

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2021090634 (Primary)

OAH No. 2021090636 (Secondary)

DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard these consolidated matters by videoconference on January 5, 2022. The record was closed, and the matters were submitted for decision at the conclusion of the hearing.

Claimant was represented by his mother. (Claimant and his family members' names are omitted to protect their privacy.)

Julie A. Ocheltree, Attorney, Enright & Ocheltree, LLP, represented the South Central Los Angeles Regional Center (Service Agency).

ISSUES

Must the Service Agency include the cost of funding for Claimant to receive 21 days of out of home respite as part of his 2021-2022 Self-Determination Program budget? (Primary case.)

Must Service Agency include the cost of funding for Claimant to receive Extended School Year-Personal Assistance for Winter 2021, Spring 2022, Summer 2022, and Fall 2022, as part of his 2021-2022 Self-Determination Program budget? (Secondary case.)

SUMMARY

Claimant seeks to have Service Agency include funding for (1) 21 days out of home respite, and (2) Extended School Year-Personal Assistance (ESY-PA) for Winter 2021, Spring 2022, Summer 2022, and Fall 2022 school breaks, added to his Self-Determination Program (SDP) budget for the 2021-2022 budget period. The Service Agency has denied the requests and contends that Claimant has not demonstrated an unmet need for the requested services, and it is not, therefore, required to consider funding for the requested services in Claimant's SDP budget. For the reasons set forth below, Claimant's appeal is denied.

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on Service Agency exhibits 1 through 9; Claimant exhibits A through E, as well as the testimony of Program Manager Adriana Colon, Claimant's mother, Elizabeth Gomez, and Gladys Lizarraga.

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 13-year-old boy eligible for Lanterman Act services under the category of Autism Spectrum Disorder (ASD). Claimant timely filed Fair Hearing Requests appealing the Service Agency's refusal to include funding for (1) 21 days of out of home respite/camp, and (2) ESY-PA for school breaks for Winter 2021, Spring 2022 and Fall 2022) in Claimant's current SDP budget as set out in Service Agency's respective August 31, 2021 Notice of Proposed Action (NOPA) and September 3, 2021 NOPA. At hearing, Claimant expanded his ESY request to include summer 2022.

3. Claimant is a special education student with an Individualized Education Program (IEP) who is enrolled in public school. He receives services through his IEP. However, no evidence was submitted as to what specific services he receives from school. Claimant's IEP for the 2021-2022 school year was not submitted into evidence.

4. During the 2021-2022 school year Claimant receives his education and related services virtually. Claimant's ASD does not preclude him from being able to attend school in-person. However, Claimant's mother elected to keep him at home during the 2021-2022 school year because of Covid-19 related health and safety concerns.

5. Claimant's decision to remain at home and utilize remote learning does not relieve the school district, a generic resource, from its responsibility to Claimant during the school day to provide him with all resources needed for his Free and Appropriate Public Education (FAPE).

6. In October 2021, Claimant voluntarily transitioned to the SDP. As part of the SDP, a consumer controls a yearly budget to purchase services. This budget is based on an individual's identified needs, as well as previous Purchase of Services (POS) expenditures.

7. The SDP Budget is developed by the Individual Program Plan (IPP) team. In formulating the SDP, the first step is usually to review the cost of services and supports for the consumer over the prior 12-month period. The budget is not fixed, and can be amended to accommodate additional needs or changed circumstances.

8. Claimant's first SDP budget covered the period from mid-September 2021 through mid-September 2022. (Ex. 5.)

9. Claimant's budget for his initial year of participation in the SDP is \$63,659. It includes \$20,894.32 in services under the Living Arrangement Category, and \$42,764.68 in services under the Employment and Community Participation Category. Based on the budget, Claimant receives 14 hours of services per day, including funding for 28 hours of personal assistance, 2.5 hours per week of social skills training, and 10.6 hours per week of in-home respite. Claimant also receives 279 hours per month of In-Home Support Services (IHSS) from the county as a generic resource. Mother is his IHSS provider. Claimant receives Applied Behavioral Analysis (ABA) services through his medical insurance.

21 Days of Out of Home Respite

10. As part of the parties August 2021 discussions regarding Claimant's SDP budget for the coming fiscal year, Claimant's mother requested that Service Agency include additional funding for 21 days of out of home respite. Service Agency reviewed and denied the request. Service Agency found Claimant ineligible for the requested service because: SDP is required to be cost-neutral when compared to the traditional service system; 21 days out of home respite is not a service Claimant received in prior years; there is no immediate need for this service; and Service Agency is not currently able to provide funding for social/recreational services.

11. At hearing, while Claimant's mother argued that Claimant should be provided 21 days of out of home respite in his SDP budget, Claimant presented no evidence to support the argument that Service Agency was required to include the requested service in the SDP budget.

ESY-PA Request – Winter 2021, Spring 2022, and Fall 2022

12. As part of the parties' discussions regarding Claimant's SDP budget for the coming fiscal year, Claimant's mother also requested that Service Agency include funds for ESY-PA for school breaks Winter 2021, Spring 2022 and Fall 2022, in Claimant's first-year SDP budget. Service Agency reviewed and denied the request.

13. Service Agency reviewed Claimant's request in consideration with guidelines for ESY-PA and found Claimant ineligible for the requested service because: SDP is required to be cost-neutral when compared to the traditional service system; these are not services Claimant received in prior years; and there is no immediate need for this service at this time. Service Agency determined that, in the absence of

demonstrated contemporaneous need, it could not provide a blanket authorization for the service.

14. Further, Service Agency denied the request because it is required by law to look at parental responsibility to provide general care and supervision for their child, regardless of the child's disability. Based on Claimant's funded services (respite, personal assistance, IHSS, socialization services, etc.), Claimant has 14 or more hours per day of paid support during the ESY/holiday periods. Accordingly, Service Agency asserted that the remainder of the care and supervision for the day is a typical parental responsibility.

15. At hearing, no credible evidence was presented to support Claimant's argument that spring, fall and winter break ESY-PA had previously been provided to Claimant by Service Agency.

16. While Claimant's mother and supporting witnesses testified that Claimant needed the requested ESY-PA services for Winter 2021, Spring 2022, and Fall 2022, no specific evidence was presented to support their testimony. For example, no evidence was provided as to how Claimant's day was structured and why the existing 14 or more hours per day of paid support did not meet his needs, therefore requiring ESY-PA during the holiday periods.

ESY-PA Summer 2022

17. At hearing, Claimant expanded his fair hearing request to include SDP budget funding for ESY-PA to include Summer 2022. ESY-PA is a service which is generally funded by regional center as an exception based on exigent circumstances and where generic resources are unavailable. Service Agency previously funded ESY-PA for Claimant for Summer 2021, but did not include ESY-PA Summer 2021 funding

in Claimant's current SDP budget. Service Agency convincingly justified the omission, arguing that insufficient evidence had been provided at this time to justify the preauthorized prospective funding for Summer 2022 ESY-PA that Claimant currently requests based on the level of services Claimant receives as part of his SDP budget.

18. Claimant provided no convincing evidence at hearing that a current need existed to preauthorize funding for ESY-PA Summer 2022 as part of his SDP budget.

19. Service Agency noted that it was not denying future requests for ESY-PA hours. Rather, Service Agency notified Claimant that, if there is a contemporaneous need, Claimant should notify his Service Coordinator with 30-days' notice requesting the service. As a result, Service Agency could then determine, based on an assessment of the need for the services at the time of the request, whether the SDP budget should be amended to include the requested funding.

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.) (Statutory references are to the Welfare and Institutions Code.) Claimant's mother timely appealed Service Agency's denials of his service requests, and therefore jurisdiction exists for this appeal.

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 the party seeking the benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Here, Claimant requests increased SDP funding. Accordingly, Claimant has the burden of proving by a preponderance of the evidence that he is entitled to the requested services.

Applicable Provisions of the Lanterman Act

4. 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.* at subd. (a).)

5. "Self-determination" is defined 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. (*Id.* at subd. (c)(6).)

6. During the individual's budget development process, 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, and 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). (*Id.* at subd. (b)(2)(H)(i).)

7. The participant also must utilize the services and supports available within the SDP only when generic services and supports are not available. (*Id.* at subd. (d)(3)(B).)

8. Pursuant to section 4685.8, subdivision (m)(1), the IPP team determines 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.

9. A regional center is required to certify its expenditures would have occurred regardless of the consumer's participation in the SDP. Therefore, other provisions of the Lanterman Act not expressly exempted in section 4685.8 still apply to funding determinations within the SDP process. As a result, 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" is applicable, regardless of an individual's participation in SDP.

Disposition

10. Based on the circumstances and applicable statutory guidelines, Claimant has provided no credible and convincing evidence to demonstrate a current need to include funding for 21 days of out of home respite in Claimant's current SDP budget, or for including funding for ESY-PA Winter 2021, Spring 2022, Summer 2022, and Fall 2022 in his current SDP budget. (Factual Findings 1-19; Legal Conclusions 1-9.)

ORDER

Claimant's appeals are denied. Service Agency is not required to include funding for 21 days out of home respite in Claimant's current SDP budget. Service

Agency is not required to include ESY-PA for Winter 2021, Spring 2022, Summer 2022, and Fall 2022 in Claimant's current SDP budget.

DATE:

IRINA TENTSER

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.