

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

**In the Matter of:**

**CLAIMANT,**

**VS**

**HARBOR REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022040513**

**DECISION**

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 20, 2022.

Claimant was represented by his parents (Mother and Father). The names of Claimant and his family are omitted to protect their privacy.

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or Service Agency).

Testimony and documents were received in evidence. The record was held open to allow HRC to submit a copy of the spending plans submitted by Claimants family by

June 20, 2022; Claimant to submit any response to the documents submitted by HRC to Ms. Fannin by June 21, 2022; and HRC to upload Claimant's response to Case Center by June 22, 2022.

HRC timely submitted email messages to and from Diana Cruz, HRC Service Coordinator (SC) and Claimant's Parents dated December 17, 2021, which were marked as Exhibit 15; a blank document, which was marked as Exhibit 16 (it is assumed that this was document was uploaded in error); a blank HRC Spending Plan Worksheet, which was marked as Exhibit 17; a blank HRC Self-Determination Spending Plan form, which was marked as Exhibit 18; email messages between GT Independence, SC Cruz, Jessica Guzman, HRC Client Services Manager (CSM), and Claimant's parents dated January 6 and 7, and March 17, 2022, which were marked collectively as Exhibit 19; email messages between GT Independence, Claimant's parents, SC Cruz, and CSM Guzman dated December 17 and 21, 2021, and March 17, 2022, which were marked collectively as Exhibit 20; an email message from Mother to SC Cruz, Father, CSM Guzman, and Adaptive Behavior Consultants dated March 18, 2022, which was marked as Exhibit 21; and a duplicate of Exhibit 21, which was marked as Exhibit 22.

Claimant's parents timely submitted a response to Exhibits 15 through 22, which was marked as Exhibit F.

Exhibits 15, 17 through 21, and A were admitted into evidence.

The record was closed, and the matter was submitted for decision on June 21, 2022.

## **ISSUE**

Should HRC be required to reimburse Claimant's family for amounts expended for behavior support and personal care services for Claimant?

## **EVIDENCE**

The documentary evidence considered in this case was: Service Agency exhibits 1-15 and 17 through 21, and Claimant's Exhibits A-F. The testimonial evidence considered in this case was that of CSM Guzman, Mother, and Father.

## **FACTUAL FINDINGS**

1. Claimant is a 24-year-old conserved male consumer of HRC who resides with his parents in the family home. He qualifies for regional center services under a diagnosis of autism spectrum disorder (ASD).

2. On March 24, 2022, Service Agency sent a letter and a Notice of Proposed Action to Claimant's parents informing them of its decision to deny their request for reimbursement of "the costs of services you purchased for [Claimant] related to the Self Determination Program (SDP)." (Ex. 3, p. A7.) Service Agency stated in the letter that the spending plans Claimant's parents submitted were incomplete and Claimant's parents had not worked with GT Independence, a financial management services agency, to onboard staff and agencies to provide services to Claimant.

3. On March 29, 2022, Claimant's parents filed a Fair Hearing Request on Claimant's behalf to appeal the denial of their request for reimbursement. This hearing ensued.

## **Background/Prior Assessments**

### **PSYCHOLOGICAL ASSESSMENT**

4. Lauren Peake, Psy.D., conducted a psychological assessment of Claimant on April 15 and 22, 2019, when Claimant was 21 and a half years old. Dr. Peake reviewed Claimant's records; conducted a clinical interview of Claimant and Mother; administered the Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV) to test Claimant's cognition, the Adaptive Behavior Assessment System, Third Edition (ABAS-III), to assess Claimant's adaptive skills, and the Gilliam Autism Rating Scale, Third Edition (GARS-3); and made behavioral observations. Since Claimant's need for behavioral and personal assistance services is not disputed as set forth more fully below, Claimant's performance on the above-mentioned tests and Dr. Peake's observations are noted but not discussed in detail.

5. Claimant's communication during Dr. Peake's observations were minimal and lacked spontaneity, and he did not engage in reciprocal social communication. Claimant demonstrated poor articulation as he stammered and stuttered over his words, and Dr. Peake observed Claimant's expressive language deficits. In addition, Claimant's affect was flat. His Full Scale IQ was 65, which is in the extremely low range, and Mother rated Claimant's adaptive behavior skills and social abilities as extremely low. Dr. Peake recommended an augmented communication assessment, speech and language therapy services, vocational training and social skills programs, and Claimant's continued participation in community and extra-curricular activities to promote social development.

## **FUNCTIONAL BEHAVIOR ASSESSMENT BY ABA WORKS**

6. ABA Works conducted a functional behavior assessment (FBA) of Claimant and prepared a report of its assessment dated September 15, 2021. According to the report, the dates of assessment were September 1, 4, 5, 13, 14, and 15, 2021, with a direct in-person home observation on September 4, 2021.

7. According to the assessor, Tosha Hayes, M.S., BCBA, Claimant's family's primary concern were: a) Claimant was not attending a day program, which was offered via Zoom, and therefore was not following his normal routines of completing hygiene activities such as bathing and brushing his teeth; b) Claimant slammed doors repeatedly, ripped up his face mask, and ran through parking lots and his home when agitated; c) Claimant threw away non-trash items, including items belonging to his family, and appeared obsessed with trash and throwing things away; and d) Claimant refused to wear shoes or socks and paced throughout the day and night, causing severe blisters on his feet.

8. Mother reported that Claimant had become increasingly agitated and non-verbal over the previous six months, and no longer showed interest in activities he previously enjoyed such as swimming, socializing with his family, and playing video games.

9. During the in-person observation, Claimant did not respond when Ms. Hayes initially greeted him, but did so after Ms. Hayes offered a fifth greeting. Ms. Hayes observed Claimant pace and touch the same area in each of the rooms he entered. At the end of the observation, Claimant rocked back and forth as he sat next to Ms. Hayes while she spoke with Mother.

10. Mother described Claimant's communication skills as limited, and Ms. Hayes reported Claimant requested items using single word commands. Claimant had difficulty expressing himself and Ms. Hayes could not understand some of Claimant's responses due to poor articulation and severe stutter. Prior to the pandemic, Claimant needed minimal support with activities of daily living, but needed maximum support with hygiene at the time of the assessment. He required close supervision as he will wander off and did not pay attention to his surroundings. Claimant demonstrated deficits in the areas of social and play skills and expressive communication.

11. Ms. Hayes concluded that Claimant demonstrated deficits in adaptive, communication, daily living, and socialization skills. The report described goals and strategies to address Claimant's deficits, as well as parent education and training, with services to begin on October 1, 2021. ABA Works ultimately recommended that Claimant and his family receive 107.5 hours per month of behavior technician support and 21 hours per month of supervision support.

## **Self-Determination Program**

12. The Self-Determination Program (SDP) is an alternative service delivery model designed to provide participants with increased flexibility in purchasing the services and supports necessary to implement their IPP. Program participants are allotted a budgeted amount of money to purchase needed services and supports. The participant's budget amount is based upon the regional center's expenditures during the prior 12 months for supports and services listed in the participant's Individual Program Plan (IPP). The budget may be increased as new needs are identified. The regional center certifies the expenditures used to calculate the participant's budget amount.

13. After the budget is determined, the participant must develop a spending plan to use the available funds to meet the goals and objectives outlined in the IPP. The spending plan cannot exceed the individual budget and must detail how funds will be used to purchase the services and supports identified in the IPP.

14. A Financial Management Services provider (FMS) supports participants in the SDP by helping them pay for the services that they need and contrary to the traditional model, the FMS is the only service provider that is required to be vendored under the SDP. In all other respects, the services and supports that are purchased with regional center funds must comply with the traditional model in that an IPP must be developed using a person-center planning process. SDP funds can only be used for services approved by the federal Centers for Medicare and Medicaid Services (CMS) and the services must not be available through other funding sources such as schools or Medi-Cal.

### **HRC's Implementation of Claimant's SDP**

15. On September 27, 2021, HRC certified and approved Claimant's SDP budget in the amount of \$93,277.70. The budget amount included funds for a direct behavior intervention in the amount of \$41,550.90, Board Certified Behavior Analyst (BCBA) supervision in the amount of \$5,176.08, socialization training in the amount of \$4,217.42, and a community integration training program in the amount of \$13,324.72.

16. On December 17, 2021, Mother sent SC Cruz an email that purported to contain Claimant's SDP spending plan. Mother indicated that "an independent supported living situation will require a budget adjustment." (Ex. 20, p. A162.) The spending plan included \$,1800 for GT Independence, the FMS; \$50,000 for behavior interventionists/technicians; \$5,176.08 for behavior analyst supervision; \$2,376 for

transportation; \$5,125.62 for a community integration program, and \$28,800 for personal assistance/communication aids.

17. On December 17, 2021, CSM Guzman sent Mother an email asking for a breakdown of the hourly pay and number of hours for each service identified in the spending plan. CSM Guzman further indicated that once HRC received that information, it could complete the spending plan.

18. Mother responded to the email on December 20, 2021, and stated that the behavior interventionists/technicians would be paid between \$30 and \$50 per hour for 80 to 100 service hours per month; the behavior analyst supervision provider would be paid a flat fee of \$500 for five to seven hours per month; Claimant would pay a \$16.50 flat fee for transportation 12 times per month; the community integration program would be paid \$16 per hour 12 times per month, and the personal assistance/communication aids would be paid \$30 per hour at 80 hours per month. Mother indicated that the hours and rate of pay may slightly vary, but that Claimant's family would not exceed the maximum amounts specified in the spending plan.

19. On December 21, 2021, CSM Guzman advised Mother that the FMS is required to provide guidance to Claimant's family on how to determine worker's compensation costs, taxes, and other benefits that must be included in the spending plan. CSM Guzman also advised Mother that the spending plan breakdown Mother submitted did not include those costs and would cause Claimant to exceed the approved budget. Finally, CSM Guzman informed Mother that once an FMS was identified, the FMS would assist Claimant's family with revising the spending plan and onboarding Claimant's support staff. Mother was provided with a list of FMS providers, and CSM Guzman advised Mother that if a FMS provider Claimant's family wanted to



work with was not on the list, HRC could start the vendorization process with the identified FMS so as not to delay Claimant's transition to the SDP.

Mother responded on that same date and indicated that she had identified an FMS and was aware of the additional costs listed by CSM Guzman. She indicated that she "already applied and completed the bulk of this work with the FMS and I am familiar with the information you provided." (Ex. 20, p. A159.)

20. On January 6, 2022, Selvin Arevalo, Field Service Representative with GT Independence, sent SC Cruz an email indicating that GT Independence was the FMS assisting Claimant's family enroll in the SDP and requesting Claimant's spending plan. On January 13, 2022, after obtaining approval from Mother, SC Cruz sent Mr. Arevalo Claimant's approved budget and requested that he work with Claimant's family to prepare a spending plan that fit the budget.

21. On March 17, 2022, SC Cruz emailed Mother to remind her that HRC had not received a spending plan that matched Claimant's approved budget. She noted her January 13, 2022 email described in Factual Finding 20, and asked Mother to provide the spending plan so that HRC could proceed with Claimant's SDP. SC Cruz forwarded a sample spending plan and a link to the Department of Developmental Services' website, which includes a budget calculation and certification tool.

On that same date, Mother responded by email; she forwarded the email chain from December set forth in Factual Finding 19 and stated she already submitted the spending plan. Mother also stated in the email that Mr. Arevalo had the same information and that she would be submitting invoices for out-of-pocket expenses for Claimant's behavior support treatment.

22. On March 18, 2022, SC Cruz and CSM Guzman called Mother to discuss the SDP. During the discussion, Mother was advised that Claimant was still in the spending plan phase of the SDP and Claimant's participation in the program would not go "live" until that phase was complete. Mother stated Claimant's family needed to be reimbursed for funds paid for service since December 2021 for the SDP program.

23. On March 18, 2022, Mother sent an email to SC Cruz, CMS Guzman, and an individual named Randy at Adaptive Behavior Consultants that included a spending plan for tailored day behavior support and community integration services as follows:

5 days per week/7 hours per day=35 hours per week

52 weeks x 35 hours per week=1820 hours x \$60/hour

Total budget for 12 months:

Adaptive Behavior Support Activities

Home and & Community \$109,200 (transportation and 1:1 behavior/communication assistant is included) FMS: \$1800

We will pay privately for the \$15,922.30 difference.

GT Independent that the account [sic] can be set up as a combination of Regional Center funding and private funds.

(Ex. 21, p. A163.)

24. On March 24, 2022, CSM Guzman and SC Cruz met with Mother to discuss Claimant's spending plan. Mother advised that she wanted one person to complete all aspects of Claimant's services, which include a day program,

transportation, behavioral support, and community integration. Mother stated that she had been paying privately for behavior support services and wanted to be reimbursed. SC Cruz advised Mother that the family never advised HRC that they were paying privately for behavior services, and the last conversation regarding those services was about ABA Works.

25. Claimant's family did not submit another spending plan.

### **Claimant's IPP Meeting**

26. At Claimant's April 12, 2022 IPP meeting, Claimant's parents reported that Claimant was regressing with respect to his behavioral health. Mother attributed Claimant's increase in maladaptive behavior to lack of a day program. Specifically, Claimant "had been having a very hard time with the COVID-19 pandemic when it comes to his anxiety, depression, agitation and behaviors," and had engaged in property destruction such as taking his neighbor's mail and destroying it. (Ex. 4, p. A17.) In addition, Claimant, who lacks social and safety awareness, has fits of anger and if not supervised, elopes from his home. In addition to destroying property, Claimant slammed doors "all day long." (*Ibid.*)

27. At the time of the IPP meeting, Claimant had two personal assistants and Mother reported Claimant had regressed in his behavior with them as well. Specifically, Claimant stopped communicating with them for a period of time; more recently however, Claimant had begun communicating with them intermittently.

28. Mother reported that Claimant was "slowly getting better" with the assistance of Randy with Adaptive Behavior Consultants. (Ex. 4, p. A17.) Claimant's family was privately paying the two personal assistants and Randy with the assistance

of ADP, a company that provides payroll and human resources services. SC Cruz consulted CSM Guzman regarding the possibility of ADP serving as Claimant's FMS.

29. Claimant's IPP notes that SC Cruz provided Claimant's family with a Creating Behavioral Educational Momentum (CBEM) brochure and met with a CBEM representative and Mother to discuss CBEM services, but Mother declined the services. The reason for the declination of services was that CBEM is only available remotely once per week and Mother believes Claimant needs in-person services at home. Mother also requested behavior therapy be provided to Claimant at home.

30. The IPP notes that services with ABA Works began on November 1, 2021, "and although the agency assisted the family in the home for a few days, the services ended shortly thereafter as family stated they were not meeting" Claimant's needs. (Ex. 4, p. A17.) Mother reported that the ABA Works therapist worked on their laptop three-quarters of the time they were with Claimant and did not "really" interact with Claimant or his family. (*Ibid.*)

31. Claimant's family requested Center for Applied Behavior Analysis (CABA)'s tailored day program for Claimant. CABA completed their assessment of Claimant on January 14, 2022, and HRC approved the provision of services. CABA declined HRC's referral in early January 2022 because "1) all exterior doorknobs were removed and require an Allen wrench to install a doorknob to exit the premises. Both [Claimant], staff and his family are locked in the home as a result . . . ." (Ex. 8, p. A110.) CABA expressed concern about the ability to evacuate in the event of an emergency. In addition, "2) the family shared their ideology surrounding California state mandates regarding the current pandemic. They also shared frustrations expressed at CABA adhering to Regional Center funded services policy to be vaccinated and requirement to wear a face mask-at all times-during sessions." (*Ibid.*) Mother disagreed with CABA's

reasons for declining services, asserting that the doorknobs are not removed and in the event of an emergency, CABA staff can exit at the front of the home. Mother also asserted that the family made changes to their home to prevent Claimant from eloping.

32. Claimant's IPP states that Claimant "is not a 'live' . . . SDP participant at this time. SC, [CSM] and the Provider Relations Team is communicating with ADP to see if they may want to be a Financial Management Service (FMS) with the SDP. Communication is ongoing, but ADP is currently not an approved FMS, which is a requirement for SDP." (Ex. 4, p. A23.) There is no evidence that ADP completed the vendorization process to become a regional center vendor. SC Cruz noted that she had to consult with HRC's Board Certified Behavior Analyst (BCBA) seven times between August 23, 2021 and January 14, 2022, due to Claimant's increased maladaptive behavior.

33. In sum, in the area of Behavior Health, Claimant's maladaptive behaviors had "drastically increased" during the pandemic to the point where he was not speaking or completing his activities of daily living (ADL's). (Ex. 4, p. A18.) The desired outcome was for Claimant to work with a behavioral agency to decrease his maladaptive behavior and increase his independence in completing ADL's. HRC funding 107.5 hours per month for behavior intervention services and 21 hours per month of supervision in the home through ABA Works, but the services were terminated pursuant to the family's request.

34. In the area of School/Program/Employer, it was noted that Claimant's parents requested personal assistant services for Claimant during the time he would be in a day program but cannot attend due to the pandemic, in the amount of 118 hours per month. The personal assistance services are temporary and will terminate

when he returns to a day program. The plan for HRC supports in this area is for HRC to continue to fund 118 hour per month of personal assistant services provided by 24 Hour Home Care from July 1, 2021, to August 31, 2022. The need for personal assistant hours is to be re-assessed on a quarterly basis. In addition, HRC will fund parent directed services (transportation) from July 1, 2021, to November 30, 2022. A 24-Hour Home Care representative notified Mother on March 18, 2022, that the SDP has not yet started with the agency and there was no set start date. The representative advised Mother to contact Claimant's SC to determine what other agencies offered the SDP.

35. In the area of Additional Information, Claimant's IPP notes that Mother was provided with a list of eight possible FMS agencies from the DDS website. Three of the FMS agencies informed Mother they did not work with a SDP/Sole Employer model, they no longer work with SDP, or did not accept SDP clients with a start date before December 1, 2022. One FMS agency representative set up an appointment with Mother but did not contact Mother on the date of the meeting and stopped communicating with Mother. Mother was advised that the family can choose any FMS provider in the state of California; the FMS agency does not have to be in HRC's catchment area.

## **Regional Center Evidence**

36. CSM Guzman testified at the hearing. She has worked at HRC for 13 years, first as an SC. CSM Guzman has been in her current position for three years. She explained that the spending plan submitted by Claimant's family is vague and, therefore, HRC cannot calculate how the family is going to spend the funds approved for Claimant's budget. CSM Guzman asserted that HRC is waiting for Claimant's family to submit a more detailed budget pursuant to SDP requirements so that Claimant can

go “live” in the SDP. In the meantime, HRC has agreed to fund behavioral support and personal care services for Claimant.

## **Claimant’s Evidence**

37. Mother testified that Claimant is 24 and a half years old and has been diagnosed with ASD and speech and language deficits. Claimant has been a regional center client since he was 20 months old.

38. Claimant is currently participating in a program with behavior and intervention and personal assistance services five days per week. Claimant was accepted in the SDP last year. He was previously on a waitlist, and Mother attended conferences and consulted with an independent facilitator to learn more about the SDP. Mother explained all the difficulties she had securing an FMS, as described in Claimant’s IPP.

39. Mother asserted that since there is no disagreement on the part of HRC that Claimant needs those services, and she has submitted a spending plan, there is no reason why Claimant should not be “live” in the SDP. Claimant has been receiving services per his SDP approved budget for three months. He is making progress in his program and doing better. Claimant’s friends are also in the program. Claimant’s family has been paying privately for the services and seeks reimbursement.

40. Mother contends she does not understand why Claimant is not currently in the SDP, but does understand that HRC is waiting on the spending plan. She testified that it is her understanding that SC Cruz will develop the spending plan with the FMS. However, Mother acknowledged that she was told the family has to work with an FMS. In a June 21, 2022, email (Exhibit F), Mother asserts that an FMS was not

identified and that "services and supports were secured for Claimant by his family through ADP financial management service." (Ex. F, p. Z31.) However, as set forth in Factual Finding 32, ADP is not a regional center vendor.

41. When Mother spoke with GT Independence representatives, she understood that her proposed spending plan would exceed Claimant's approved budget because of worker's compensation costs, taxes and the fees for the FMS; Mother did not want to include those costs in the budget because she did not want to take any funds away from services, and Claimant's family would pay any costs that exceeds the approved budget privately.

42. With respect to personal care services, Mother asserted that although HRC agreed to fund 118 hours of services, it was her understanding that the provider would be paid \$22.85 per hour. However, Claimant's family was informed by 24 Hour Home Care that the provider was only paid \$16 per hour. When Claimant's family could not reconcile the hourly rate, they decided to pay the difference in the pay rate themselves.

43. Father testified that he does not know where the confusion about the SDP process was created, but Claimant's family has encountered a lot of obstacles obtaining services for Claimant. Claimant's family believed the SDP would suit Claimant's needs and waited years for the SDP to be implemented.

44. Father was unaware of the term "live" in relation to the SDP until the hearing. He believed Claimant was in the program. Father reported that Claimant is responding well to the services he is receiving, and Father is thankful that the family located Claimant's current services and providers.



45. Father described how Claimant regressed during the pandemic in terms of his behavior. According to Father, Claimant was functioning at a lower level than he previously had over his life.

46. With respect to personal assistant services, Father testified that the family was unable to obtain the services of a competent provider for \$16 per hour and had no problem supplementing the pay. However, Claimant's family has expended significant amounts for Claimant's current services and would like to access funds in Claimant's approved budget. Father attributed the lack of progress in Claimant going "live" in the SDP to procedural disagreements or lack of training.

47. Father explained that services provided by CABA did not work because Claimant does not respond to providers wearing masks and utilizing their computers for most of the service sessions. Father asserted that if Claimant would have responded to the supports and services offered, the family would have utilized them.

48. Father testified that he and Mother have had a difficult time emotionally working with the SDP and want Claimant's participation in the program to be "live" as soon as possible, but they need help.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) (Further statutory references are to the Welfare and Institutions Code.) An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of his

request that HRC reimburse Claimant's family for funds privately expended for behavioral intervention and personal assistant services. Jurisdiction in this case was thus established. (Factual Findings 1-3.)

2. A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his funding request. Claimant must prove his case by a preponderance of the evidence, which requires him to present evidence that has more convincing force than that opposed to it. (Evid. Code, § 115; *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **The Lanterman Act**

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the DDS, is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the

person and be directed toward the achievement of the most independent, productive, and normal lives possible.” (§§ 4502, subd. (a), 4640.7.)

5. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client’s developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, address the cost-effectiveness of the services and supports, contain a statement of time-limited objectives for improving the client’s situation, and reflect the client’s particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(D) & (E).)

6. As of July 16, 2021, the Lanterman Act requires DDS to implement a statewide SDP available in every regional center “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.” (§ 4685.8, subd. (a).) The SDP is “a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion.” (§ 4685.8, subd. (c)(6).)

7. For consumers participating in an SDP, the regional center’s IPP team must use a PCP process in the development of the participant’s IPP. Also, the IPP team must determine the “individual budget” available each year to the SDP participant to purchase services and supports necessary to implement the IPP. (§ 4685.8, subd. (c)(3).)

8. Consumers in an SDP may only purchase services and supports necessary to implement their IPP. The services and supports must be eligible for federal financial participation. Participants may use services and supports available within the SDP only when generic services and supports are not available, and shall manage SDP services and supports within their individual budget. (§ 4685.8, subds. (c)(6), (d)(3)(A-F), (e).)

9. SDP participants may purchase services and supports from regional center vendors as well as from non-vendors. (4685.8, subds. (b)(2)(B), (t).)

10. A copy of a spending plan, *not to exceed the individual budget, detailing how funds will be used to purchase services and supports identified in the IPP*, shall be attached to the participant's IPP. (§ 4685.8, subd. (c)(7), italics added.) An Independent Facilitator (IF), chosen by the participant, shall help the participant implement the participant's IPP and advocate for the participant in the PCP and IPP processes. (§ 4685.8, subd. (c)(2).)

11. The individual budget may be adjusted (a) if the regional center's IPP team determines an adjustment is needed due to a change in the participant's needs or if prior needs were not addressed in the IPP, and (b) the IPP team documents the reason for the adjustment in the IPP and certifies that adjustments would have occurred regardless of SDP participation. (§ 4685.8, subd. (m)(1)(A)(i), (ii)(I).) This latter provision explicitly makes applicable the general IPP requirement that services and supports for a consumer be cost-effective. (§§ 4640.7, subd. (b), 4646, subd. (a), 4648, subd. (a)(6)(D).)

12. Regional centers must ensure continuation of services and supports while the consumer transitions to an SDP, certify individual budgets, and train all service coordinators and fair hearing specialist regarding SDP. (§ 4685.8, subd. (r)(9).) They

must review spending plans to verify that all goods and services are eligible for federal financial participation and are not available through a generic resource. (§ 4685.8, subd. (r)(6).)

### **Claimant's Request for Reimbursement**

13. The Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384 (Association for Retarded Citizens).)

14. Reimbursement of the out-of-pocket costs already incurred by Claimant's family for the cost of behavioral intervention and personal assistant services is inappropriate where such reimbursement is inconsistent with the purposes of the Lanterman Act and Claimant's family did not comply with the statutes governing the SDP. (See *Association for Retarded Citizens, supra*, 38 Cal.3d at p. 393; § 4685.8, subd. (c)(7).)

15. Here, while there is no dispute that Claimant needs behavior support and personal assistant services, there is no evidence that the services paid for by Claimant's family provides a cost-effective means of meeting Claimant's established needs

identified in Claimant's IPP. In addition: a) HRC initially notified Claimant's family that a spending plan needed to be submitted in December 2021; b) HRC repeatedly notified Claimant's family that they are required to submit a spending plan developed with the aid of an FMS that did not exceed Claimant's approved budget; c) HRC notified Claimant's family that worker's compensation and FMS costs as well as taxes must be included in the spending plan; d) Claimant's family indicated that they did not want to include those costs in a spending plan; e) Claimant's IPP states Claimant's participation in the SDP was not "live"; f) HRC agreed to fund behavioral support and personal assistant services under the traditional model while Claimant transitioned to the SDP; g) Claimant's family privately paid for services without notifying HRC; and h) to date, Claimant's family has not submitted an appropriate spending plan.

16. The issue regarding the funding of Claimant's services and transition to the SDP is ongoing and shall reoccur because Claimant is not "live" in the program and Claimant's family continues to pay privately for behavioral support and personal assistant services. HRC has approved and continues to approve funding of behavior support and personal assistant services as set forth in Claimant's IPP to ensure continuation of services and supports while Claimant transitions to an SDP. HRC has also offered and continues to offer to help Claimant's family select an FMS and IF to assist Claimant's family prepare a spending plan that comports with Claimant's approved budget and the statutory requirements for a spending plan. To the extent that Claimant's parents wish to accept HRC's offer of assistance, they must communicate and cooperate with HRC and provide any information requested by HRC. (See Civ. Code § 3521 ["He who takes the benefit must bear the burden."].) The parties are encouraged to meet as soon as possible to discuss these matters.

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## **ORDER**

Claimant's appeal is denied.

DATE:

CARMEN D. SNUGGS-SPRAGGINS

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.