

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

OAH No. 2021090486

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 1 and December 13, 2021, in San Diego, California.

Claimant appeared and represented herself.

Ronald R. House, Attorney at Law, represented the service agency on November 1, 2021. Bridgette Webster, Attorney at Law, represented the service agency on December 13, 2021.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 13, 2021.

ISSUES

Is the service agency required to add funds to claimant's self-determination plan budget to help her learn how to use the spending plan?

Is the service agency required to mandate that claimant's financial management service provide more accessible resources for claimant? Is the service agency required to do more to make the financial management service process accessible for claimant?

Did claimant provide adequate notice to consider the additional issues that claimant raised during the hearing?

SUMMARY

Based on the evidence in this case, the regional center is prohibited from adding funds to claimant's self-determination plan budget to help her learn how to access her program. The regional center is not prohibited from providing claimant with a \$2,500 fund for person-centered planning.

The evidence did not support ordering the regional center to issue mandates to the financial management service or taking further action concerning accessibility of the financial management service process.

The additional issues claimant raised during the hearing were not included in the fair hearing request, and therefore may not be considered at this time.

FACTUAL FINDINGS

Jurisdictional and Procedural Matters

1. Claimant is an adult consumer of regional center services under the Lanterman Developmental Disabilities Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq. She is qualified for services based on her diagnosis of autism spectrum disorder. Claimant lives independently. Claimant receives generic resources from in home support services (IHSS), supplemental security income, Medi-Cal insurance, and Section 8 housing.

2. Claimant submitted a fair hearing request on September 15, 2021. Financial Management Service is called FMS. RCSD is San Diego Regional Center. Under "reason(s) for requesting a fair hearing" claimant wrote:

I am in danger of losing my independent living status. I am being advised by RCSD that I have a self determination budget, but the required FMS is not paying for the supports, so I am stuck between paying an advance with finance charges or terminating services until a definitive strategy is made accessible to me.

3. The Americans with Disabilities act is called ADA. Under "describe what is needed to resolve your complaint" claimant wrote:

RCSD to make accessible the FMS process until disbursements occurS [sic] SINCE DATE OF APPROVAL JULY
1. RCSD to remove contingency that ME=consumer must pay for others from my spending plan to help me learn how

to utilize it. RCSD to mandate ADA compliance with FMS per the statute with written agreement for accommodation approva [*sic*].

4. At the hearing, claimant raised additional issues that will be addressed below. The regional center objected to claimant's additional issues and also objected to all of claimant's evidence because, although she filed copies of some of her evidence with the Office of Administrative Hearings before the hearing, she did not provide copies of her evidence or witness list to the regional center at least five days before the hearing as required by Welfare and Institutions Code section 4712, subdivision (d). Rulings on objections to specific items of evidence were made on the record in the hearing.

The Self-Determination Program

5. In 2013, the Legislature passed Welfare and Institutions Code section 4685.8, which required the Department of Developmental Services (department) to implement a statewide self-determination program to provide participants and their families, within an individual budget, increased flexibility and choice, greater control over decisions, resources, and needed and desired services and supports to implement their individualized program plan (IPP). The department implemented pilot programs in certain regional centers, including San Diego Regional Center, and oversaw statewide working groups from various regional centers and consumer groups to develop policies and procedures to implement the program.

6. Amendments to section 4685.8 required regional centers to make the self-determination program available to all regional center consumers who wished to use it effective July 1, 2021. Regional centers are required to develop and implement

an outreach and training plan about the self-determination program for the diverse communities the regional center serves, and to provide information in plain language, in alternative formats and alternative modes of communication, provide language access as required by state and federal law, and obtain input from stakeholders, including consumers and families, about the effectiveness of this outreach and training and other activities that may be effective in reducing disparities. (Welf. & Inst. Code, § 4685.8, subd. (r)(2).)

7. To participate in the self-determination program, consumers must attend at least one orientation that explains the program's benefits, requirements, and the expectations for participation. The regional center offered orientation sessions in person and online in various languages and formats before the July 1 implementation date. The regional center also provided many resources to help consumers and their families understand the benefits and duties of the program. Claimant attended an orientation program on June 5, 2021. She had difficulty accessing the online program. Regional center personnel helped her access the program and she completed the orientation.

8. The individual self-determination budget must be the total amount of the most recently available 12 months' purchase of service expenditures for the consumer. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(i).) The regional center may adjust this amount if the IPP team determines that an adjustment is necessary due to the consumer's changed circumstances, needs, or identifies prior needs that were not addressed in the IPP. The team must document the specific reason for the adjustment in the IPP. The regional center must certify on the individual budget document that regional center expenses for the individual budget, including any adjustment, would

have occurred regardless of the individual's participation in the self-determination program. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).)

9. Each consumer in the program is required to develop an individual spending plan to use their available individual budget funds to purchase goods, services, and supports necessary to implement their IPP. The spending plan must identify the cost of each good, service, and support that will be purchased with regional center funds. The total amount of the spending plan cannot exceed the total of the individual budget. A copy of the spending plan must be attached to the consumer's IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).)

10. Each item in the spending plan must be assigned to uniform budget categories developed by the department and distributed according to the anticipated expenditures in the IPP in a manner that ensures that the participant has the financial resources to implement the IPP throughout the year. (Welf. & Inst. Code, § 4685.8, subd. (m)(3).) The regional center must review the spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies. (Welf. & Inst. Code, § 4685.8, subd. (r)(6).)

11. Every consumer in the self-determination program must use a FMS to assist the consumer to manage and direct distribution of funds contained in the individual budget and ensure that the consumer has the financial resources to implement their IPP throughout the year. (*Id.*, subd. (d)(3)(B).) The FMS assists with managing the budget, pays workers and ensures that all applicable employment laws are followed, helps make sure that workers have the required licenses, certificates, and training to provide the services that they're hired to do, and assists with criminal record background checks where required by law or where the consumer requests one. The regional center must provide payment to the FMS provider

for spending plan expenses through a not less than semi-monthly pay schedule. (*Id.*, subd. (r)(10).)

12. A consumer may elect to use the services of an independent facilitator to help the consumer make informed decisions about the budget and spending plan, locating, accessing, and coordinating the services and supports. (*Id.*, subd. (c)(2).) If the consumer decides not to use an independent facilitator, his or her service coordinator fills that role to a more limited extent. The amount of the individual budget may not be increased to cover the cost of the independent facilitator or the FMS. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(iii).)

Claimant's History

13. Claimant was raised in New York City by non-English speaking holocaust survivors in a religious sect. The sect was strictly controlled and enforced rigid gender roles. She testified that she is a product of inbreeding and has multiple genetic conditions. She did not realize her rights as an American until she was 37 years old. Claimant was married within the sect in a forced arranged marriage at age 18 and had four children. Around 2010, claimant became completely estranged from the sect. She had no cultural exposure to what it means to be a person outside of her community of origin. She became homeless and lived for a while in a shelter. Claimant has no contact with her family. She now describes the sect as a "cult." Claimant was diagnosed with autism as an adult while she lived in another state. She has autistic children and managed their self-determination programs in the State of New York. She relocated to Northern California in 2015. She immediately began to pursue self-determination because of her unique needs.

14. A regional center in Northern California denied her request for eligibility for services, alleging that she was not substantially disabled. After a fair hearing before OAH, claimant was determined to be eligible. She later relocated to the San Diego area.

Claimant's Deficits and Health Concerns

15. Claimant's IPP notes that, in addition to autism spectrum disorder, claimant has Crohn's disease of the small intestine, asthma, intestinal bypass and anastomosis, and a severe cognitive-communication disorder. She needs supports for activities of daily living, reading correspondence, coordinating and attending medical appointments, social interactions, refilling prescriptions, referrals for healthcare providers, and money management.

16. Claimant experiences severe and chronic breakdowns in verbal communication. She struggles to comprehend human speech. She has poor binaural word recognition. She relies on captions to facilitate comprehension. She requested a live captioning system accommodation for the present hearing but one was unavailable. She agreed to go forward with the hearing using a captioning system on her own devices. She uses a free screen reader program on her computer that is not capable of reading encrypted emails or PDF formatted documents.

17. Claimant's IPP notes that she has seen measurable regression in her threshold to meet communication demands, along with declines in hearing, vision, mobility, nutrition, and cognition. She is diagnosed with compound heterozygosity for phenylketonuria, muscular dystrophy, familial dysautonomia, Ehlers-Danlos syndrome, Balint's syndrome, and moderate osteoarthritis. She experiences muscle weakness, cramping, and spasms. She eats a restricted medical diet of no protein, no sugar or

sweeteners, high calories, no rice, no fiber or grains, and no liquids with meals. Her food intake issues are compounded by her own sensory feeding concerns with tastes and textures. She struggles with biting, chewing, swallowing, and gagging. She needs support to maintain her system of accessing foods and electrolytes.

18. Claimant wears eyeglasses with Irlen spectral filter custom lenses. Without her glasses, she experiences visual distortions that risk her engagement with information, her mobility, stability, and safety. During the hearing, the lights in the hearing room were dimmed for a portion of the time to accommodate her visual needs. She wears orthotic shoes and is unable to walk independently without a cane.

19. Claimant is unable to schedule and transport herself to and from medical appointments and needs a support person to help her communicate with healthcare providers. She testified that, on several occasions, she has been escorted from medical provider offices by security due to her difficulty communicating and advocating for herself.

Claimant's Unique Abilities

20. Claimant's condition does not impact her intellectual abilities. She is very articulate and knowledgeable. She did not have traditional schooling during childhood. Her IPP indicates her primary language is Hebrew. Claimant testified at the hearing that she wants the IPP changed to show her primary language as American Sign Language. There was no evidence that she has made that request to the regional center or that it has acted on this request.

21. Claimant taught herself English, her seventh language, later in life. She obtained her GED, a bachelor's degree in music, a master's degree in transformative leadership, and a Ph.D. in psychology. She received services and supports from the

California Department of Rehabilitation for some of her educational achievements. She testified that she relocated to California on invitation to teach in a graduate program. She testified that she has experience as a policy analyst.

Current Services and Supports

22. Claimant's IPP dated June 24, 2021 states that, through her approved self-determination plan and spending plan, the service agency will fund supports for homemaking, IT accessibility, independent facilitator, speech, hearing, and language supports, communication support, mobility aids, housekeeping, medication preparation, hygiene, grocery shopping, nutritional consultation, recreation, and health care case management. She wants to develop a microenterprise for self-employment. Claimant testified that she wanted to be included in an earlier pilot project for the self-determination program but was not selected. She believes the regional center discriminated against her when she was not selected for the pilot program. The regional center denied this claim when it was raised at the hearing. Since the claim that the regional center improperly administered the lottery program was not stated in the fair hearing request in this case, no finding on this issue will be made.

Claimant's Self-Determination Program Budget and Spending Plan

23. In May 2021, the service agency prepared a self-determination initial budget form by looking at the expenditures that were authorized for claimant's traditional service model from June 1, 2020, to May 31, 2021. The total amount of services authorized during the previous 12 months was \$26,182.56.

24. Next, the service coordinator and claimant reviewed the services and supports claimant would need for the next 12 months if the traditional service model was to be used. The regional center team determined that the previous year's funds

were not fully meeting claimant's needs, and that she needed to transition to more intensive assisted living. The new amount the regional center would authorize under the traditional service model was increased to \$75,273.36. This amount established claimant's self-determination program individual budget. The regional center certified that this amount of services would have occurred regardless of claimant's participation in the self-determination program. Claimant and her service coordinator signed the initial budget form on June 6, 2018.

25. All consumers transitioning to the self-determination program, including claimant, were entitled to a one-time person-centered plan support budget of \$2,500 that they could use to hire an independent facilitator or other support person to help them develop their spending plan to access their services and supports. Claimant declined this additional transition money.

26. In July 2021, claimant and her service coordinator developed an individual spending plan that detailed how she would use her budget to implement her IPP goals. Her service coordinator approved the spending plan on July 14, 2021. Claimant revised the spending plan in September and again in October 2021. Her September spending plan was not provided in evidence; witnesses testified that the regional center approved the September revision. Her service coordinator approved the latest revision to her spending plan on October 7, 2021.

27. Claimant testified that she looked for templates or forms to assist her in developing the spending plan, but none were available. Claimant asserted that the regional center failed to provide sufficient accessible resources for her to develop her spending plan. She developed her own color-coded spending plan using the Google Sheets spreadsheet application. Claimant wanted to use Google Sheets to facilitate remote sharing and discussing her spending plan with the regional center in a digital

format. Regional center personnel accommodated this request although it was not the usual way that other consumers interact with the regional center about their individual spending plans.

28. Through her individual budget and spending plan, claimant is authorized to use regional center funds to pay for housekeeping services, household support, employment support, money management support for her microenterprise, Amazon and Instacart memberships for delivery of groceries and other goods, transportation, a subscription to Apple Music to support her quality of life, Verizon for Face Time communication, T-Mobile for TTY communication, technology support from Best Buy, a Google subscription, language lessons, a massage therapist, and her prescription eye glasses and optometrist exams.

The FMS Role

29. The Lanterman Act requires that each consumer in the self-determination program have a FMS to handle managing the individual's spending plan. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(E).)

30. FMS providers may have service models that offer three levels of service to consumers. The lowest and least expensive service model is bill payer only, in which the FMS simply pays the consumer's bills for services and supports in the spending plan; neither the FMS nor the consumer become the employer of people providing the services. The next service model level is called sole employer, in which the consumer obtains a tax reporting number, hires and employs workers directly, and is responsible for obtaining required liability and workers compensation insurance. The highest and most expensive FMS service model is co-employer, in which the FMS acts as the employer for the service workers and handles insurance while the consumer shares

some employer roles and responsibilities with the FMS. Not all approved FMS providers offer all three of the financial service models.

31. According to the Department of Developmental Services (DDS) website, there are currently seven vendored and approved FMS providers for San Diego County. Claimant selected the provider Acumen and chose the least expensive bill payer FMS model. A consumer can change to a different FMS provider or a different FMS payment model at any time.

Implementation of Claimant's Plan

32. Claimant was eager to implement her plan as soon as possible. She began selecting service providers early in the spending plan development process. On July 20, 2021, Acumen personnel contacted claimant's service coordinator because the service workers listed on her spending plan had not submitted paperwork that Acumen required in order to pay them for their services. On July 28, 2021, a note in claimant's record indicates that there was an email exchange between Suzy Requarth, the regional center's manager of the self-determination program, and Yvette Torres of Acumen, about whether claimant's contracted service providers had to have a business tax certificate on file with the City of San Diego before they could be paid for their services.

33. In late July 2021, one of claimant's service providers came to her home and, according to claimant, harassed her and others on her support team for payment. Claimant called the police and made a police report; a police officer contacted the regional center for additional information about the issue. Claimant believed that the police involvement at her home threatened her independent living status.

34. A note in claimant's record dated August 10, 2021, states that claimant was requesting Acumen to pay the bill for her prescription glasses. The regional center noted that claimant did not have funds in her spending plan for that category of service, and that money would have to be moved from another spending line. A consumer can annually transfer up to ten percent of the funds originally in any budget category to other budget categories without regional center approval. Transfers exceeding ten percent of the budget category require the regional center's approval. Her spending plan was adjusted to allow for this payment.

35. A note in claimant's record dated August 12, 2021, states that Ms. Requarth set up a mediation between claimant and Yvette at Acumen FMS to discuss "solutions to ongoing problems with SDP [self-determination program] process." The note stated:

Yvette described the following processes to [claimant]:
Components of vendor packet for new providers, invoice process for billing/payment, and Acumen portal information. [Claimant] requested more information about what safeguards are in place to prevent fraud by hired staff or retaliation for delayed payments. I indicated the importance of making sure providers are cleared by Acumen to get paid before having them provide any services and also suggested she consider finding an FMS with the co-employer model as that model offers more support with managing providers.

36. On August 16, 2021, a note in claimant's record states that claimant reported one of her self-determination program workers fraudulently submitted

invoices to Acumen under the name of another contractor listed on claimant's spending plan. Acumen determined it would not pay the fraudulent invoice.

37. A note in claimant's record dated August 17, 2021, stated that Acumen required a form W-9 for each contractor that was requesting payment.

38. An August 20, 2021, note shows that there were still delays in making payment to providers. The note indicated that claimant stated Acumen had provided unclear communication about her contractors' requirements to bill for their services and that the invoicing process was not accessible to her. The note referenced an August 16, 2021, meeting with Acumen personnel to assist claimant. The note states "Latest emails indicate that things are moving forward with finalizing billing for providers and making the process more accessible to [claimant.]"

39. To facilitate paying a provider of accounting services, claimant made a payment with her personal credit card. Ms. Requarth worked with claimant and the FMS to dispute the charge with her credit card company. Claimant's provider then issued a refund after the FMS paid the provider several months after the payment was authorized. Claimant testified that she incurred service charges and had to make minimum payments to her credit account and that the process impacted her credit score. These debts have been resolved in part thanks to Ms. Requarth's intervention.

40. On September 9, 2021, a quarterly progress meeting was held at claimant's home. Her regional center service coordinator, personal assistant, and IHSS worker were present. A note in claimant's record indicates that claimant was continuing to struggle and needed additional support in activities of daily living, reading correspondence, coordinating and attending medical appointments, social

interactions, getting prescription refills, referrals for healthcare providers, and money management.

41. Claimant testified that the FMS refused to accommodate her accessibility needs. For example, they will not use the DocuSign electronic signature process. She testified this requires her to do “hours of work” with paper documents that are not accessible to her. She testified she has spoken with other FMS providers who also do not use an electronic signature process that would accommodate her needs.

42. Claimant testified that the FMS continues to challenge paying for costs that have been approved by the regional center. For example, she stated that she requires the T-Mobile service for her assistive technology. The regional center has approved this, but the FMS continued to challenge it, forcing her to have to advocate for her services twice – once with the regional center and again with the FMS – a situation she terms “double jeopardy.” This results in additional time that she must spend, additional time and cost for her paid assistants to help her communicate these issues, and a delay in getting needed services. As another example, she has a line item in her spending plan for technology. When she chooses a vendor, the FMS forces her to prove that the service complies with the federal definition before approving payment.

43. Claimant asserted that the regional center is monitoring her use of social media groups and retaliates against her for statements she makes in those public forums.

44. Claimant participates in a public Facebook group that has helped her learn about her rights and helped her connect with potential and some of her current service providers, including Ms. Jones. Claimant believes the fact that this group is

public violates her privacy because she cannot use it to, for example, search for a service provider, because she must “disclose to the entire internet, indexable by Google search engines” that she is a developmentally disabled person.

Suzy Requarth Testimony

45. Suzy Requarth is the regional center’s Carmel Mountain Office regional manager, and the project manager for the self-determination program for all of San Diego Regional Center. She holds a master’s degree in rehabilitation services from Penn State University. She was previously employed as manager of the regional center’s intake service and has been the program manager over the self-determination program for two years.

46. Ms. Requarth stepped in to assist in claimant’s case because claimant had requested a different service coordinator and, during the transition, Ms. Requarth wanted to assist with ongoing issues as claimant transitioned from the traditional model to the self-determination program. Ms. Requarth met with claimant, claimant’s FMS, and others through remote meetings and telephone calls on many occasions from July 2021.

47. Claimant attended an orientation in June 2021. Ms. Requarth worked with claimant to enable captions for that orientation to accommodate claimant. She testified that typically the IPP and spending plan are developed at the same time. In this case, claimant was eager to move forward with her self-determination program as soon as possible, so the regional center worked with her to develop the IPP in June and her spending plan came along later.

48. Claimant asserted that the regional center was not doing enough to accommodate her in accessing her services and supports, accessing her FMS, and

helping her to understand her role in the self-determination process. Ms. Requarth testified that she believed the regional center accommodated claimant's requests and provided resources in an accessible form.

49. Ms. Requarth testified that claimant was eager to start her services on July 1 and problems with paying claimant's providers occurred because claimant did not ensure that all of her providers were properly set up with the FMS before they began providing services to her. She advocated for claimant in resolving issues with her credit card company and worked closely with the FMS to resolve the early problems with claimant's spending plan.

Gabriella Ohmstede Testimony

50. Gabriella Ohmstede is the San Diego Regional Center associate director of case management. She supervises all of the regional managers within San Diego Regional Center. She has worked for the regional center for 18 years. Before her promotion to associate director, she was the manager for the self-determination program. She was involved in the statewide working groups planning implementation of the self-determination program after the original legislation passed in 2013.

51. Ms. Ohmstede testified that the regional center developed many resources and tools to help consumers understand the self-determination program and navigate its requirements. They developed frequently asked questions, lists of service codes, rates, a budget development form, and guidance for independent facilitators. The regional center had an outreach program through emails, its newsletter, its website, its Facebook page, and during informational sessions. Those resources were available before the June 2021 orientation sessions in different languages and formats.

52. Ms. Ohmstede testified that the regional center does not require claimant to pay for services to help her understand how to access the self-determination program. All of the regional center's resources, and many others available online, are free. Claimant also has access to her case coordinator for assistance with understanding and accessing the self-determination program. DDS is still creating and changing guidelines as the program rolls out. The regional center continues to update its resources as new information becomes available.

Melissa Jones Testimony

53. Melissa Jones is an independent facilitator who works with claimant to help her access the services and supports in her IPP and spending plan. She does not currently charge for her services to claimant because her spending plan does not have money for an independent facilitator. They met through a Facebook independent living group. Ms. Jones was not involved with claimant's program during the budgeting and spending plan development process, or in the initial few months. Claimant had a lot of problems early on because she hired people but there were delays in getting them paid. She was using people's services, but they were not yet connected to the FMS and therefore could not be paid. Ms. Jones got involved to help claimant in August 2021.

54. Claimant's spending plan provides for a housekeeper, but there has been a lot of turnover because of the problems with timely payments. There are other supports indicated on the spending plan, but no person connected to that service yet.

55. Ms. Jones attended a meeting with the regional center in September 2021 to discuss claimant's unmet needs. They discussed moving money around in the spending plan but there was no increase in funding authorized. Ms. Jones testified that

claimant seemed confused about how the money was to be handled. In Ms. Jones's opinion, it did not appear that claimant received sufficient training and support from the regional center to understand how to implement her self-determination program. The employment supports and communication supports in claimant's spending plan have not met her needs. She has no emergency medical support and no healthcare proxy. She has no circle of support other than herself.

56. When asked on cross examination if she believes claimant should change to the co-employer FMS model, she testified that claimant does not choose to use the co-employer model because claimant believes it would be a detriment to the service providers that she uses. Ms. Jones does not recommend claimant use the co-employer model because it is claimant's choice. Claimant prefers to use independent contractors for services.

57. Ms. Jones testified that claimant did not understand the self-determination process and her program was "a mess." Ms. Jones does not believe a different FMS or payment model would have made a difference because claimant did not understand the process.

Alejandro Dealba-Servin Testimony

58. Mr. Dealba-Servin is an American Sign Language-fluent assistant with a background in cognitive psychology and knowledge of the accessibility culture and the San Diego neuro-divergent communities. Claimant hired him for his expertise in communication and his knowledge. At first, there was confusion about how he was to get paid through claimant's FMS. The payment issue was resolved after approximately one month. When he had problems getting paid for his services, claimant showed anxiety about losing him as a support person. He testified that claimant exerted herself

to the point of injury and without the correct prescription glasses. She put her personal and professional goals on hold to make sure he would get paid for his services.

59. Mr. Dealba-Servin testified that he has extended himself beyond his expertise to assist claimant. There were times when he was supposed to be in class, but he did not want to leave claimant without support, so he got permission to attend class remotely while he was also supporting claimant. He has come in extra days to help claimant when her homecare aide was unavailable. He has helped claimant beyond his authorized hours when she had emergencies.

60. Mr. Dealba-Servin attended medical appointments with claimant in which he observed first-hand her difficulty communicating with healthcare providers to the point that her concerns were disregarded. On one occasion he accompanied claimant to a medical appointment. After arriving at the facility, claimant was informed the appointment had been canceled. Mr. Dealba-Servin assisted claimant to communicate with the office manager and eventually she was able to see a doctor. He had class at the same time so he was faced with the ethical dilemma of leaving claimant without support or missing his class.

61. Mr. Dealba-Servin testified that he has spent a minimal amount of time helping claimant with community support – his contracted service – and most of his time helping her with health and safety issues. Managing healthcare is outside of his area of expertise, but she has no one else to help her so he does the work. When he negotiated his contract with claimant, he did not expect to perform healthcare support. He would have charged a higher rate if he had known. He did not understand claimant's unique needs when he first entered into the contract. Claimant's needs are more than he expected.

62. As a last resort when no other support person was available, Mr. Dealba-Servin accompanied claimant to an OB-GYN- appointment. This involved being in the examination room while claimant had an intimate personal discussion with her doctor. He testified that he was very uncomfortable attending this appointment. He has tried to help claimant navigate the case management process with her HMO healthcare insurance provider. He estimated that he spent over 30 hours on her health and safety issues. He testified that, due to claimant's autism, she had difficulty communicating how she is feeling to healthcare providers. He testified that he believes claimant needs two people at all times to assist her access healthcare.

63. Mr. Dealba-Servin testified that he has also helped claimant with money management, although that is outside of his expertise and not a service he has contracted to provide. He believes claimant has unmet needs in healthcare management and communication, needs help with her specific dietary needs, and she needs to consult with a geneticist. He testified that claimant wants to attend the Abilities Expo conference in Los Angeles. She will need a personal needs consult to determine what supports she will need during the conference. He expects that she will need a motorized wheelchair to get around, and an interpreter with knowledge of her needs to travel with her. Both claimant and her assistant will need hotel rooms.

Claimant's Additional Requests for Resolution

64. At the end of the hearing, claimant provided a list of the remedies that she is requesting.

- An increase in her self-determination budget to \$300,000 in order to fully realize her IPP goals.

- Everything identified in her IPP should be associated with an appropriate and adequate spending plan line item.
- These adjustments to her spending plan to be retroactive to July 1, 2021. She does not want to restart her IPP cycle in January because she does not wish to be required to have budget meetings during the holiday season.
- An addendum to her IPP to guarantee in writing that the regional center will facilitate claimant's accessibility needs with the FMS vendor. Because there is no budget item in the traditional model or in the self-determination program for ADA accessibility, claimant cannot pay for this service out of her spending plan, although the Lanterman requires regional centers to provide accessible services and supports.
- An order requiring the regional center to create accessible instructional templates for everything that is necessary for her to access the self-determination program, in a variety of languages, font sizes and formatting visualizations consistent with the Universal Design for Learning principles. Examples she provided include instruction on how to interview a person, where to look for support persons, how to develop a self-spending plan. The templates should go beyond the information in the orientation and describe the process each consumer needs to go through in order to take part in the self-determination program, including how the IPP gets translated into a spending plan, a digital platform to access the FMS systems of accounting, an accessible published database available to all consumers with traditional service codes translated to self-determination service codes based on the federal definitions, an up to date list of the available FMS providers, independent facilitators, and person centered planners already vendored

with the state to eliminate possible vendors making direct solicitations to consumers.

- Weekly scheduled captioned remote meetings with the regional center and FMS until the templates are available, for at least 90 days until claimant can realize unfacilitated utilization of her spending plan and IPP services and supports.
- An order adding American Sign Language as one of the required languages for regional centers.
- An order requiring closed captioning to be provided in all meetings, trainings, and self-advocacy chats, as well as all due process hearings.
- An order directing the regional center to issue a directive to the state council to modify its public Facebook group to be changed to "closed" status to prevent outsiders from searching the group's content in order to protect the privacy of consumers who use the group.
- An order that claimant's IPP be increased to pay for medical insurance premiums and co-pays, dentists, eye surgery, and a nurse case manager.
- An order directing the regional center to issue a directive in writing to the FMS provider to make purchases for categories that are wholly absent of provider allotments in the spending plan.
- An order prohibiting retaliation to prevent allocation refusals based on the regional center's interpretation of any state council's directives or lack thereof, such that future issues with claimant's autonomous choices for her spending plan not be refused causing further hardship.

- An order that independent facilitator funds be added to her plan to avoid using judicial time for determining claimant’s audits of unmet needs.
- An order adding funeral service funds to claimant’s budget to assist with end-of-life planning.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500; Cal. Code Regs., tit. 9, § 7356, subd. (e).) A party seeking a government benefit has the burden of proving an entitlement to such benefit. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden to prove each of the issues and resolutions she raises. The regional center has the burden of proving any defenses it raises.

2. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115; Cal. Code Regs., tit. 9, § 7356, subd. (e).) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. . . .”

5. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“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 independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information, and referral services, . . . [and] supported living arrangements, . . .

6. 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. (Welf. & Inst. Code, § 4416.) A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. 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.)

7. In order to be authorized, a service or support must be included in the consumer's individual program plan. (Welf. & Inst. Code, § 4512, subd. (b).) In implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

8. The planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

9. Regional centers are not required to provide all the services a consumer may request but are required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.) They are specifically prohibited from funding services that are available through another publicly funded agency. (Welf. & Inst. Code, § 4659, subd. (c).) This prohibition is often referred to as "supplanting generic resources." When a consumer elects to participate in the regional center's SDP, she may receive services "only when generic services and supports are not available." (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

10. Any recipient of services who is dissatisfied with any decision or action of a regional center that he or she believes to be illegal, discriminatory, or not in the recipient's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. (Welf. & Inst. Code, § 4710.5.) The request for fair hearing must be stated in writing on a hearing request form provided by the department. (*Id.*, subd. (b).)

Evaluation of Claimant's Original Issues and Proposed Resolutions in the Fair Hearing Request

11. The issues claimant raised in her fair hearing request in this case involved being "stuck" between choosing to pay her service providers out-of-pocket or risk losing them because the FMS was delaying payment, and her difficulties accessing the FMS process. The delays in payment, at least in part, were caused by claimant's

impatience and eagerness to begin using her preferred service providers without first obtaining clearance from the FMS so they could be paid. Claimant asserts that her initial confusion is due to the regional center's failure to provide adequate accessible support materials so she could understand how the support worker payment process would work.

12. The evidence established that the payment problem has been resolved. Claimant's support vendors are now being paid on a timely basis. Therefore, the delay-in-payment issue is moot and does not require administrative adjudication.

13. Claimant is requesting that the regional center pay support personnel to help her learn how to use her spending plan. The Lanterman Act specifically prohibits adding funds to a consumer's spending plan that would not be required if the consumer is using the traditional service model. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).)

14. Claimant did not prove that the regional center failed to meet its statutory duties under the Lanterman Act to develop and implement outreach and training materials for its diverse communities in alternative formats and alternative modes of communication. The fact that one regional center consumer asserts that she did not understand how her self-determination program would work and did not initially understand the FMS process does not establish that the regional center failed entirely in its duty. The regional center is required to obtain input from, among others, consumers, about the effectiveness of its communication. It may consider claimant's feedback on her experience using the materials as one source of such input.

15. Claimant did not establish that the regional center has the authority to "mandate" that the FMS comply with the Americans with Disabilities Act. The regional

center and the FMS are already required to comply with the ADA and other laws requiring reasonable accommodations for people with disabilities. Even if the regional center did have that authority, claimant did not provide a persuasive argument that the Office of Administrative Hearings, in this Lanterman Act fair hearing process, has the authority to direct the regional center to issue mandates to other entities. If claimant is concerned that the regional center, FMS, or anyone else, has violated her rights under the ADA, there is a forum for asserting such claims outside of the Lanterman Act's fair hearing process.

16. To the extent claimant's allegations against the regional center invoke potential violations of the Americans with Disabilities Act or other laws prohibiting discrimination against people with disabilities, the administrative fair hearing process is not the forum to adjudicate such claims.

Evaluation of Additional Issues Not in the Fair Hearing Request

17. An important component of due process is the requirement that a person be given notice of the case against him or her and an opportunity to meet it. (*See, Lent v. California Coastal Comm.* (2021) 62 Cal.App.5th 812, 842.) In Lanterman Act appeals, the fair hearing request form provided by DDS requires the appealing party to state the "reason(s) for requesting a fair hearing," and to "describe what is needed to resolve your complaint." The department's inclusion of this information on the form recognizes that it is unfair to a regional center to require it to appear at a hearing and defend its decisions or actions without knowing what issues the claimant wishes to present and which resolutions the claimant will propose. The Lanterman Act also requires that the parties exchange hearing evidence and witness lists at least five calendar days before the hearing and provides that the hearing officer may prohibit

testimony of a witness documents that are not disclosed. (Welf. & Inst. Code § 4712, subd. (d).)

18. At the end of the first day of hearing, claimant stated a list of four additional issues she wanted to raise. At the end of the second day of hearing, that list expanded to fifteen items. None of them were embraced in the issues and proposed resolutions that claimant stated in her fair hearing request.

19. Fundamental fairness dictates that claimant be required to limit her issues in this case to those she a raised in her fair hearing request. She may have many other legitimate issues of dispute with the regional center. The parties are encouraged to continue their efforts to work out these issues collaboratively. Claimant argued that her current IPP, budget, and spending plan leave her with unmet needs. She has the right to make requests to the regional center to address her claimed unmet needs, and the regional center has the duty to evaluate these requests. Until she has presented these requests to the regional center and it has the opportunity to evaluate them and notify her of a decision, the issues are not ripe for decision in the Lanterman Act fair hearing process.

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ORDER

Claimant's appeal as stated in the fair hearing request is DENIED.

Claimant's requests for other remedies not within the scope of her original fair hearing request are DENIED.

DATE: December 24, 2021

ALAN R. ALVORD

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 of the receipt of this decision.