

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2022020871

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on July 12, 2022. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by her mother. Their names are omitted to protect claimant's privacy.

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

ISSUES

Shall service agency provide prospective funding for claimant to attend the UC Davis Redwood SEED Scholars Program's Living Learning Lab?

Shall service agency reimburse claimant's mother \$11,934 for the costs of claimant attending the Living Learning Lab during the 2022 Winter and Spring quarters?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 1 through 10; claimant exhibits A through II; as well as the testimony of Adult Services Manager Adrian Sosa; Dustlyne Beavers, a Self-Determination Program consultant; MF and NL (their children are consumers of other regional centers); Beth Foraker, Co-Director of the UC Davis Redwood SEED Scholars Program; claimant's mother; and claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. 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 24-year-old woman who is eligible for services under the Lanterman Act based on her qualifying diagnosis of Mild Intellectual Disability. (Ex. 1.)

3. Claimant is a participant in the Self-Determination Program (SDP). The SDP process includes creating an annual budget for services and supports funded by service agency. (See Legal Conclusions 4-8.)

4. In the process of creating claimant's SDP budget for the 2021/2022 fiscal year, claimant's mother requested to add to the budget funding for the newly identified need of attending the Living Learning Lab component of the UC Davis Redwood SEED Scholars Program (SEED program). As explained in more detail below, the Living Learning Lab is a dormitory living environment for the SEED program students. (Testimony [Test.] of Claimant's mother; Exs. 3, G, H.)

5. Service Agency agreed to add the Living Learning Lab to claimant's budget. (Test. of Adrian Sosa, claimant's mother; Exs. G, H.) However, when the bill was received for claimant's second quarter in the Living Learning Lab, in November 2021, service agency refused to pay it. Service agency contended the bill was for room and board, which is excluded from SDP funding because it is not part of the federal waiver program approved for California. (Exs. 1, O.)

6. On January 13, 2022, after much correspondence and many conversations between the parties, service agency advised claimant's mother that its refusal to pay the bill in question was final. (Ex. 1.)

7. On January 20, 2022, service agency issued a Notice of Proposed Action (or NOPA) advising claimant's mother her request for payment of the bill for the second quarter of the Living Learning Lab was denied. (Ex. 1.)

8. On or about February 17, 2022, claimant's mother submitted a Fair Hearing Request, which contained a demand for a hearing to challenge service agency's refusal to pay for claimant's second quarter in the Living Learning Lab.

Claimant's mother also requested prospective funding for claimant's remaining time in the Living Learning Lab program until she graduates. (Ex. 2.)

9. At hearing, claimant's mother also requested reimbursement of the bill she paid for claimant's third quarter in the Living Learning Lab program. Service Agency did not object to litigating the issues not described in the NOPA.

Claimant's Relevant Background Information

10. Claimant is a single woman who is conserved. Her mother is one of her limited conservators. (Test. of claimant's mother.)

11. Except as otherwise indicated below, claimant lives at home with her mother and older sister. (Ex. 3.)

12. Claimant graduated from high school in 2016. She sells her photography through her own internet business and also has worked part-time for several employers, mainly performing cleaning and maintenance work. (Exs. A-F.)

Interest in Attending a Four-Year College

13. Claimant's older brother went to college at the University of California, Davis (UC Davis). Claimant visited her brother on campus and fell in love with it. From that time, claimant has wanted to attend a four-year college. (Test. of claimant, claimant's mother.)

14. Claimant's mother could not find an appropriate four-year college for claimant in Southern California. She did not believe her daughter was mature enough to attend suitable colleges on the East Coast. So, claimant and her mother decided

claimant would start her college experience by attending a junior college close to home. (Test. of claimant's mother.)

15. Service agency and vendors hired to assess claimant have uniformly agreed claimant's goal of attending college was appropriate, which she had the aptitude for and ability to pursue. In order to do so, however, she needed to improve her independent living skills. (Exs. A-F.)

16. From 2016 through 2019, claimant attended junior college courses. Claimant did well, but she and her mother felt the classes were limited. Claimant also experienced problems with the quality of educational support staff helping her access campus helping her with notetaking during class. (Test. of claimant's mother.)

17. In 2019, claimant decided to open enroll at California State Polytechnical University, Pomona (Cal Poly Pomona). She took courses at Cal Poly Pomona until 2020. Claimant did well academically, but found the courses she took were not challenging. She did not live on campus, was not able to make friends at school, and was the only developmentally disabled person she saw on campus. In Spring 2020, claimant's courses were converted to on-line learning due to the COVID-19 pandemic. Claimant struggled with on-line learning and stopped attending courses at Cal Poly Pomona in Spring 2020 for that reason. (Test. of claimant's mother; Exs. B-E.)

The SEED Program

GENERALLY

18. In Fall 2020, claimant and her mother learned about the SEED program. They were instantly interested because it is part of UC Davis, the campus claimant loved, and was a four-year college program. The SEED program is specially designed

for intellectually delayed adults to approximate a four-year college experience. They attend specially designed classes on the UC Davis campus, and live together on campus in a dormitory with degree-seeking peers. Those who graduate from the SEED program receive an integrated studies credential. (Test. of claimant's mother, Beth Foraker; Exs. J, K, L.)

19. An important component of the SEED program is the Living Learning Lab. SEED program students live and interact with same-age peers in an on-campus dormitory their first few years in the program. The focus of the Living Learning Lab is to develop and build independent living skills with social inclusion mentors, and health and wellness mentors. The SEED students also have reflective morning and evening check-ins with residential housing mentors. These mentors work to help with organization, scheduling, planning, and independent living in whatever areas of need the student has. Same-age peers model independent living skills and teach specific skills as needed. The same-age peers also reinforce independent living skills, guide, and encourage. (Test. of claimant's mother, Foraker; Ex. K.)

20. Various studies show that post-secondary education and/or completion of a college-transition program such as the SEED program greatly increases an intellectually delayed person's future employability and self-sufficiency. (Test. of Dustlyne Beavers, Foraker; Exs. Y, Z, II.)

21. In January 2021, claimant applied for the SEED program. She was accepted for its inaugural class beginning in the 2021 Fall quarter. (Test. of claimant's mother.)

INDIVIDUAL PROGRAM PLAN

22. Adrian Sosa is an Adult Services Manager with service agency. He was the supervisor of claimant's service coordinator and involved in updating claimant's individual program plan (IPP) in 2021. Claimant's mother explained the SEED program to Mr. Sosa. His understanding was that the SEED program was an independent living service (ILS) operated in an educational setting. He agreed it was an appropriate community living service that could be given a service code of 320 and should become part of claimant's IPP. (Test. of Sosa, claimant's mother; Exs. 3, I.)

23. Claimant's IPP executed in Fall 2021 has many goals and outcomes for claimant aligned with her participating in the SEED program. Examples include entering a college program; living in a dormitory; extra-curricular activity; independent living; pursuing her passion for photography; obtaining an internship; following a daily schedule, including classes and homework; independently navigating seven different routes on a college campus; and independently maintaining a dormitory room. (Exs. 3, I.)

SELF-DETERMINATION PROGRAM

24. Claimant was one of service agency's first consumers to participate in the SDP. The centerpiece of the SDP is the annual budget created by the parties. The consumer has wide discretion in using funding in the budget for the various services and supports identified therein as he or she sees fit. That flexibility allows the consumer to reprioritize services and supports throughout the fiscal year, and reallocate spending among the various services and supports as needs arise. (See Legal Conclusions 4-8.)

25. Claimant's SDP budget certified for the November 2021 through October 2022 fiscal year totaled \$36,632. The budget included funding for claimant to attend the SEED program, including the Living Learning Lab, which was described as a newly identified need. The stated cost was \$5,967 per quarter, the cost of the Living Learning Lab. That expense was budgeted as a means of supporting claimant with access to post-secondary education, socialization, skill development, and community participation. (Exs. G, H.)

26. Claimant also is a consumer of the Department of Rehabilitation (DOR). Because the SEED program will help facilitate claimant's employability, DOR has agreed to fund claimant's tuition for the SEED program, which is approximately \$12,000 per school year. (Test. of claimant's mother; Exs. M, N.)

27. Claimant enrolled in the SEED program and attended the first quarter it was offered, the 2021 Fall quarter. Because the parties were still in the process of finalizing service agency funding for the Living Learning Lab component of the SEED program, claimant's mother paid for that quarter herself, which cost her \$5,967. She has not requested reimbursement for this expense. (Test. of claimant's mother.)

28. Claimant testified as to her experience during her first year in the SEED program. She had a great time and is looking forward to her second year at UC Davis. Through the SEED program she had an academic mentor who helped her with homework. She had health mentors who guided her through her health and hygiene, including prodding her to exercise. She had residential mentors who checked on her progress in her dormitory room in the morning and evening. She worked on financial budgeting and scheduling her classes. Mentors helped her go to extra-curricular events. She had an internship working with the women's volleyball team as their videographer and scoreboard operator. She learned many routes on campus, including

to her classes, bookstore, and cafeteria. She also received mentoring on keeping her dormitory room clean. She liked her classes and made many friends. She misses classes and her friends. Claimant's testimony demonstrates the Living Learning Lab is aligned with many of the goals specified in her IPP.

Bills for the Living Learning Lab

29. Service agency included the SEED program in claimant's IPP and SDP in time for her second quarter at UC Davis, which was the 2022 Winter quarter. (Test. of claimant's mother.)

30. While researching the SEED program for service agency funding, Mr. Sosa was never advised any part of it included room and board. Nor did he specifically ask about that. To confound things, the SEED program has not been clear about the underlying costs of the \$5,967 it charges students each quarter. As explained below, the SEED program literature has provided different accounts of the cost breakdown, and its Co-Director, Beth Foraker, was not clear on this topic in her testimony. (Test. of Sosa, Foraker; Exs. 4, J, S, T, 10, K.)

31. For example, in an undated document created by the SEED program, the cost breakdown includes \$3,870 per quarter for the Living Learning Lab, which is described as "residential living." (Exs. 4, J.) The Living Learning Lab is described as "an opportunity for students with intellectual disabilities to live with same age peers in context and with meaningful relationships. These opportunities provide all independent living skills in context and with meaning. Hygiene, communication, daily planning, meal planning, collaboration, cleaning, traveling and transportation and many other skills are embedded in this opportunity." (Ex. 4, p. A38.)

32. In this same undated document, an additional cost of \$2,500 per quarter is listed for "Residential Mentor Supports," who work to support SEED students in residential living. "They check in with each scholar in the morning and at night to see how their residential living experience is going." (Ex. 4, p. A40.)

33. It is unclear from this undated document why the combined cost of the two components, both seemingly part of the Living Learning Lab, exceed \$5,967 per quarter. This document does not state whether food or housing is part of these costs. (Ex. 4.)

34. The bill for the 2022 Winter quarter that was sent to claimant's mother was for a total of \$5,967. The bill stated \$2,097 was for "Winter Quarter Meal Plan," and \$3,870 was for "Winter Quarter Housing." (Exs. 5, T.) The bill does not mention the SEED program or the Living Learning Lab.

35. The bill was rejected by the financial management service (FMS) assisting claimant with her SDP. The reasoning was that the bill covered solely room and board, which was not allowed under the SDP because it was an excluded expense under the federal waiver program. (Test. of claimant's mother, Sosa; Exs. O, P.)

36. The dispute was elevated to Mr. Sosa and service agency. Lucina Galarza of service agency contacted the SEED program for further details about the bill. In an e-mail response, Ms. Foraker stated simply that the bill was for the cost of meals and housing. Ms. Foraker also advised, "Our students are supported with residential housing mentors as well but that is not included in this cost." (Ex. 10.)

37. In an undated document presumably created after this dispute arose, the SEED program sought to clarify the Living Learning Lab: "Our students are not paying for 'Housing at UC Davis[;]' they are paying for the opportunity to live among same-

age peers on a college campus.” (Ex. K.) However, the document is silent as to whether any part of the bill for the 2022 Winter quarter included meals and/or housing.

38. Because service agency refused to fund the Living Learning Lab, claimant’s mother paid the 2022 Spring quarter bill in the amount of \$5,967. (Test. of claimant’s mother; Ex. T.)

39. In her testimony at hearing, Ms. Foraker did not specify whether any part of the Living Learning Lab cost included meals or housing. When pressed during closing argument, claimant’s mother conceded the bills for the Living Learning Lab, in part, covered meals and housing, in that she did not pay any other amount for her daughter to eat at the cafeteria or stay in the dormitory.

Federal Waiver Program

40. Under the authority of the Social Security Act, states are allowed to waive certain Medicaid requirements in order to furnish home and community-based services that promote community living for Medicaid beneficiaries and, thereby, avoid institutionalization. Waiver services complement and/or supplement the services that are available through the Medicaid State plan and other federal, state, and local public programs, as well as the supports that families and communities provide to individuals. However, states willing to participate in this waiver program and receive federal funding must apply for the waiver, and be willing to abide by restrictions and limitations established by the federal government. (Ex. 7, pp. A89-101; Legal Conclusions 9-14.)

41. According to a pamphlet created by the California Department of Developmental Services (DDS):

People with intellectual and developmental disabilities are provided many services because of the Lanterman Act. Many services people receive are paid for with state and federal money from the federal Centers for Medicare and Medicaid Services (CMS). Therefore, California must comply with what is called the Home and Community-Based Services (HCBS) Final Rule. This rule sets requirements for HCBS settings, which are places where people live or receive services.

(Ex. 7.)

42. In January 2019, CMS issued instructions to states applying to participate in the HCBS waiver program. The instructions provide, "Except in limited circumstances, a state may not claim federal financial participation (FFP) for the costs of the room and board expenses of waiver participants. Room and board expenses must be met from participant resources or through other sources." (Ex. 8, pp. A95, A138.) The limited circumstances described therein do not pertain to this case. (*Ibid.*)

43. The HCBS Final Rule applies, in part, to residential settings. The parties agree the HCBS Final Rule applies to the residential setting encompassed within the Living Learning Lab. Pertinent to residential settings, the HCBS Final Rule requires a participant has a choice about roommates; privacy in the room; control over schedule and activities; the ability to have visitors; freedom to furnish and decorate the room; and a lease or other legal agreement protecting from eviction. (Ex. 7.)

44. There is conflicting evidence whether the Living Learning Lab complies with the residential aspect of the HCBS Final Rule. For example, service agency

program evaluator Lourdes M. Sanchez wrote a memorandum relaying she had heard from another regional center employee that the SEED program was not in compliance. (Ex. 9.) However, an e-mail from Ms. Foraker to the involved regional center suggests the other regional center had not made such a conclusion. (Ex. AA.)

45. At hearing, Ms. Foraker and Ms. Beavers testified the SEED program does comply with the HCBS Final Rule.

46. Overall, the evidence is more persuasive that the SEED program complies with the HCBS Final Rule than that it does not. (Test. of Foraker, Beavers, claimant's mother; Ex. L.)

Funding by Other Regional Centers

47. There is conflicting evidence concerning whether other regional centers have paid the entire Living Learning Lab quarterly costs. For example, MF and NL, parents of other SEED program students, testified the regional centers serving their children have paid all of the quarterly Living Learning Lab bills. (See also Ex. U.) On the other hand, in e-mail correspondence with claimant's mother, service agency's executive director advised he had been told other regional centers do not pay the room and board component of those costs; and DDS has advised service agency that room and board are not fundable under the SDP. (Ex. P.)

48. Official notice is taken that two other Fair Hearing Decisions resolving this issue have both concluded a regional center cannot pay the room and board component of Living Learning Lab quarterly costs, either in the SDP or prior traditional funding system. (OAH case nos. *2021080776* [ALJ B. O'Hearn] & *2021090413* [ALJ E. Koch-Goodman].)

49. Literature from the less comprehensive but similar Wayfinders program at California State University, Fresno, states that while the ILS component of its program is funded by regional centers, rent and groceries are paid by the family. (Ex. V.) Literature from the similar Pathway program at University of California, Los Angeles, suggests the same allocation of costs. (Ex. W.)

Other Relevant Facts

50. In March 2018, claimant's mother was vendored by service agency for purchase reimbursement under service code 024. Claimant's mother has used this vendorization to pay for college support services before claimant entered the SDP. (Exs. CC, DD.)

51. Ms. Beavers, an SDP consultant, testified service code 107 covers education services, including "room and board while attending California State colleges or universities." The Service Code List submitted by claimant's mother corroborates her testimony. (Ex. S, p. A173.) Ms. Beavers testified she has seen that code used to pay for room and board for one particular consumer in an educational setting. However, it is not clear from either her testimony or the Service Code List if this service code pertains to the SDP or how it interacts with the federal waiver program. Moreover, the SEED program is not vendored with service agency or any other regional center.

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.) (Undesignated statutory references are to the Welfare and Institutions Code.) Claimant's mother timely appealed the service agency's refusal to pay the second quarter bill for the Living Learning Lab, and service agency did not object to litigating its refusal to pay the third quarter bill or the request for prospective funding of the Living Learning Lab. Therefore, jurisdiction exists for this appeal. (Factual Findings 1-9.)

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. The person seeking government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant is requesting retroactive reimbursement, and prospective funding, of a service the service agency has not yet funded, and therefore she has the burden of proving by a preponderance of the evidence that she is entitled to such funding. (Factual Findings 1-9.)

Applicable Provisions of the Lanterman Act

THE SELF-DETERMINATION PROGRAM

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 IPPs. (*Id.*, subd. (a).)

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

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

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

8. Pursuant to section 4685.8, subdivision (n)(1), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

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

(A)(ii) An adjustment may be made to the amount specified in clause (i) if both of the following occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the Self-Determination Program.

APPLICABLE LANTERMAN ACT FUNDING RESTRICTIONS

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

10. Pertinent to this case, there is nothing in section 4685.8 making inapplicable the following provisions of the Lanterman Act:

Section 4646, subdivision (a), which provides, in part, that the purpose of the Lanterman Act is "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."

Section 4646.4, subdivision (a), which requires a regional center, when developing or reviewing a consumer's IPP, to follow an internal process that adheres to federal and state law and regulation.

Section 4689, subdivision (i)(1), which prohibits regional centers from making rent, mortgage, or lease payments on a supported living home, or paying for household expenses of consumers receiving supported living services, except under exceptional circumstances not present in this case.

IMPACT OF THE FEDERAL WAIVER

11. When legislation initiating the SDP was enacted in 2005, section 4685.7, subdivision (a), specified that the SDP was contingent upon approval of a federal

waiver, defined in subdivision (b)(4) as “a waiver of federal law pursuant to Section 1396n of Title 42 of the United States Code.”

12. In 2009, section 4688.3 was enacted, mandating DDS, which oversees implementation and funding of the Lanterman Act, to partner with the California Department of Health Care Services to jointly seek from CMS its approval of a so-called “1915(i) state plan amendment” to expand federal financial participation for services under the Lanterman Act.

13. The upshot of these statutes is that funding under the SDP must be consistent with the dictates of the federal waiver approved for California, through the state plan amendment approved by CMS.

14. Regional centers provide home and community-based services (or HCBS as discussed in the Factual Findings) to people with significant physical and cognitive limitations, allowing them to remain living in their homes or home-like settings rather than being institutionalized. (Social Security Act § 1 et seq., codified at 42 U.S.C. § 1396n(c).) To be eligible, individuals must meet level-of-care standards required for institutionalization in the absence of HCBS. (42 U.S.C. § 1396n(c)(1).)

15. HCBS are funded via a Medicaid waiver under the Social Security Act. (42 U.S.C. § 1396n(c).) This is the federal waiver referenced in the SDP statutes. As such, any residential setting must comply with the HCBS Final Rule.

16. The HCBS Final Rule has many statutory requirements. (42 U.S.C. § 441.301(c)(4)-(5).) Generally, Medicaid waiver monies for HCBS can pay for case management, a home health aide and personal care, and adult day health, habilitation, and respite care. (42 U.S.C. § 1396n(c)(4)(B)). However, the Medicaid HCBS Final Rule specifically excludes the payment of room and board. (42 U.S.C. § 441.301(c)(4)-(5);

§ 1396n(c)(1)). In essence, waiver funds may not be used to pay for room and board expenses or to acquire goods and services which a household that does not include a person with a disability would be expected to pay as household expenses.

REIMBURSEMENT

17. The parties agree reimbursement of previously incurred costs is not specifically provided in the SDP statutes. Yet, the lack of specific statutory authorization is not dispositive of this issue.

18. In the fair hearing context, an ALJ is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act].” (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available in particular cases where equity requires it. Otherwise, the general requirements for funding services through the IPP and SDP processes, and the above-described statutory restrictions on funding, would be superfluous. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, reimbursement should be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

Disposition

PROSPECTIVE FUNDING

19. It is clear the Living Learning Lab has two components. One component is the ILS that is provided to claimant through the various mentors who work with her

throughout the day in her dormitory and on campus. This element of the Living Learning Lab is articulated in claimant's operative IPP and certified in her SDP budget. In that sense, this part of the Living Learning Lab has already been approved by service agency. That approval is consistent with section 4685.8, and not exempted by any other provision of the Lanterman Act that applies to the SDP. For example, claimant has found a generic resource, DOR, to fund the tuition part of the SEED program. No evidence suggests there is any other generic source that is available to fund the Living Learning Lab. (§§ 4685.8, subd. (d)(3)(B); 4646, subd. (a).) Finally, the ILS component of this program complies with the HCBS Final Rule, so there is no federal funding rule that bars this element of the service. (§ 4646.4, subd. (a).) (Factual Findings 13-28; Legal Conclusions 4-8.)

20. However, the other component of the Living Learning Lab is room and board. While the SEED program has given contradictory and confusing statements about the underlying costs of the Living Learning Lab, a preponderance of the evidence established that room and board is part of the \$5,967 quarterly cost. Meals and housing are not funded under the SDP, because as service agency correctly points out, the SDP is dependent on the federal waiver California obtained, and under the HCBS Final Rule, room and board are not funded except under certain circumstances which are not present in this case. This restriction is consistent with the Lanterman Act, which similarly prohibits funding for rent and household expenses in a supported living home. (§ 4689, subd. (i)(1).) (Factual Findings 29-49; Legal Conclusions 9-16.)

21. The problem in this case is that nobody has quantified how much of the \$5,967 quarterly cost of the Living Learning Lab is for ILS and how much is for room and board. The involved parties have treated this situation as an all-or-nothing proposition, which it is not. But the allocation between the two components cannot be

determined from the information provided by the SEED program. Because part of the Living Learning Lab is fundable under the SDP and federal waiver program, prospective funding of this aspect of the service should be provided to claimant. It does not appear the SEED program has specifically been requested to allocate the ILS versus room and board in its bills. In the future it needs to do so, as service agency is only allowed by law to fund the ILS component, and it cannot fund the room and board. (Factual Findings 13-49; Legal Conclusions 4-16.)

22. Claimant's mother's alternative arguments for prospective funding of the entire Living Learning Lab program are not convincing.

23. For example, it is not clear if other regional centers have paid all of the Living Learning Lab bills or, if so, under what circumstances they have done so in light of the federal waiver prohibition against funding room and board. Even if they have, the two other Fair Hearing Decisions indicate they were wrong to do so. Also, similar college programs only pay the ILS component, but not the room and board, indicating this is a fair allocation of costs consistently undertaken by most regional centers, and consistent with section 4689, subdivision (i)(1). (Factual Findings 47-49.)

24. Service Code 107 is more intriguing, as it specifically references room and board at state colleges and universities. However, the record is unclear whether this service code applies to the SDP, particularly since the SEED program is not a vendor of any regional center. Moreover, the record is insufficient to warrant the conclusion that the service code is enough to ignore federal law to the contrary. (Factual Finding 51.)

25. Finally, claimant argues her prior reimbursement service code 024 used to pay for college support services can provide the necessary funding. However, that

service code was used to fund services under the traditional funding system before claimant became a participant in the SDP. There is nothing in the SDP statutes allowing a participant to switch back-and-forth between the two funding systems as a mechanism of funding a particular service. Claimant has chosen to participate in the SDP, and while she remains in the program, she is bound by the program's rules. (Factual Finding 50.)

REIMBURSEMENT

26. As discussed above, reimbursement is available under the Lanterman Act when the principles of equity apply or to avoid frustrating the purposes of the Act. Here, claimant's mother incurred the costs of all three quarters of the Living Learning Lab, the last two of which she paid after service agency had expressly approved the service in claimant's IPP and SDP budget. Claimant's enrollment in the SEED program was made in reliance on service agency's agreement to fund the service.

27. The service agency's inability to obtain a complete cost breakdown was not caused by claimant's mother, and nothing in the record suggests she misrepresented the program to service agency staff. It would be inequitable for claimant's mother to bear those costs, especially where a significant part of the Living Learning Lab is fundable under the SDP and federal waiver. In addition, it would thwart the purposes of the Lanterman Act to force claimant's mother to bear these costs simply because the service provider did not provide an accurate breakdown of the costs in its bills. Claimant's mother is entitled to a one-time reimbursement for the two quarters she was required to pay to keep her daughter in the SEED program under these exceptional circumstances.

28. Now claimant's mother knows part of the Living Learning Lab is not fundable. It is up to her to decide whether she will continue to incur the non-reimbursable room and board component of the Living Learning Lab. (Factual Findings 13-51; Legal Conclusions 17-18.)

ORDER

The service agency shall provide prospective funding for claimant to attend the UC Davis SEED Program's Living Learning Lab. However, such prospective funding shall not cover the room and board portion of the Living Learning Lab as allocated by the SEED program in its bills. If no such allocation is made, service agency shall not be required to pay for the Living Learning Lab.

The service agency shall reimburse claimant's mother \$11,934 for the expenses she paid for claimant to attend the Living Learning Lab during the 2022 Winter and Spring quarters.

DATE:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.