

**BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022030654**

**DECISION**

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on October 24, 2022.

Claimant represented himself at the hearing. Claimant's mother also was present. The names of Claimant and his mother are omitted to protect their privacy. Claimant's mother was assisted by a duly sworn Spanish language interpreter.

Daniel Ibarra, Fair Hearing Representative, represented San Gabriel / Pomona Regional Center (SGPRC or Service Agency).

The ALJ received testimony and documentary evidence. The record was closed and the matter was submitted for decision at the end of the hearing.

## **ISSUE**

Shall Service Agency fund a Play Station 5 game console (PS5 console) for Claimant as part of his Self Determination Program (SDP)?

## **EVIDENCE RELIED ON**

Documents: SGPRC Exhibits 1–9. Testimony: Claimant, Claimant’s Mother.

## **SUMMARY**

Claimant seeks to include funding for a PS5 console in his SDP budget. A PS5 console is not a support or service eligible for funding under the Lanterman Act. Nor is it an approved expense for the SDP by the Centers for Medicare and Medicaid. Claimant’s request for regional center funding of a PS5 console therefore is denied.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

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). (Welf. & Inst. Code (Code), § 4500 et seq.)

2. In January 2022, Claimant requested SGPRC to fund a PS5 console as part of his SDP budget. Claimant believed playing video games on the PS5 console would

relieve his stress and manage his anxiety. By Notice of Proposed Action dated January 14, 2022, SGPRC denied Claimant's request. According to SGPRC, funding a PS5 console is not a service or support authorized by the Lanterman Act or available as part of Claimant's SDP. SGPRC cited Code sections 4512, subdivision (b), 4646.4, subdivision (a), 4685.8, subdivision (d)(3), and 4685.8, subdivision (f), in support of its position. Claimant filed a timely fair hearing request.

3. All jurisdictional requirements were satisfied to allow this hearing to proceed.

## **Background**

4. Claimant is a non-conserved 32-year-old man who lives with his parents, his sister, and two older brothers. He is eligible under the Lanterman Act for services from SGPRC based on a diagnosis of mild intellectual disability and autism.

5. Claimant is bilingual and can carry on a complex conversation. He completes most daily living skills on his own. He can prepare simple meals, helps his mother at home with chores, has great safety awareness, and does not require supervision. Claimant does not display any maladaptive or aggressive behaviors. According to his January 19, 2022 Individualized Program Plan (2022 IPP), Claimant has a history of Depressive Disorder and becomes easily frustrated. At present, Claimant is not in any psychological therapy.

6. Claimant enjoys playing sports, listening to music, and watching sports on television. He can make purchases on his own. As of January 2022, he was working on obtaining his California driver's license. His 2022 IPP reports Claimant attends Citrus Community College and works part-time as a Recreation Leader for the Parks and Recreation Department for the City of Baldwin Park.

7. The 2022 IPP sets forth Claimant's goals for 2022. Included in those goals are learning to drive, continuing his college studies, acquiring and improving his socialization and self-help skills through community-based physical fitness activities, and obtaining transportation assistance to work and school.

8. Claimant currently receives his SGPRC-funded services through SDP. Claimant's SDP Spending Plan, approved by Claimant for the March 1, 2022 to February 28, 2023 period, contains a budget totaling \$36,493.96. The budget was increased to \$39,782.96 in June 2022. (Exhibit 6.) As part of the budget, SGPRC provided funds for a new Apple MacBook Pro computer and software, which Claimant then purchased. In addition, the budget dedicates \$3,289 toward social recreation goals, which includes funds for a jujitsu/karate class, a boxing class, and a gym membership. As of the date of the hearing, Claimant had not spent any of those social recreation funds.

9. Claimant requested the purchase of a PS5 console be included in his SDP budget when the budget was first developed sometime in late 2021 and early 2022. On January 12, 2022, in an email sent to his SDP facilitator, his SGPRC Service Coordinator, and other staff members at SGPRC, Claimant wrote of his intention to appeal SGPRC's denial of his request for funding a PS5 console.

## **Hearing**

10. Claimant and his mother both testified at hearing as to the basis of Claimant's request for a PS5 console. According to Claimant's mother, Claimant gets easily frustrated and angry and sometimes has an aggressive temperament. She believes playing video games on a PS5 console would be helpful to relieve Claimant's stress and would act as a calming influence.

11. Claimant testified a PS5 console would help with his stress and anger. He intends to use it at his home by himself. He acknowledged his MacBook computer has games on it. However, he understood the computer could only be used in connection with his school activities. Claimant also testified that, unlike computer games, programs on the PS5 console sometimes involve physical movement and exercise so they would benefit his physical health as well.

12. Claimant has not been able to use the social recreation activities identified in his SDP budget, i.e., jujitsu and boxing classes and gym enrollment, because none of the identified programs accept third-party payments. He notified his SDP financial services manager, individual facilitator, and SGPRC of the problem, but he has yet to receive any response.

## **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. (Code, §§ 4700–4716.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A preponderance of evidence 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 individual seeking government benefits or services has the burden of proving entitlement to such benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimant is seeking to include the funding of a PS5 console in his SDP budget. He therefore has the burden of proving by a preponderance of the evidence that he is entitled to such funding. Claimant failed to meet his burden of proof.

## **Lanterman Act**

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. 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 developmentally disabled persons 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.) The Lanterman Act mandates that an “array of services and supports should be established. . . to meet the needs and choices of each person with developmental disabilities. and to support their integration into the mainstream life of the community.” (Code, § 4501.)

5. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Code, § 4416.) To comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as regional centers, to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Code, § 4620.)

6. The services and supports provided to developmentally disabled individuals through the Lanterman Act are described generally in Code section 4512, subdivision (b), which states in part:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of 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.

7. The IPP process is used to determine the services and supports necessary to meet the needs of a consumer. As stated in Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the [IPP] and provision of services and supports by the regional center

system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

## **SDP Principles**

8. Code section 4685.8 governs regional center consumers who participate 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 the IPP. (*Id.*, subd. (a).) The SDP program allows "increased participant control over which services and supports best meet his or her needs and the IPP objectives." (Code, § 4685.8, subd. (b)(2)(B).) A participant's unique support system may include the purchase of existing services, hiring one's own support workers, or negotiating unique service arrangements with local community resources. (*Ibid.*)

9. To participate in the SDP, a participant must agree to purchase services and supports necessary to implement their IPP. (Code, § 4685.8, subd. (d)(3)(C).) An IPP for an SDP participant is subject to the same requirements as for Lanterman Act



consumers who do not participate in the SDP (*Id.*, subd. (c)(4).) Just as for Lanterman Act consumers who do not participate in the SDP, the SDP consumer's IPP identifies the consumer's needs and goals, and describes services the regional center will provide or fund to meet those needs and goals. (*Id.*, §§ 4646, 4685.8, subd. (b)(2)(H)(i).)

10. "Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion." (Code, § 4685.8, subd. (c)(6).) The SDP is required to only fund those services and supports deemed eligible for federal financial participation by the federal Centers for Medicare and Medicaid Services. (*Ibid.*)

11. Until DDS promulgates regulations implementing the SDP, directives issued by DDS guide the regional centers on the application of the SDP to the IPP and services and supports. (Code, § 4685.8, subd. (r)(2)). On January 13, 2022, DDS issued a directive noting that SDP funds can only be used for goods and services approved by the federal Centers for Medicare and Medicaid Services and not available through other funding services.

12. Exhibit 9 defines the SDP service categories approved by the federal government. Those categories potentially relevant to Claimant's request for SDP funding for a PS5 console are Community Integration Supports, Participant-Directed Goods and Services, and Technology.

13. Community Integration Supports are those services related to the acquisition, improvement, or retention of skills and abilities that facilitate an SDP participant's community participation, interdependence, and independence. Such supports include art and recreation programs. (Exhibit 9, pp. A47–A48.)

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14. Participant-Directed Goods and Services are defined as follows:

Participant-Directed Goods and Services consist of services, equipment or supplies not otherwise provided through the SDP Waiver or through the Medicaid State [P]lan that address an identified need in the IPP (including accommodating, improving and maintaining the participant's opportunities for full membership in the community); and meet the following requirements: the item or service would decrease the need for other Medicaid services; promote interdependence, and inclusion in the community; and increase the person's safety in the home environment; and the participant does not have the personal funds to purchase the item or service and the item or service is not available through another funding source. The participant-directed goods and services must be documented in the participant's Individual Program Plan and purchased from the participant's Individual Budget. Experimental or prohibited treatments are excluded.

(Ex. 9, pp. A62–A63.)

15. Approved technology consists of “an item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to promote community integration, independence, and increase, maintain, or improve functional capabilities of participants.” Fundable technology under the SDP includes cell phones, iPads, tablets, and laptops. (Exhibit 9, pp. 68–69.)

## **Disposition**

16. Claimant did not prove by a preponderance of evidence his entitlement to funding for a PS5 console in his SDP budget. A PS5 console does not fall within the scope of services and supports offered by the Lanterman Act. Claimant's use of a PS5 console would not alleviate his developmental disability, assist with his social, personal, physical, or economic habilitation, or assist him in achieving or maintaining an independent, productive, and normal life. A PS5 console also is barred from funding under Claimant's SDP because it does not fall within any of the Service Categories approved for funding in the Centers for Medicare and Medicaid Guidelines. A PS5 console does not constitute a technology item, since it is not a computer, iPad, cellphone, or other equipment used to promote Claimant's community integration and independence or improve Claimant's functional capabilities. A PS5 console does not assist Claimant's integration into the community because Claimant intends to use it at home and by himself. It also fails to qualify as a participant-directed good as no evidence was presented it would reduce any Medicaid service or promote Claimant's interdependence or inclusion in the community.

17. Claimant's need for stress relief can be addressed by supports and services already identified in Claimant's IPP and included in Claimant's SDP budget. Claimant's new computer has readily downloadable games that can provide some outlet for stress; Claimant is not prohibited from using the computer for personal enjoyment. The physical component Claimant contends that is missing from computer games can be met by the social recreation programs identified in Claimant's SDP, i.e., gym membership, boxing classes, and jujitsu classes. At hearing, Claimant indicated he is interested in pursuing those programs; however, he has been unable to obtain assistance in accessing them. Claimant, his IPP team, his independent facilitator, and

his financial manager therefore shall meet within 30 days to determine how best to access these programs, or find suitable substitutes.

## **ORDER**

Claimant's appeal of Service Agency's denial of the request to fund a Play Station 5 gaming console is denied. San Gabriel / Pomona Regional Center shall not be obligated to fund a Play Station 5 gaming console as part of Claimant's Self Determination Program.

Within 30 days from the effective date of this Decision, Claimant, his IPP team, his SDP financial manager, and his SDP independent facilitator shall meet to determine how best to access the social recreational programs already budgeted in Claimant's SDP or provide alternatives to address Claimant's need for physical exercise and stress relief.

DATE:

CINDY F. FORMAN

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.