

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

In the Matter of:

CLAIMANT

v.

SAN DIEGO REGIONAL CENTER

OAH No. 2022060019

DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 24, 2022.

Bridgette Webster, Attorney at Law, represented San Diego Regional Center (SDRC).

Natalie Hoxie, limited conservator of claimant, represented claimant.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on July 5, 2022.

ISSUE

Is SDRC required to fund a parent-provided adult day program and retroactively fund a parent-provided adult day program to August 23, 2021?

FACTUAL FINDINGS

1. The following factual findings are derived from the totality of the documentary evidence submitted by SDRC and claimant, and the testimony of William Lacey, program manager; Lori Sorenson, director of community services; Greg Keiling, claimant's consumer services coordinator; Neil Kramer, executive director designee; Thomas Hoxie, claimant's father; and Natalie Hoxie, claimant's mother.

2. Claimant is 23 years old and qualifies for regional center services based on a diagnosis of intellectual disability, autism spectrum disorder, and epilepsy.

3. According to claimant's Individual Program Plan (IPP), dated February 17, 2022, Outcome #2 states, "[Claimant] will be placed in a community focused adult day program that is conducive of his functional independence, social, adaptive, behavior, safety, personal interest, and fitness needs by 1/31/2024." Claimant exited school in August 2021, and he has been on a waitlist for over a year at TERI Inc., which is a SDRC-vendored, full-time, adult day program. Outcome #8 states, "[Claimant] will benefit from participation in a caregiver directed adult day program, until opportunities become available to [claimant], at the day program(s) he is currently waitlisted." The IPP states, "*Parent would like to be designated as adult day program and transportation provider, until a full time day program becomes available. Parent became vendored with SDRC effective 8/22/01 and her vendor code is PQ0724."

4. On April 27, 2022, SDRC sent claimant a Notice of Proposed Action (NOPA) that his request for SDRC to reimburse him for Surf Camp, Ride Above Disability, and 24 Hour Fitness was denied because the "services were completed outside the scope of the IPP planning team . . . [and] the services are not vendored through the SDRC."

5. On May 17, 2022, claimant filed a fair hearing and requested the following: [Errors in original.]

1. Funding of a Parent-Provided Adult Day Program (Vendor PQ0724) retroactive to 8/23/2021 at 30 hours per week at the rate of \$76.00/hour) – any part time adult day services offered by the SDRC until Client gains access to TERI. 2. Also for gym and adaptive riding until TERI is accessed. 3. Funding/reimb for surf camp.

6. An informal meeting was held on May 31, 2022, and in attendance were claimant's parents and SDRC representatives. Thereafter on June 2, 2022, a letter was sent by Neil Kramer to claimant's parents that stated the request for claimant's parents to be reimbursed for providing day program services for claimant, retroactively from August 23, 2021, for 30 hours each week, at a rate of \$76 was denied; and the request to provide funding for parents to provide day program services for claimant until he gains access to services through TERI Inc. was denied. In addition, the letter stated that the request to fund an adaptive riding program was denied; the request to fund a monthly gym membership was granted; and the request to fund attendance at surf camp through the Autism Society was granted.

7. At the beginning of the hearing, the parties stipulated that SDRC would fund an adaptive riding program for claimant until he is removed from the waitlist at TERI Inc., and begins his full-time adult day program at TERI Inc. The issue of funding an adaptive riding program was no longer an issue at the hearing. As such, the decision herein addresses the remaining issues of whether SDRC must fund a parent-provided adult day program, and retroactively fund a parent-provided adult day program to August 23, 2021.

8. Claimant's mother testified at the hearing on behalf of claimant. The following is a summary of her testimony. She is claimant's limited conservator. She has a Bachelor's Degree in physical education, a Master's Degree in Education with an emphasis in special education and specialization in autism, a certificate in Healthcare Systems Management, and is in progress of obtaining her Doctorate Degree in Education Leadership. Since August 2021, she has provided a community based adult day program for claimant in their home. This has impacted her income and forced her to decline teaching and research employment opportunities at San Diego State University. Claimant's needs do not shift with SDRC's ability to find providers even during a public health crisis. Per claimant's IPP, he is in need of a full-time community based adult day program, five to six hours a day, five days a week, to address his unique needs as a consumer. SDRC has failed to provide these services since August 2021, and claimant and his parents "are simply seeking some sort of interim solution until he is admitted to TERI Inc. for which he has been on a wait list for over a year." The previous SDRC program manager, Ms. Requeath who is now retired, set aside the Purchase of Service (POS) codes to allow for a temporary solution of a combination of two part-time tailored day programs. SDRC cannot continue with "no options for needed services." As parents, she and her husband have stepped in to "fill the void [and] for that we are entitled to some form of compensation." She questions why

SDRC will allow for a part-time tailored day program but not reimburse her for a “meaningful evidence based program.” The guidelines are “not hard lined and can be set aside in extraordinary circumstances.” Her POS vendor code¹ 024 is proof that parents can be reimbursed, and she is respectfully asking for reimbursement back to August 2021.

9. Claimant’s father and limited conservator testified at the hearing on behalf of claimant. The following is a summary of his testimony. Claimant’s mother has been providing a community based day program to claimant that exceeded what he would have otherwise received because of her qualifications. He and claimant’s mother have missed work to fulfill his home/parent based program. They take him out in the community and help him with his skills. It is not just babysitting. He recalled that their parent vendor POS code 024 was not just for co-pays but was also for reimbursement for occupational therapy, respite, and 1-to-1 applied behavioral analysis therapy.

10. William Lacey, SDRC Program Manager, testified on behalf of SDRC at the hearing. The following is a summary of his testimony. He is familiar with claimant’s case and that claimant needs an adult day program. He understands for claimant’s parent to be paid or reimbursed for providing an adult day program for claimant, claimant’s parent must be vendored as a day program.

11. Lori Sorenson, SDRC Director of Community Services, testified on behalf of SDRC at the hearing. The following is a summary of her testimony. She has held her

¹ Claimant’s mother and SDRC referenced her vendor code from 2001 as “PQ0724” and “024.” The service code listing provides that 24 is for “purchase reimbursement” – reimbursement for purchases to meet consumers IPP objectives.

position since 2017. Claimant's mother became a vendor in 2001 under POS code 024, which is for "purchase reimbursement." At the time, she was reimbursed for 14 co-pays for an authorized total of \$140 when claimant was in an Early Start program. The "period of service" was from January 23, 2001, to August 8, 2001. At that time, SDRC was also able to reimburse parents for respite under POS code 024. However, in 2009, the recession caused the state to look for revenue and it "looked at all these 024 [POS codes] as parent vendor vouchers, they said these should be under respite which is reimbursable under the federal government, and we have agencies that will hire a provider that a family wants to use." As such, regional centers changed their system because services under 024 are not eligible for reimbursement from Centers for Medicare and Medicaid Services (CMS). Therefore, vendor code 024 that claimant's parent wants to use is no longer applicable. It is also no longer an "active vendorization" and should have been closed out after two years of being inactive.

12. Ms. Sorenson testified that claimant participates in the "traditional services" program, wherein a parent cannot be paid for providing adult day program services because a parent cannot be vendored as an adult day program, and claimant's parent cannot be reimbursed for the adult day program services she provided for claimant in the past.

13. Ms. Sorenson testified that there are two options for claimant's parent to provide an adult day program and be paid – the "self-determination" program or the "participant choice" option through the traditional services program.

14. Under the self-determination program a client directs their own services. A budget is created, and the client can purchase services within the parameters of the self-directed services guidelines. Claimant is not a participant of the self-determination program, although he can opt to become a participant of this program. The only entity

that is vendored is the financial management service (FMS), which gathers background and financial information.

15. Under the participant choice option of the traditional services program, claimant's parent would have to become vendored as a day program in order to receive payment for providing an adult day program for claimant. Claimant's parent could receive payment from that point forward. Ms. Sorenson stated, "We [are] willing to work with it – [claimant's mother] has some great ideas and has done a great job with the programming, and I don't see a problem with her being vendored," based on the exhibits that she submitted. Many adult day programs were closed due to the pandemic, and several are now having a difficult time finding staff. This is the reason why claimant is not able to attend an adult day program and on the waitlist at TERI Inc. Under the participant choice option, the department decided to allow for families to "set up their day and . . . hire whomever is appropriate to provide those services rather than allow a traditional day program to find staffing . . . it's possible for the parent to be a vendor here probably under [POS] 510 or 515," which is for day service programs. In addition, vendorization is a contract that requires a process. A parent who wants to provide an adult day program at home would have to submit documentation of their credentials, the hours of service being provided, a background check by the Office of the Inspector General, and a W-9 form and vendor application. SDRC cannot pay anyone for providing an adult day program unless they have been vendored.

16. Greg Keiling, SDRC Service Coordinator, testified pursuant to a subpoena requested by claimant. The following is a summary of his testimony. He has been claimant's service coordinator for seven or eight years. He attended the individualized education program (IEP) meetings for claimant when claimant prepared to transition out of public education. It was determined that claimant needed a community-based

setting of an adult day program with staff, who are trained to work with non-verbal clients and who could also adhere to seizure protocols. Claimant aged-out of Poway Unified School District in August 2021. Claimant's current IPP calls for an adult day program. He has been working very hard to secure a full-time adult day program, but because of claimant's non-verbal status, epileptic seizures, and intellectual disability, there have been challenges to procure adult day program services. Claimant has been approved for 23 days per month of funding for a community adult day program, but he has not been successful in obtaining those service hours. He was given permission to obtain alternative services as a temporary solution for claimant until claimant gets off the waitlist at TERI Inc. The alternative services are two tailored day programs from two different agencies, but he has not been able to secure this option because there are no vendored services under these programs that are available to claimant.

17. Neil Kramer, SDRC Executive Director Designee, testified pursuant to a subpoena requested by claimant. The following is a summary of his testimony. He reiterated Ms. Sorenson's testimony regarding the POS code 024 being for co-pay reimbursement for families transitioning from Early Start programs to regional centers. He explained the reason for denying payment and reimbursement to claimant's parent for providing an adult day program to claimant is because the regulations require vendorization for a payment to be rendered to a provider.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the

evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

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

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. 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. (Welf. & Inst. Code, § 4416.) In order 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." (Welf. & Inst. Code, § 4620.)

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

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and consider the needs and preferences of the individual and family. Further, the provision of services

must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

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

9. A regional center is authorized to purchase services and supports for a consumer pursuant to vendorization or a contract in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3); Cal. Code Regs., tit. 17, § 50612, subd. (a).)

10. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

11. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification;

cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

12. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

13. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage."

Evaluation

14. It is clear that claimant's parents have stepped in to fill the void of claimant not having an adult day program as a result of the pandemic and a staffing crisis. They are commended for their efforts and dedication to their son. However, the evidence established that SDRC shall not fund a parent-provided adult day program unless claimant's parent becomes a vendored day program through the vendorization process, which is available through the participant choice program of the traditional services program with POS codes 510 or 515. The regulations do not permit a vendor to be paid until vendorization has been completed. Claimant is currently in a traditional services program, and he would have to participate in the participant choice option in order for his parent to be vendored as an adult day program. Even if claimant's parent became vendored under the participant choice option, the regulations do not permit for reimbursement. The only other manner for which

claimant's parent can be paid for a parent-provided adult day program is through the self-determination program, which claimant is not a participant, but claimant can be if he wishes.

15. In addition, claimant's parent cannot be paid as a vendor through POS code 024 because it is no longer used for services that can be reimbursed by CMS, such as an adult day program and respite services. Claimant's mother's vendor code 024 was used in 2001 when claimant was transitioning from an Early Start program and used to reimburse copays and respite services. However, regional centers no longer allow this because the state cannot be reimbursed by CMS with POS code 024.

ORDER

Claimant's appeal from San Diego Regional Center's determination that it will not fund a parent-provided adult day program and not retroactively fund a parent-provided adult day program to August 23, 2021, is denied.

1. San Diego Regional Center is not required to fund a parent-provided adult day program through the traditional services program unless vendorization is obtained by the parent through the participant choice option with Purchase of Service code 510 or 515.

2. San Diego Regional Center is not required to fund a parent-provided adult day program retroactively to August 23, 2021.

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3. San Diego Regional Center shall continue to attempt to secure placement at an adult day program, such as TERI Inc., for claimant.

DATE: July 19, 2022

JAMI A. TEAGLE-BURGOS
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.