

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

In the Matter of:

CLAIMANT,

vs.

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2021120229

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 13, 2022, by videoconference.

Ronald R. House, Attorney at Law, appeared on behalf of the San Diego Regional Center (SDRC).

Claimant's father appeared on behalf of claimant, who was not present.

Testimony and documents were received in evidence. The record was closed and the matter was submitted for decision on January 13, 2022.

ISSUE

Should claimant's individual budget of \$57,402.36, prepared as a result of his inclusion in the self-determination program (SDP), be increased to cover 20 hours per month of socialization training, 49 hours per month of adaptive skills training/personal assistance hours, technology services training (to include technology instruction, computer graphics drawing classes, a photography/video editing class, and purchase of an iPad), nutritional consultation six times per year, speech therapy once per week, and funds to cover independent facilitator hours?

SUMMARY OF DECISION

Claimant's appeal is denied. Claimant's SDP and his budget of \$57,402.36 was properly calculated in accordance with applicable law, and claimant is not entitled to an increase in that budget to cover the services and supports requested.

FINDINGS OF FACT

Background

SELF-DETERMINATION PROGRAM

1. The SDP was established in 2013 as a pilot program at specified regional centers. The program was expanded in 2021 to all regional centers and implemented by the Department of Developmental Services (DDS). (Welf. & Inst. Code, § 4648.8, subd. (a).) The SDP is designed to help consumers plan their own life decisions, decide how money is spent for needed services and supports, and have more freedom in the

selection of services and supports to meet their Individual Program Plan (IPP) goals. Unlike the traditional delivery of services where regional centers purchase services and supports for consumers through vendors, a consumer in the SDP has the ability to use a budget to purchase services on their own, in accordance with applicable law.

CLAIMANT'S IPP AND PCP

2. Claimant is a 26-year-old man who lives with his parents. Claimant is under a limited conservatorship and his parents are his conservators. Claimant receives Social Security. He receives 200 hours per month of In-Home-Supportive Services (IHSS) and the provider is his mother. There was no testimony or evidence regarding on what basis claimant qualified for SDRC services. Testimony during the hearing and other documentary evidence indicated that claimant has a seizure disorder. Claimant's eligibility is not in question. Claimant receives regional center services through the SDP.

3. The following information is derived from claimant's March 17, 2020, IPP: Claimant's maladaptive behaviors (screaming, crying, and hitting his face with an open fist) have increased. The planning team wished to see claimant increase working opportunities and participation in community activities, increase daily living skills, communication and advocacy skills, learn how to build relationships with others, and decrease instances of screaming, crying, and hitting his face. A new outcome was added to the IPP to address this behavioral change.

Claimant is able to complete dressing and self-care tasks with reminders and supervision as needed due to the risk of claimant experiencing seizure activity. Claimant is able to toilet independently and toast waffles and make scrambled eggs. His parents prepare most meals. The planning team determined it would be in

claimant's best interest to continue working on increasing his independence with preparing meals.

Claimant has some verbal skills. He maintains good eye contact when speaking to others and has good greeting skills. When conversing with others, claimant tends to be brief in conversation. Claimant's parents report that he has a speech impediment. The planning team determined it would be in claimant's best interest to continue working on increasing his ability to elaborate when conversing with others.

Claimant's primary source of support is his parents. Claimant also receives support through his day program staff and respite provider. Claimant does not have any friends and the planning team determined it would be in claimant's best interest to learn how to build some friendships and relationships with community partners. Claimant attends a community-based adult day program, Monday through Friday, at Toward Maximum Independence (TMI). This program is funded by SDRC. Claimant's father said the program is wonderful and consists of volunteer sites such as Feeding San Diego, the Japanese Friendship Gardens, and the Salvation Army. They also spend time exercising at Y.M.C.A. and visiting the library. The planning team determined it would be in claimant's best interest to increase his work opportunities by participating at various job and/or volunteer sites. Claimant's day program staff transports him to and from his day program.

Outside of his day program hours, claimant enjoys being out in the community. He likes participating in various activities such as going on hikes, jumping on trampolines and sports, participating in a basketball league, and watching recordings on YouTube of people playing video games. Claimant needs assistance with making purchases in the community.

Claimant requires someone in the home with him nearby and supervision in the community due to risk for seizure activity and limited safety awareness. The planning team would like to see claimant participate in more community activities with peers while under the care of his respite provider.

Claimant's health is stable at this time. His last seizure was on April 30, 2018. Claimant gets exercise while at his day program and through sports outside program hours. Claimant is very kind, loving, and likes being active. His day program staff reported claimant is a great worker, is independent in completing job tasks, and sees those tasks through completion. Claimant experiences anxiety at times which can be triggered by changes in his routine, being asked to talk about his day, or needing to stop using the computer. Claimant has outbursts, described as crying, screaming, and hitting his face with an open hand and they occur about two to three times per week on average. Despite being upset with having to stop using the computer at the library, claimant understands that he needs to keep his voice down. Disruptive behavior occurs a few times per week or more on average, depending on how claimant's day is going. Claimant tends to not generally communicate his wants and needs, voice his opinion or stand up for himself in an assertive manner.

4. After claimant elected to be in the SDP, a person centered plan (PCP) was developed from claimant's IPP. The PCP identified the following outcomes:

- Outcome #1: Claimant will live in the most supportive and least restrictive environment.
- Outcome #2: Claimant will develop and increase Independent Living Skills.
- Outcome #3: Claimant will advocate for himself.

- Outcome #4: Claimant will develop vocational skills.
- Outcome #5: Claimant will enhance his communication and conversation skills.
- Outcome #6: With the guidance of a life coach, Claimant will identify and work toward mastering his personal goals.
- Outcome #7: Claimant will participate in Socialization Training to develop appropriate social skills and build friendships.
- Outcome #8: Claimant will increase recreational and leisure skills.
- Outcome #9: Claimant will access various community events and activities.
- Outcome #10: Claimant will increase life skills, moving toward a greater level of independence in the home and in the community.
- Outcome #11: Claimant will stay healthy and safe at home, community, and work sites.
- Outcome #12: Claimant will cope better with changes/transitions.
- Outcome #13: Claimant will improve his expressive language to reduce his anxiety and communicate better.

PROPOSED INDIVIDUAL BUDGET

5. A regional center, in accordance with the process specified in Welfare and Institutions Code section 4685.8, subdivision (m), develops an individual budget for a consumer who is in the SDP. Claimant's IPP and PCP help inform the services and supports incorporated into the proposed individual budget.

6. On September 29, 2021, SDRC calculated an individual budget proposal for claimant. The individual budget included the most recent 12 months of all regional center expenditures used to purchase services and supports identified in claimant's IPP. The following services and expenditures were identified:

- ADC-CBP (day program/23 days per month), amount authorized - \$21,776.40, amount used - \$5,285.30
- ADC-AS (day program), amount authorized - \$10,946.96, amount used - \$9,578.59
- Behavior Analyst (60 hours total), amount authorized - \$3,583.20, amount spent - \$2,373.87
- Respite (300 hours/year), amount authorized - \$7,812.00, amount used - \$1,620.24
- Respite – COVID, amount authorized - \$3,696.56, amount used - \$0.00
- Transportation (23 days/month), amount authorized - \$3,138.12, amount used - \$1,159.74

Thus, over the previous 12-month period, \$50,953.24 in services were authorized while only \$20,017.74 was actually used. The individual budget also reflected that the temporary COVID respite and transportation, which were not used and/or were underutilized, would not be continued going forward (since it was only temporary). SDRC noted that many of the services that were underutilized were, in fact, underutilized due to COVID, and this was taken into consideration when determining, going forward, what claimant's budget should be. Consequently, SDRC identified the following services and supports that would likely be funded for claimant

going forward if he were in the traditional program and not SDP (traditional services blueprint):

- ADC-CBP (day program), 23 days per month, at a cost of \$22,035.84
- Independent Living Skills (ILS), 20 hours per month, at a cost of \$9,304.80 (based on ILS assessment)
- Behavior analyst (30 hours per 6-month period), at a cost of \$3,583.20
- Respite (120 hours per quarter), at a cost of \$12,830.40
- Transportation (23 days/month), at a cost of \$3,138.12 (negotiated with day program)
- Conference (1 time), at a cost of \$200
- SDSU Adaptive Fitness Clinic, at a cost of \$6,310

Ultimately, the total proposed individual budget was calculated to be \$57,402.36, a significant increase in not only what was allocated for use in the previous 12 months, but also in what was actually used.

FAIR HEARING REQUEST AND INFORMAL MEETING LETTER

7. Claimant objected to the amount of the proposed individual budget. On October 28, 2021, SDRC filed a Notice of Proposed Action adhering to the proposed individual budget and advising claimant of his rights to file a fair hearing request.

8. On November 19, 2021, claimant filed a fair hearing request, explaining the reason for the request as follows:

We do not agree with SDRC's decision to deny all of our service requests which we identified during the PCP process. They set a pre-determined amount of budget and want to stick with it without considering my son's huge needs and supports described in the latest IPP. Their actions defeats [sic] the fundamental purposes of the SDP.

Nowhere in the fair hearing request did claimant identify exactly what he disagreed with in the individual budget, or what he sought to have included in the budget that he believed was omitted.

9. On December 16, 2021, an informal meeting was held between claimant's father and SDRC representatives to discuss the fair hearing request. Claimant's father indicated he wanted the proposed individual budget increased to account for the following supports and services, which he contended were not considered by SDRC in the development of the budget: 20 hours per month of socialization training, 49 hours per month of adaptive skills training/personal assistance hours, technology services training (to include technology instruction, computer graphics drawing classes, a photography/video editing class, and purchase of an iPad), nutritional consultation six times per year, speech therapy once per week, and funds to cover independent facilitator hours.

10. Following the informal meeting, SDRC adhered to its proposed individual budget. In a letter dated December 16, 2021, memorializing the meeting, SDRC explained:

Suzy Requarth, Coordinator of SDP services (SDRC)
discussed the budget which was recently approved for your

son. She shared [sic] that the budget includes a Community-Based Day Program, Transportation Services, Independent Living Skills (ILS) training in the home, Respite Services, Behavior Consultation, and an Adaptive Physical Fitness Clinic. When asked about [claimant's] need for Social Skills and Vocational Training, she replied that the services should be fulfilled under his Community-Based Day Program. She further shared, that if [claimant's] current program is not meeting his needs, under the SDP program, you can use the funds allocated within the budget to find an alternative program which could meet [claimant's] social and vocational goals.

Furthermore, Ms. Requarth shared that Socialization training is not a separate service available to [claimant] under traditional services through the SDRC. Regarding the use of Personal Assistance services to assist [claimant] with his vocational training, Ms. Requarth shared that the budget allocated for day program services could meet the need and reminded family that they can also reach out to the Department of Rehabilitation (DOR) to explore any available options for vocational support.

Ms. Requarth also discussed the ILS training allocated within [claimant's] SDP budget. The ILS service can be tailored to address his adaptive skills training needs. We also discussed the use of [claimant's] budget for technology

services. Ms. Requarth reported that vocational training for technology services could fall under the day program or supported employment category under traditional services but there is no service code under traditional services entitled Technology Services.

I discussed your request regarding Nutritional Services, Speech/Hearing and Language services. Because the services could be covered through private insurance, the regional center is prohibited from funding medical services as the SDRC is a payor of last resort. If these services are denied through all generic resources, please provide documentation of the need and corresponding denial to the SDRC for clinical review. . . .

Testimony of Suzy Requarth

11. Ms. Requarth's testimony supported and explained what was conveyed in the December 16, 2021, informal meeting letter. Her testimony, and documentary evidence supporting her testimony, are summarized as follows:

Suzy Requarth is the SDRC Regional Manager and the Project Manager for the SDP at the SDRC. Prior to this position, Ms. Requarth has worked in many capacities at SDRC, including intake service coordinator and program manager. She holds a Master of Arts degree in education and rehabilitation services.

Ms. Requarth explained how the self-determination budgeting process works. First, a regional center looks at what expenditures have been incurred on behalf of a

consumer in the previous 12 months, including the amount of money authorized as well as the amount of money actually spent.

Second, a regional center develops a “traditional services blueprint,” which is what services and supports would be authorized for claimant if he were in the traditional program. In other words, it reflects the services and supports regional center would secure through their vendors to provide services to the consumer. This part of the budgeting process takes into consideration the cost of the services and supports based on claimant’s needs, as well as the increases that are likely to occur in costs for those services and supports over the life of the budget period, and produces expected expenditures. Ms. Requarth explained that the traditional services blueprint is important because it shows what money a regional center would allocate for a consumer’s needs in the traditional program, and the ultimate amount allocated under the SDP cannot exceed that amount.

Finally, the last step in the process is developing the actual spending plan for the consumer. This is the component of the SDP that makes it different from the traditional program, as it is the component where the creativity and flexibility comes into play. The spending plan is how the consumer decides to spend the “pot of money” that has been allocated to implement his IPP and otherwise meet his needs. The purpose of the SDP spending plan is so that consumers can “think outside the box” and choose services appropriate for their needs, but still being within the budget that a regional center would have if the consumer were under the traditional program.

Ms. Requarth is familiar with claimant’s case. She reviewed the individual proposed budget, previously described, which took into consideration the previous 12 months of expenditures authorized and incurred on claimant’s behalf (\$50,953.24 authorized/\$20,017.74 used), and the traditional services blueprint developed for

claimant if he were to receive his services under the traditional program (resulting in an individual proposed budget of \$57,402.36). A spending plan has yet to be developed, however, because claimant does not agree with the proposed individual budget. As SDRC explained in an e-mail to claimant's father on October 21, 2021, services or supports claimant seeks may be built into the spending plan even though they are not included in the proposed individual budget, because the spending plan is where the flexibility exists.

Ms. Requarth explained that claimant is asking for an increase in his budget for the requested services and supports, but an increase in the budget cannot be provided for several reasons. First, some of the services and supports requested would already fall under categories included in his individual budget, and duplication of services is prohibited. Second, some services and supports are prohibited by law. Lastly, generic resources are available for some of the supports and services, and therefore, regional center must deny the request because it is a payor of last resort.

Ms. Requarth's testimony concerning why claimant's request for an increase in the individual budget echoed what regional center wrote to claimant in the December 16, 2021, letter memorializing the outcome of the informal meeting. Specifically, Ms. Requarth noted that things like socialization training and adaptive skills are things that can be provided through a day program. If claimant's current day program does not meet those needs, he is free to seek out a day program that will. Those needs would also be addressed by the independent living skills hours already included in the development of claimant's individual budget. Regarding the personal assistance, that is a service not normally provided to someone living in the family home or any other assisted living setting. Nonetheless, personal assistance would normally be used to help a consumer living independently, and the independent living skills service, already

included in claimant's individual budget, would be used (if claimant were in the traditional program) to teach him the type of skills he would need if he were living alone. The proposed individual budget also included costs for "behavior analyst," and things like socialization, adaptive skills, and personal assistance fall under that category as well.

Regarding the request for technology services training (to include things like computer classes, computer graphics classes, photography and video editing classes, and the purchase of an iPad), SDRC does not provide technology services of this nature under the traditional program, and the Department of Rehabilitation is a generic resource where these services can be explored. Finally, regarding claimant's request for nutritional consultation and speech/Hearing/Language services, no medical need has been identified for such services, and claimant would first need to contact his medical insurance, which is likely where such services, if needed, would be provided.

A document submitted by SDRC also identified various spending codes utilized in the SDP. This is how a service or support is identified in a consumer's spending plan. These service codes include, but are not limited to: communication support, community integration supports, community living supports, employment supports, family support services, homemaker services, individual training and education, nutritional consultation, occupational therapy, pre-vocational supports, speech/hearing/language services, and technology. As Ms. Requarth explained, SDRC is not saying claimant may not purchase the services or supports he is requesting; SDRC is just not allocating additional funds into the individual budget for the reasons discussed above. Once claimant develops a spending plan, many of these services or supports he seeks might be able to be included in that spending plan, which of course,

is also subject to specified law not at issue here, and which must fall under a specific SDP spending code.

In conclusion, Ms. Requarth explained that all claimant's needs, including those he identified at the informal meeting, are either included in services and supports already identified in his traditional services blueprint, or, cannot be provided for other reasons (i.e. prohibited by law or generic resources not exhausted). The proposed individual budget for claimant is consistent with the law, claimant's person-centered plan, and will address the needs identified in claimant's IPP.

Claimant's Evidence

12. Claimant's father's testimony, and a document claimant submitted entitled, "Fair Hearing: Case Summary" (Case Summary) is summarized as follows: The principles of SDP are that everything is supposed to be "selected and directed" by the consumer. Nothing in the law applicable to SDP shows there is a cap on an individual budget. Nothing shows that a regional center can just make up its own budget. The budget should be based on the PCP and individual consumer choice. The increase claimant seeks in the budget was based on claimant's needs identified in the IPP and PCP process. SDRC denied an increase because it does not offer some of these services under its traditional program and that is not right because other regional centers do offer those services. Not increasing the budget to cover services offered at other regional centers is a denial of "fair and equitable" support. SDRC completed the proposed individual budget the same day or before the PCP was completed so that is a problem. The individual budget is supposed to be based on prior needs as well as a change in circumstances, not what a regional center thinks the budget should be. The budget is not enough to implement claimant's IPP goals.

It is noted that in the Case Summary document claimant prepared for hearing, the only service requests identified were 20 hours per month of Socialization Training and 49 hours per month of Personal Assistance/Adaptive Skills Training. It did not identify any of the other service requests enumerated in the December 16, 2021, letter memorializing what was discussed at the informal meeting.

Claimant did not submit documents showing a proposed budget other than the one provided by SDRC, that showed the existing proposed individual budget was otherwise insufficient to meet claimant's needs.

13. Jamie Cha-McGrath has worked at SDRC in the past. At the moment, she provides independent living skills services and personal assistant services. She has researched many other regional centers and they offer things like personal assistance or socialization skills. Ms. Cha-McGrath does not understand why all regional centers are under the department and the Lanterman Act, but offer different services. She feels the proposed individual budget is not sufficient. She feels claimant should be referred to someone to assess claimant and recommend service hours and be able to decide whether claimant should receive those service hours.

Ms. Cha-McGrath did not explain why the proposed individual budget is insufficient to meet claimant's needs.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.)

to provide a pattern of 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. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by

individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . .

This subdivision does not expand or authorize a new or different service or support for any consumer unless that service or support is contained in the consumer's individual program plan.

3. The department 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.) In order to comply with its statutory mandate, the department 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.)

4. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

5. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

6. 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).)

7. 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.) Welfare and Institutions Code section 4648 requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) Regional center is also required to consider generic resources and family responsibility (Welf. & Inst. Code, § 4646.4.)

9. Welfare and Institutions Code section 4685.8, subdivision (a), provides:

The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. . . .

10. Participation in the SDP is voluntary and the consumer may leave the SDP at any time. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).)

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

12. The SDP requires a regional center, when developing the individual budget, to determine 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 subparagraph (D) of paragraph (6) of subdivision (a) of Section 4648. (Welf. & Ins. Code, § 4685.8, subd. (b)(2)(H)(i).)

13. "Individual Budget" means the amount of regional center purchase of service funding available to the participant for the purchase of services and supports necessary to implement the IPP. (Welf. & Ins. Code, § 4685.8, subd. (c)(3).)

14. "Spending Plan" means the plan the participant develops to use their available individual budget funds to purchase goods, services, and supports necessary to implement their IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).) The spending plan shall 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 amount of the individual budget; and a copy of the spending plan must be attached to the consumer's IPP. (*Ibid.*)

15. "Independent facilitator" means a person, selected and directed by the participant, who is not otherwise providing services to the participant pursuant to their

IPP and is not employed by a person providing services to the participant. (Welf. & Inst. Code, § 4685.8, subd. (c)(2).) The independent facilitator may assist the participant in making informed decisions about the individual budget, and in locating, accessing, and coordinating services and supports consistent with the participant's IPP. (*Ibid.*) The consumer may utilize the services of an independent facilitator of their own choosing for the purpose of providing services. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(F).) If the participant elects not to use an independent facilitator, the participant may use their regional center consumer service coordinator to provide the services of the independent facilitator. (*Ibid.*)

16. A consumer is required to utilize the services of a financial management services (FMS) provider of their own choosing who is vendored by a regional center and who meets applicable qualifications. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(E).)

17. The SDP requires participants to "only purchase services and supports necessary to implement their IPP . . ." (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).)

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

19. Welfare and Institutions Code section 4685.8, subdivision (j), provides:

The IPP team shall utilize the person-centered planning process to develop the IPP for a participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the

participant to achieve the outcomes set forth in the participant's IPP and ensures their health and safety. . . .

20. Welfare and Institutions Code section 4685.8, subdivision (k) provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5. A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

21. A consumer in the SDP shall have all the rights established in Welfare and Institutions Code sections 4646 to 4646.6. (Welf. & Inst. Code, § 4685.8, subd. (l).)

22. Code Section 4685.8, subdivision (m), details how the individual budget shall be determined:

(1) Except as provided in paragraph (4), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A)(i) Except as specified in clause (ii), for a participant who is a current consumer of the regional center, their individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant.

(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. When adjusting the budget, the IPP team shall document the specific reason for the adjustment in the IPP.

(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.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator or the financial management services.

(B) For a participant who is either newly eligible for regional center services or who does not have 12 months of purchase service expenditures, the participant's individual budget shall be calculated as follows:

(i) The IPP team shall identify the services and supports needed by the participant and available resources, as required by Section 4646.

(ii) The regional center shall calculate the cost of providing the services and supports to be purchased by the regional center by using the average cost paid by the regional center for each service or support unless the regional center determines that the consumer has a unique need that requires a higher or lower cost. The IPP team also shall document the specific reason for the adjustment in the IPP. The regional center shall certify on the individual budget document that this amount would have been expended using regional center purchase of service funds regardless of the individual's participation in the Self-Determination Program.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator or the financial management services.

(2) The amount of the individual budget shall be available to the participant each year for the purchase of program services and supports. An individual budget shall be calculated no more than once in a 12-month period, unless revised to reflect a change in circumstances, needs, or

resources of the participant using the process specified in clause (ii) of subparagraph (A) of paragraph (1).

(3) The spending plan shall be assigned to uniform budget categories developed by the department in consultation with stakeholders and distributed according to the timing of the anticipated expenditures in the IPP and in a manner that ensures that the participant has the financial resources to implement the IPP throughout the year.

(4) The department, in consultation with stakeholders, may develop alternative methodologies for individual budgets that are computed in a fair, transparent, and equitable manner and are based on consumer characteristics and needs, and that include a method for adjusting individual budgets to address a participant's change in circumstances or needs.

23. Welfare and Institutions Code section 4685.8, subdivision (n), provides:

Annually, participants may transfer up to 10 percent of the funds originally distributed to any budget category set forth in paragraph (3) of subdivision (m) to another budget category or categories. Transfers in excess of 10 percent of the original amount allocated to any budget category may be made upon the approval of the regional center or the participant's IPP team.

24. Welfare and Institutions Code section 4685.8, subdivision (o), provides:

Consistent with the implementation date of the IPP, the IPP team shall annually ascertain from the participant whether there are any circumstances or needs that require a change to the annual individual budget. Based on that review, the IPP team shall calculate a new individual budget consistent with the methodology identified in subdivision (m).

Burden and Standard of Proof

25. Claimant is the party seeking to change the amount of the SDP budget, so claimant is the party seeking to change the status quo. The burden of proof is therefore on claimant to establish by a preponderance of the evidence that: services or supports he seeks comply with Welfare and Institutions Code section 4512 (directed toward the alleviation of a developmental disability), are not prohibited in any other provisions of the Lanterman Act, and the SDP budget is not sufficient to account for those additional services. (Evid. Code, §§ 115; 500.)

Evaluation

26. While the SDP is designed to give a consumer more freedom in selecting their own vendors and obtaining services and supports without the restrictions and cost controls present in the traditional program, it is not without limitation. The Lanterman Act mandates that the individual budget "shall be the total amount of the most recently available 12 months of purchase of service expenditures" for the consumer. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(i).) SDRC calculated that amount to be \$50,953.24, of which only \$20,017.74 was used. Section 4685.8, subdivision (m)(1)(A)(ii)(I), further provides that the budget amount may be adjusted up or down based on 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. SDRC understood that much of that budget was not utilized due to COVID, so claimant was not penalized for not using the total funds available. SDRC looked at the needs in claimant's IPP and the new outcomes specified in his PCP (increase independent living skills and life skills, improve his communication and conversational skills, develop vocational skills, improve his social skills to build friendships, increase his recreational and leisure skills; access the community). They selected services and supports that would be available under the traditional service model and allocated adequate funding to meet those needs, also taking into consideration the likely increase in costs due to it being a new service year. The proposed individual budget included a day program, independent living skills, behavior analyst, and adaptive fitness, among other things. Ultimately, the proposed individual budget was determined to be \$57,402.36. There was nothing inappropriate or contrary to law regarding the manner in which SDRC calculated claimant's individual proposed budget.

Claimant's father suggested that the budget was not sufficient to meet the outcomes identified in claimant's PCP or needs identified in the IPP. However, he presented no alternative budget or other document to show that \$57,402.36 was insufficient to address those outcomes or needs. The SDP individual budget is not prepared by assigning dollar amounts to each individual service or item a claimant may desire to purchase. To the contrary, the dollar amounts are assigned to services and supports that address a claimant's *needs*, identified in the IPP and PCP. As it does in claimant's case, one service may address multiple needs.

Here, the proposed individual budget, among other expenditures, considered funding for a day program five days per week, 20 hours per month of independent living skills, and 30 hours per month of behavioral analyst services. As Ms. Requarth explained, the services and supports claimant seeks – like socialization skills, adaptive skills, and personal assistance (to learn things described in his IPP like preparing meals or functioning more independently at home) - would traditionally be provided by the day program or independent living skill services, both of which were included in the individual budget. A day program may also provide technology assistance or other assistance to help claimant meet his vocational goals. If claimant's current day program does not meet those needs, claimant has the flexibility to select another day program that does.

Regarding nutritional services and speech/hearing/language services claimant seeks, because the services may be covered through private insurance, claimant can request those services from his medical provider, a generic resource. Even though claimant is in the SDP, the SDP does not eliminate the requirement that a regional center must consider generic resources. (Welf. & Inst. Code, §§ 4646.4; 4685.8, subd. (d)(3)(B).) Claimant's mother also provides 200 hours of IHSS, a generic resource. Some of those hours could be reallocated for personal assistance as well.

Regional centers also must consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Things like an iPad and the classes claimant seeks (technology instruction, computer graphics drawing classes, a photography/video editing class, and purchase of an iPad), can be provided by a day program, which has already been accounted for in the individual budget, or claimant may request services from the Department of Rehabilitation, which is a generic resource. Similarly, the evidence does not establish

that purchasing an iPad or the classes claimant seeks meet the requirement of “cost-effectiveness” within the meaning of Welfare and Institutions Code sections 4512, subdivision (b), and 4685.8, subdivision (b)(2)(H)(i). It was also not shown that the device or classes are materially effective at achieving the goals of claimant’s IPP and PCP.

Finally, SDRC is prohibited from increasing an individual budget for independent facilitator services. (Welf. & Inst. Code, § (m)(1)(A)(iii).) If claimant does not want to use any portion of his budget to hire someone to perform independent facilitator services, thereby retaining more of his individual budget to purchase other services and supports, claimant can use his consumer services coordinator to perform that role. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(F).)

27. It is important to note also, that in reviewing just a few of the SDP service codes, which would be the codes used to purchase services or supports with the funds available in claimant’s SDP budget, the codes include: communication support, community integration supports, community living supports, employment supports, family support services, homemaker services, individual training and education, nutritional consultation, occupational therapy, pre-vocational supports, speech/hearing/language services, and technology. Consequently, claimant may be able to purchase many, if not all, of the services and supports he seeks with his SDP budget. However, he has yet to develop a spending plan, which, as Ms. Requarth explained, is where that creativity, flexibility, and freedom not present in the traditional program comes into play.

28. In conclusion, it is determined that claimant’s SDP individual budget was properly calculated in accordance with the Lanterman Act, and claimant did not

establish by a preponderance of the evidence that he is entitled to increase that individual budget to account for the additional services and supports requested.

ORDER

Claimant's request for an increase in his SDP individual budget, currently \$57,402.36, to cover the additional cost of 20 hours per month of socialization training, 49 hours per month of adaptive skills training/personal assistance hours, technology services training (technology instruction, computer graphics drawing classes, photography/video editing class, and purchase of an iPad), nutritional consultation six times per year, speech therapy once per week, and independent facilitator hours, is denied.

DATE: January 27, 2022

KIMBERLY J. BELVEDERE

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.