied (June 6, 2019), review denied (Aug. 14, 2019) (B.H.) citing *Honig v. Doe* (1988) 484 U.S. 305, 308–310.) LEAs are required to assess a child and develop an IEP for each eligible

student. An IEP is a written statement developed in a participatory process involving parents and school personnel. The IEP describes the child's needs, academic and functional goals, and a statement of the special education, related services, and program modifications and accommodations that will be provided via the LEA. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, §§ 56032, 56345, subd. (a).) Generally, the school district in which the parents of the disabled student reside is responsible for preparing an IEP for the child and paying for the costs of implementing that plan until the child reaches age 22. (Ed. Code, §§ 48200, 56028.)

Claimant

9. Claimant is a consumer of Alta. She has a current IPP, dated December 30, 2020. Her current goals include receiving a FAPE. Because of her age and Down Syndrome diagnosis, Claimant is entitled to a FAPE via the special education program provided by the Roseville Joint Unified School District (District). Notwithstanding, during her K-12 education, Claimant has not always participated in a special education program. From kindergarten through grade 5, Claimant attended Quail Glen Elementary School in the Dry Creek Joint Elementary School District; she had an IEP and participated in the special education program. However, for grades 6 through 8, Claimant attended and participated as a general education student at a private school, St. Philomene in Sacramento, with the exception of one semester when she was home schooled. In grade 9, Claimant enrolled at Roseville High School. The District offered claimant an IEP, but her parents refused; instead, the District developed a 504-Plan³

³ A 504 Plan is provided to K-12 students under the Rehabilitation Act of 1973 (29 U.S.C. §§ 701 et seq.); a federal civil rights law prohibiting discrimination against persons with disabilities when they are working or participating in programs receiving

for Claimant, based on her Down Syndrome diagnosis, and she attended and participated as a general education student with modifications for five years. The last school year, 2020-2021, Claimant participated virtually because of the COVID pandemic. In November 2020, Claimant requested information from the District about its special education program, seeking adult transition skills; to be eligible, the District informed Claimant she would have to be assessed and have an IEP meeting. The District assigned a school psychologist to conduct a psycho-educational evaluation of Claimant and requested Claimant and Father meet for the development of an IEP. In January 2021, Claimant and Father refused to attend an IEP meeting with the District. On May 27, 2021, Claimant received a Certificate of Completion from Roseville High School.

REDWOOD SEED

10. In June 2021, Claimant applied to Redwood SEED, a four-year program for students ages 18 to 23, who have intellectual disabilities. In July, Claimant was

federal funding. Section 504 requires public school districts to provide accommodations to students with ADA (Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.) qualifying disabilities. Claimant's 504 Plan offered accommodations, including receiving copies of notes/power points, preferential seating near instruction (9th grade only), being paired with students who have a B grade or higher for group work, being assessed on 20 percent of the class standards, and the ability to modify her grades based on consultation with her school counselor and the 504 team.

accepted and in August/September, Claimant started the program. Redwood SEED is a non-degree seeking program, providing:

Students live on campus in the dorms with the support of typical students. They take specialized foundational courses that have been developed for them so that they will have the skills needed to participate in typical classes on campus. They also take one to two typical courses on campus with academic support. In addition, students participate in any campus club or organization that interests them, with support as needed.

Students also have an employment opportunity each quarter, beginning in winter quarter or as students are ready. These employment opportunities are carefully created to offer a ladder of support and designed to build on the skill and interest levels of the student. Additionally, recognizing the health disparities of students with intellectual disabilities when compared to the typical population, we will have health and wellness mentors working with students on nutrition, exercise and general good health habits.

11. Redwood SEED students are strongly encouraged to live on-campus. "The residential living piece of our program is truly unique, and we believe a significant benefit for our students." "Our program is holistically designed and living on campus is intentionally an important part of the design." Redwood SEED "has developed the residential living opportunity as a Living Learning Lab" with an annual cost of

“\$11,610.” Redwood SEED describes the Living Learning Lab as far more than simply housing and food.

Residential living provides an opportunity for students with intellectual disabilities to live with same age peers in context and with meaningful relationships. These opportunities provide all independent living skills in context and with meaning. Hygiene, communication, daily planning, meal planning, collaboration, cleaning, traveling and transportation . . . and many other skills are embedded in this opportunity.

More specifically, Redwood SEED students “will be sharing dorm rooms together, using a shared bathroom with the dorm floor and eating in the dining commons with all other first-year students.” In addition, Redwood SEED students are required to check-in with a residential mentor “in the morning and at night” and are subject to a nightly curfew.

FUNDING

12. In July 2021, Father contacted Alta for assistance with funding for Redwood SEED, as well as inquired about the SDP.⁴ Alta recommended Father contact the Department of Rehabilitation (DOR) Student Services program and the District for

⁴ SDP allows regional center clients to control a budgeted amount of money to purchase needed services and supports.

possible funding. At the same time, Alta began investigating and then processing an application for Claimant to participate in the SDP.

13. In August 2021, the DOR granted Claimant \$10,817.14 towards tuition, plus up to \$2,000 for books and supplies for enrollment and participation in Redwood SEED. At the same time, Claimant selected an Independent Facilitator, Cindy Cox from First Choice Solutions, for her SDP account. Ms. Cox put together Claimant's Person-Centered Plan and Alta assisted with an SDP budget.

14. Today, Claimant seeks funding from Alta to pay for the "Living Learning Lab" component of Redwood SEED or an increase in her SDP budget to pay for the same. Claimant identifies the Living Learning Lab cost as \$5,967 quarterly or \$17,901 annually, as itemized in quarterly invoices from UC Davis (e.g., Fall Quarter Meal Plan Fee \$2,097 and Fall Quarter Housing Fees \$3,870).⁵ On September 2, 2021, Alta denied Claimant's request to purchase, or have her SDP individual budget increased to pay for the costs associated with her participation in the Redwood SEED program, including room and board. In addition, Alta determined Claimant was not eligible for an exemption under section 4648.55, because extraordinary circumstances did not exist.

FAIR HEARING REQUEST

15. On or about September 7, 2021, Claimant filed a Request for Fair Hearing. A Mediation was held on October 25, 2021, with an Interim Mediation

⁵ Initially, Claimant sought funding for all costs associated with her participation in Redwood SEED. However, in August 2021, the DOR provided Claimant \$10,817.14 towards tuition, plus up to \$2,000 for books and supplies. At hearing, Claimant seeks only costs for room and board.

Agreement signed by the parties. The matter did not resolve thereafter, and this hearing followed.

Alta

16. Under the Lanterman Act, regional centers are obligated to provide “[s]ervices and supports for persons with developmental disabilities.” (§ 4512, subd.

(b).) More specifically,

specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.

(Ibid.)

Services and supports are provided “to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685), 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 (§§ 4501, 4750-4751).” (*ARC, supra*, 38 Cal.3d at p.388.)

HCBS WAIVERS

17. In practice, regional centers provide home and community-based services (HCBS) to people with significant physical and cognitive limitations, allowing

them to remain living in their homes or home-like settings rather than being institutionalized. (Social Security Act § 1 et seq., codified at 42 U.S.C. § 301 et seq.; spec. § 1915(c), codified § 1396n(c).) To be eligible, individuals must meet level-of-care requirements (i.e., that they would require institutionalization in the absence of HCBS). (42 U.S.C. § 1396n(c)(1).)

18. For the most part, HCBS are funded via a Medicaid waiver under the Social Security Act, section 1915(c), codified at section 1396n(c). As such, any residential setting must comply with the Medicaid HCBS Final Rule (Final Rule). Specifically, any setting must: be integrated in and support full access to the greater community; be selected by the individual from among setting options; ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint; optimize autonomy and independence in making life choices; and facilitate choice regarding services and who provides them. (42 U.S.C. §§ 441.301(c)(4) – (5), 441.710.) In addition, the unit or dwelling must be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. (*Ibid.*) Plus, each individual must have: privacy in their sleeping or living unit, with lockable entrance doors, and only appropriate staff having keys to the same; if sharing units, a choice of roommates; the freedom to furnish and decorate their sleeping or living units within the lease or other agreement; the freedom and support to control their own schedules and activities, and have access to food at any time; are able to have visitors of their choosing at any time; and the setting is physically accessible to the individual. (*Ibid.*)

19. Generally, Medicaid waiver monies for HCBS can pay for case management, a home health aide and personal care, and adult day health, habilitation, and respite care (§ 1396n(c)(4)(B)). However, the Medicaid HCBS Final Rule specifically excludes the payment of room and board. (42 U.S.C. § 441.301(c)(4) – (5); § 1396n(c)(1)). In essence, waiver funds may not be used to pay for room and board expenses or to acquire goods and services that a household that does not include a person with a disability would be expected to pay for as household expenses (e.g., subscription to a cable television service).

SDP

20. The SDP is an alternative method of providing regional center services and supports that provides “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.” (§ 4685.8, subd. (a).) The budget for a participant currently receiving regional center services and supports is equal to the regional center’s expenditures for those services and supports during the previous 12 months. (*Id.*, subd. (m)(1)(A)(i).) The regional center certifies the expenditures used to calculate the client’s budget amount. The amount may be changed if: (1) the planning team determines the consumer’s circumstances, needs, or resources have changed, and (2) “the regional center certifies . . . that regional center expenditures . . . would have occurred regardless of the individual’s participation in the [SDP].” (*Id.*, subd. (m)(1)(A)(ii).)

SECTION 4648.55 EXEMPTION

21. Section 4648.55, subdivision (a), precludes a regional center from funding day programs, vocational education, work services, independent living program, or

mobility training and related transportation services for any client who is 18 to 22 years old, if they are eligible for special education and have not received a diploma or certificate of completion. However, if the IPP planning team determines that the client's needs cannot be met in the educational system and/or grants an exemption, then regional center funding is available for the above services and supports. (*Ibid.*) An exemption may be granted for participation in a paid internship or competitive integrated employment that is an outcome of a paid internship or in extraordinary circumstances. (§ 4648.55, subd. (d).) For extraordinary circumstances, the exemption will "be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need." (*Ibid.*)

Analysis

22. Claimant is 21 years old and eligible for regional center services. In May 2021, Claimant received a Certificate of Completion from Roseville High School and in August/September 2021, she enrolled in Redwood SEED, a post-secondary education program at UC Davis. Claimant has obtained generic resources from the DOR for tuition and books for the 2021-2022 Redwood SEED academic school year. Today, Claimant seeks funding from Alta for the Redwood SEED "Living Learning Lab" or dormitory housing and daily meals associated with her participation in the program.

23. There is no question, one of Claimant's IPP goals is to seek higher education. Redwood SEED allows Claimant to meet that goal. Moreover, regardless of age and eligibility, the District cannot meet Claimant's goal because it does not offer post-secondary education.

24. Today, Claimant seeks money for housing and meal costs while she participates in Redwood SEED. However, room and board is not considered a service

or support under the Lanterman Act. Moreover, Claimant is not required to live on-campus to participate in Redwood SEED; she chose to. The cost of room and board are the same for all college students. Claimant, like any other student, can choose to live on-campus or at home to save money and expenses; and because the regional center would not fund room and board, SDP funds cannot be used to pay for the same. In addition, room and board is specifically excluded from the Final Rule (42 U.S.C. § 441.301(c)(4) – (5)) and is inconsistent with the state waiver requirements under the Social Security Act section 1915(c) (e.g., daily check-ins 2x/day and daily 7:00 p.m. curfew without the ability to leave the dormitory thereafter.).

25. Finally, section 4648.55, subdivision (a), is inapplicable to Claimant, because she received a Certificate of Completion from Roseville High School. Therefore, the exemptions offered in subdivision (d) are also inapplicable. Even still, if section 4648.55, subdivision (a) did apply to Claimant, Claimant provided no evidence of an extraordinary circumstance justifying a change in her IPP and/or the funding of room and board at UC Davis during her participation in the Redwood SEED program.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal Alta’s denial of funding for college dormitory housing and a meal plan.

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 her funding requests.

3. Based on the Factual Findings as a whole, Claimant did not establish that the Lanterman Act requires Alta to fund the Living Learning Lab/room and board at Redwood SEED. The Lanterman Act requires regional centers to deliver services and supports to eligible clients. (§ 4501.) Here, Claimant's request is for room and board; the same is not a service or support under the Lanterman Act, the Final Rule, or the state waiver requirements under the Social Security Act.

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's decision to deny Claimant's request to fund the Living Learning Lab, also known as room and board, is AFFIRMED.

DATE: December 20, 2021

ERIN R. KOCH-GOODMAN
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.