

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency.

OAH No. 2022060340

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter by telephone and videoconference on July 14, 2022.

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

Claimant's parents appeared and represented claimant who did not appear.

The hearing was translated by a Tagalog interpreter. Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 14, 2022.

ISSUES

As written, claimant stated the reason for requesting a hearing was because SDRC "did not want to add the goals and services that we want in [claimant's] IPP [Individual Program Plan] based [sic] after I emailed them our inputs for two years. I will not sign an incomplete IPP where only the manager, service coordinator or supervisor decides on my son's life. I also need translation of documents after we completed the updated goals and services."

Claimant stated that what was needed to resolve the complaint was: "[Claimant's] family knows what he needs. Please update this IPP with his family's participation. We need his swimming class soon for his safety because we live in [sic] a military base where there's a lot of water. My son eloped several times and he likes to go to the water. This service is under [sic] for his safety. They need him to enroll to [sic] swimming class soon."

Prior to the start of hearing, the issues for hearing were discussed with the parties who understood that the issues at this hearing were as follows:

1. Should claimant's IPP be updated to reflect the goals set forth in claimant's mother's May 23, 2002, email to SDRC?
2. Shall SDRC fund swimming lessons for claimant? As a corollary to that issue, did SDRC deny claimant's request for SDRC to fund swimming lessons?
3. Has SDRC excluded claimant's parents from being part of the IPP process?

SUMMARY

The evidence presented at this hearing demonstrated that claimant's currently proposed IPP for 2022 does identify those items set forth in claimant's mother's email, albeit not in the format claimant requests. SDRC's position regarding the drafting of an IPP and how information is to be written in the IPP was unrefuted and is what the law requires. SDRC's position that it never denied claimant's request to fund swimming lessons, but instead requested additional information from claimant in order to evaluate that request, was clearly supported by the evidence. Claimant never provided the requested information and offered no reasonable explanation for the refusal to do so, other than vague claims that the swimming lesson provider was not returning calls.

Finally, and most importantly, absolutely no evidence supported claimant's contention that he and his family were excluded from the IPP process. No evidence demonstrated that SDRC did not comply with all applicable laws; instead, the evidence demonstrated SDRC has made great efforts to work with this family and communicate clearly with them about what is required in order for SDRC to respond to claimant's requests. Claimant's concerns that IPPs can be changed or altered without his knowledge was wholly unsupported by the evidence. While it was obvious that claimant's parents want the best for their son, their claims lacked merit and on this record, claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, currently a seven-year-old male, is eligible for regional center services based on his diagnoses of intellectual disability and autism spectrum disorder.

He resides in his home with his mother and father, a retired military veteran. His father suffered a brain injury during active duty and had part of his frontal lobe removed, resulting in his early retirement from service.

2. On June 27, 2022, SDRC received claimant's Fair Hearing Request. At no time has SDRC ever denied a service or issued a Notice of Proposed Action. As such, it was curious as to why this matter was set for hearing.

Documentary Evidence Introduced at Hearing

3. Numerous documents were introduced, and testimony from Neil Kramer, SDRC Fair Hearing Manager; Ashlie Stephenson, SDRC Regional Manager; and claimant's parents was received. The following factual findings are based thereon.

4. Claimant's January 13, 2021, IPP Summary Sheet documenting the addendum to claimant's 2020 IPP, as agreed upon by SDRC and claimant during a January 13, 2021, mediation, noted that SDRC would update claimant's IPP "to include time-limited copayment funding for speech therapy and occupational therapy services." SDRC would fund copayments for those two services "for a period of up to six months beginning 2/1/2021."

5. Claimant's 2021 IPP Summary Sheet set forth the outcomes/services, and agreed upon services to be included in his 2021 IPP. The Summary Sheet noted that three IPP meetings were held – May 18, 2021, August 5, 2021, and August 26, 2021. The Summary Sheet was signed by SDRC and claimant's mother on November 5, 2021.

6. Prior to signing that Summary Sheet, but after those three IPP meetings, claimant's mother sent an email to SDRC on October 18, 2021, stating in part (as written in original):

I would like to set up a meeting with you regarding some corrections to the IPP. Our IPP supposed to be every year but it says there it's every 3 years. Also, we would like to add some outcomes such as [claimant] will remain in home with the family, [claimant] will be able to improve his social skills and have friends, [claimant] will be able to involve more in the community, the respite is for behavior but will be able to make sure that [claimant] is safe all the time, [claimant] will improve his will to exercise such as walking and other activities. We are hoping for the [Consumer Services Coordinator(CSC)] to advocate [claimant] during IEP meeting in the school, his previous [CSC] usually attend during IEP and advocate for him, we also want the [CSC] to assist [claimant] during IHSS., also the IPP will be translated in tagalog which is my main language for the service of my son. The last meeting we had, we didn't discuss an outcome but the services only and they were denied.

I am requesting a meeting with [SDRC]. Please give me dates that you are available. I will sign the paper soon as these things were added to his IPP and some corrections. Our previous [CSC] she usually set an appointment if we need anything to add on [claimant's] IPP.

Also the self-determination is not documented in his IPP yet.

7. Claimant's October 13, 2021, Individualized Education Program (IEP) noted the program accommodations claimant's IEP team determined were needed.

8. On November 9, 2021, SDRC sent claimant a copy of his 2021 IPP. That IPP outlined claimant's strengths, goals, services provided, information regarding claimant's family, and his self-care needs. Claimant's communication and social difficulties were noted, as were concerns regarding his safety. The IPP also documented the services and supports that claimant received. At one point during this hearing, claimant's parents asserted there were different versions of the 2021 IPP but later withdrew that assertion; in any event, no evidence supported their contention.

9. A December 9, 2021, email sent at 7:11 p.m., from claimant's mother to SDRC stated: "I found this directives [*sic*] from DDS [Department of Developmental Services]. I am very interested to know more information on Social Recreation. I would like to add this service to [claimant's] IPP."

10. A December 17, 2021, email from SDRC to claimant regarding social recreation advised claimant that this "was discussed during one of our planning team meetings a few months back," but the CSC "would be happy to discuss it with" claimant's mother again and requested claimant's mother provide the CSC with good days/times to call claimant's mother. The CSC also stated: "Keep in mind that I currently don't work on Mondays or Tuesdays."

11. A May 10, 2022, Title 19 Consumer I.D. Note written by the CSC noted that claimant's mother left a voicemail on Monday, May 9, 2022, requesting to schedule an IPP meeting. The note also documented a Sunday, May 8, 2022, email from claimant's parent requesting to schedule claimant's IPP, and a second email indicating that the CSC had not responded. An email was sent to the parent

"reiterating work schedule and reminding parent that [CSC] is out on Mondays."

Available dates and times for the IPP meeting were provided to claimant's parent.

12. Claimant's mother sent an email to SDRC on May 10, 2022, at 4:40 p.m., stating: "I would like to request IPP meeting. Due to my husband's therapy we would be available on Tue and Thursday. Please give me any available date that [SDRC is] available. I would like update [claimant's] IPP due to his date of birth tomorrow. I reached out to [the CSC] by email or phone. I have not heard anything from her yet."

13. A May 10, 2022, email from claimant's CSC, sent at 4:57 p.m., again advised claimant's mother that the CSC had Mondays off so was unable to return claimant's mother's phone call from yesterday or respond to her email until today. The CSC requested that claimant's mother take note of the CSC's schedule and advised that the CSC was available to meet on May 24 or May 26 at 1:00 p.m. or 3:00 p.m. and that a two hour block of time would be set for the IPP meeting. The CSC requested claimant advise as soon as possible which date worked best so that SDRC could schedule a translator. The email further stated: "It is also expected that this meeting will be completed within the allotted timeframe as I will not be able to accommodate multiple meetings like occurred last year." The CSC also advised that she received claimant's message regarding attending a conference and that as long as the IPP meeting was completed "this month, then an addendum would not be needed as we can include that specific conference in his next IPP."

14. An email from claimant's mother to SDRC sent on May 10, 2022, at 9:52 p.m. stated: "I was not aware of the new policy. Is this something that you can provide me a copy of not having multiple meetings? [E]specially when we need to contact you as a service coordinator? I am requesting a letter or copy of your policy. The dates that

you provided will not be available to my time. Please send me a denial letter. I wouldn't wanna waste your time."

15. Claimant's mother sent an email to SDRC on May 23, 2002, requesting services be added to claimant's IPP. She wrote, "We can discuss to add it and how can we possibly find the generic resources and help from you. We just want to make sure of that they are documented to [claimant's] IPP [*sic*]." Claimant advised that its insurer, Tricare, was cutting funding for "adaptive skills or community outings in ABA sessions." The email stated that "some" of the goals claimant wanted in his IPP were:

1. [Claimant] will continue receiving services needed to stay at home with his family and community.
2. Increased participation in community activities (community) – [claimant] will participate, play, social, community services, and education.
3. Assurance of a stable and healthy living environment in a residence of [claimant's] choice – [claimant] (a minor child) will be supported to live in a family.
4. An increased opportunity for [claimant] to develop stable and nurturing interpersonal relationships by making friends.
5. Maintenance of [claimant's] family ability to care for his home and increase his respite hours.

Claimant's email stated further (written as in original):

Services and Supports some of them...

1. [Claimant's] behavior training in the community
2. camping
3. counseling for the consumer
4. development and provision of a 24-hour emergency response system
5. education
6. Emergency and Crisis intervention
7. mental health services
8. Speech Therapy
9. Occupational Therapy
10. social skills training
11. specialized dental care
12. supports to [claimant] to enable him to fully participate in the community
13. community facilitation services to integrate or include you in the community

Here's the link where I based the needs and pattern for [claimant's] IPP. [Claimant's mother then provided the link to Supplement F: Services and Supports for People with

Cognitive Disabilities- RULA- Rights Under the Lanterman Act (disabilityrightsca.org)]¹

I attached the IPP services and Resources that he needs even when it's not provided by you due to generic resources. I would like to receive a Notice of Action if this cannot be written in his IPP. Due to [claimant's father's] disability, his processing can take awhile and written notice does help a lot.

16. Claimant's mother's email sent May 24, 2022, at 9:02 a.m., asked if the IPP could be set from "12-2" because of claimant's schedule despite the CSC's prior email advising of availability at 1 and 3. Claimant's mother also requested "an interpreter in all of our IPP meeting and the documents. We will be recording the meeting as well. The documents I sent to you that's our agenda."

17. Attached to this email was the October 7, 2021, memo sent to all regional center executive directors by DDS advising of the changes to Welfare and Institutions Code section 4648.5 that restored "regional center authority to fund" various services. Various portions of that memo were highlighted and the following was typed on the memo: "We would like [claimant] to enroll in swimming class for safety."

¹ The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is found at Welfare and Institutions Code section 4500 et seq.

Attached to that memo were documents identifying various regional center services and descriptions of those services. Claimant highlighted and added notes to various parts of that attachment as follows:

- The Client/Parent Support/Behavior Intervention Training service and the description of the service were highlighted and the following was typed: "ABA is helping on this but we need to add in his IPP."
- On the Durable Medical Equipment service and description portion claimant inserted the following: "[Claimant] got his special needs bed from Medi-Cal. He also had special needs wagon from Tricare. You can add in his IPP."
- The Home Health Supports service and description were highlighted and claimant inserted the following: "Tricare cannot approve this neither school in [*sic*] home."
- The Medical Specialists and Professionals service and description were highlighted and claimant inserted: "Please add in his IPP and will usually use the [Tricare] and [Medi-Cal] as generic resources."
- The Parent Coordinated Services and its description were highlighted and the following words inserted: "We will use the [Tricare] and [Medi-Cal] of how can they help us on this. Or the SDRC will help us find the resources."
- The Personal Emergency Response System service and description were highlighted and the following was added: "We need to put this in his IPP and see who can help him in terms of his needs."
- The Respite Services-In-Home service and description were highlighted, but no words were added.

- The Social/Recreational Services and Non-Medical Therapies services and description were highlighted and claimant added the following: "Will be enrolling [claimant] the summer."
- The Self-Determination service and description were highlighted and claimant inserted: "Please add in his IPP."
- The Speech Services and description were highlighted and the following text added: "Continue his speech with use of private insurance will need assistance or co-pay from [Medi-Cal]."
- The Therapies service and portions of its description were highlighted and the following text added: "The family will request from private insurance."
- The Translator/Interpreter Services and its description were highlighted but no text was added.

18. A May 24, 2022, email sent to claimant at 5:06 p.m., confirmed the interpreter for the IPP meeting beginning at noon, advised that the Zoom invite would be sent out, and that SDRC would "develop agenda for meeting. The purpose of the meeting will be to develop the IPP, and we will allow two hours to go through each section, update and identify outcomes/services." Of note, SDRC accommodated claimant's request for the IPP to begin at noon.

19. On May 25, 2022, at 11:04 a.m., SDRC sent claimant's parents an email confirming the "12noon – 2pm" IPP meeting and noting: "In order to make the most of our time commitment to 2 hours for the development of [claimant's] IPP tomorrow, the following will be our agenda with time allocations noted to complete each session:

Taking Care of Self/Home: 10 Minutes

Communication: 5 Minutes

Community/Social Involvement: 15 Minutes

Safety: 15 Minutes

Health & Wellness: 15 Minutes

Discussion Regarding IPP outcomes: 30 Minutes

Discussion regarding miscellaneous services and supports/requests not already covered during the IPP process: 30 Minutes

SDRC ended the email by stating: "Looking forward to meeting and working together to achieve a supportive IPP plan."

20. On May 25, 2022, at 11:47 a.m., claimant's mother sent an email to SDRC "looking forward to" the IPP meeting the following day and "requesting to make sure of that [*sic*] we get the decision tomorrow if the services that I requested to add in his IPP will be included even if it's from generic resources." Claimant's mother further wrote: "If anything that we don't agree, I respect it and just send me NOA [Notice of Proposed Action] for any denial."

21. Recordings of portions of the May 26, 2022, IPP meeting noted that the CSC informed claimant's mother that she must sign the IPP Summary Sheet agreeing to the goals first and that once claimant's mother signed the sheet, "then the IPP will happen." In another excerpt the CSC explained to claimant's mother that the 2022 IPP process was similar to the 2021 IPP process in that a Summary Sheet outlining the goals, outcomes, and services would be sent to claimant for signature. The CSC further

stated that once the Summary Sheet was signed, the CSC would create the IPP and "once that's finalized" the CSC would send a copy to claimant "and at that point [as the SDRC regional manager said] if there are other things that [claimant's mother] would like to add [she] is welcome to do one sheet of paper and include [claimant's mother's] notes and [SDRC] can attach that to the IPP."

Claimant's mother sought further clarification, and the CSC told her that the CSC would send claimant's mother the goals, claimant's mother is "going to sign off on that," and then the CSC would develop the IPP. The CSC would then send a copy to claimant's mother "and at that point [claimant's mother] can add [her] one page notes [*sic*] to it," to which claimant's mother replied, "I'm confused." In another audio excerpt the CSC explained to claimant's mother that she needed claimant's mother's signature on the Summary Sheet first, agreeing to the goals and claimant's mother explained how in school with the IEP the document is not signed until it is completed.

On the recording, claimant's mother also stated that she had previously requested the document be translated to Tagalog so she could fully understand it and once that happened, she would sign it. SDRC's regional manager then interjected that SDRC would be unable to provide services unless it received the signed Summary Sheet. The regional manager explained that because claimant had selected to have a yearly IPP, it was important to get the documents completed quickly so that there was no break in claimant's services. In order for that to be accomplished, claimant's mother needed to provide her signature agreeing to the goals after which SDRC would create the IPP and claimant could attach a document to it noting any requests or disagreements.

On the recording claimant's mother sought further clarification and it was explained to her that signing the Summary Sheet only meant she was agreeing to the

goals and the agreed-upon services, but SDRC “does not translate until the IPP is approved.” The regional manager informed claimant’s mother that when she received the translated IPP she could attach the one page noting any disagreements or further requests. Claimant’s mother thanked SDRC for explaining it to her and advised that if she did not understand it, she would let them know.

It was concerning that SDRC would require claimant’s representative to sign a document as important as the IPP Summary Sheet without the benefit of it being translated. Translating documents “after they have been signed and approved” does not establish that the representative understood what he or she was signing, and was especially troubling here where claimant’s mother had requested translation. Claimant’s parents’ testimony regarding their reluctance to sign documents that had not been translated was understandable. It would be beneficial to SDRC to have the Summary Sheet translated before it is signed, especially given that Welfare and Institutions Code section 4646, subdivision (j)(1), requires SDRC to “communicate in the consumer’s preferred language, or, if appropriate, the preferred language of the consumer’s family . . . during the planning process for the individual program plan, including during the program plan meeting. . .” As worded, the “planning process” is more than just the IPP meeting, and providing translation services “during the planning process” would include that part of the process involving the Summary Sheet.

22. In a note filed with the hearing exhibits, claimant’s mother wrote: “During the IPP meeting, the [CSC] reiterated that I need to agree with the goals where we did not discuss together [*sic*]. However, she will create the IPP without a discussion of additional services or support that [claimant] will have.”

23. A May 26, 2022, Title 19 Consumer I.D. Note documented the “lengthy planning team” meeting held via Zoom for claimant’s IPP meeting, which included CSC

Heather Billings, Program Manager Sue Morasse, Regional Manager Ashlie Stephenson, claimant's mother and an interpreter. "The planning team reviewed [claimant's] development, current services and supports, as well as progress toward outcomes."

24. The draft 2022 IPP is in a similar format to the 2021 IPP. The IPP was also translated to Tagalog. Comparing the 2022 IPP draft to claimant's mother's May 23, 2002, email showed that things claimant listed as "goals" in the email were contained in the narrative portions of the IPP. Further, SDRC's assertion that those items were not proper "goals" because the purpose of a goal is to identify a consumer's needs and determine what services and supports are appropriate to address those needs, was unrefuted. The "goals" listed in the email were extremely vague and overbroad, but the concerns identified in those "goals" were contained in the IPP. Claimant's request that the IPP be in a different format was unsupported by law.

25. The 2022 IPP Summary Sheet documented the May 26, 2022, IPP meeting held with the parties. Section A identified the following five Outcomes/Services to be included on the IPP:

1) [Claimant] will have his self-care, behavioral, and safety needs met by respite providers while his parents receive intermittent breaks from his care, through 5/31/2023.

2) [Claimant] will benefit from his parent's attendance at the conference they have selected, as parent will use techniques and information from the conference to better meet his needs related to supervision, managing behaviors, and self-care through 5/31/2023.

3) Parent states that [claimant's] insurance funded BHT program [behavioral health therapy program] is working toward reducing undesired behaviors as well as increasing safety skills. Parent states that the specific outcomes include staying dry overnight, independence with self-care, stopping elopement behaviors, as well as adhering to safety instructions. [Claimant's] social skills development will be further supported by his family exploring community and school based opportunities and resources.

4) [Claimant] will access appropriate resources to maintain optimal dental, mental, and physical health (to include appropriate exercise), through 5/31/2023.

5) [Claimant] and his family will have access to translation/interpreter services, through 5/31/2023.

Section C identified the following "List of agreed upon services and supports:"

Respite- In home services at 120 hours/quarter with YMCA

Conference funding – Parents will contact [CSC] when interested in attending an event

Interpreter/Translation Services – To be provided when requested by parents within a reasonable amount of time

Social/Recreation – Pending development of POS guidelines and review process from SDRC. Parent will submit

information about a desired program for review when interested in accessing services.

All of the boxes in Section D, which requested check marks be placed "next to the following statements that you are in agreement with" were checked. Given that claimant's parent did not sign the document, it appears that SDRC had checked all those boxes. The signature portion of the document was dated May 27, 2022, and all signature lines were blank.

26. The 2022 IPP Summary Sheet was returned to SDRC by claimant's parents containing numerous cross outs, strike throughs, and handwritten statements. As SDRC explained at this hearing, the IPP must meet certain requirements by law. Altering the Summary Sheet as claimant's parents did here, voids the IPP such that there is currently no IPP in place. Without an IPP in place, SDRC cannot fund services for claimant. If a consumer disagrees with the IPP, he or she can handwrite on a separate document those portions that are not acceptable; crossing out the Summary Sheet voids the document. Furthermore, as noted on the Summary Sheet in section D, if a consumer disagrees with the outcomes/services identified in the IPP, the consumer can simply not check the box that indicates agreement.

27. A June 2, 2022, email from claimant's mother to SDRC regarding the request for "swimming class safety for [claimant's] IPP" stated that she wished "to follow up from our last IPP meeting that we need to add safety for [claimant's] IPP. We would like to request and fund [sic] this swimming class on base as soon as possible. We have swimming pool [sic] everywhere here and this is a need especially [claimant] has eloped frequently [sic]." She advised that she would "attach the information" and provided two links in her email.

28. A June 3, 2022, email from SDRC to claimant regarding the swimming class safety for claimant's IPP requested that claimant provide the following to SDRC: length of service (must be time-limited), cost, amount family is able to contribute toward costs. The email stated further: "Once you provide that information it will be forwarded to management for review. We do not yet have a timeline for when services will be reviewed or approved."

29. A June 3, 2022, Title 19 Consumer I.D. Note stated:

Email from [claimant's mother] asking that the IPP Summary Sheet be translated into Tagalog.

Discussed parent request with [program manager and office manager. Office manager] stated that the procedure for translation occurs after documents have been signed and approved. Noted that [SDRC regional manager] discussed this with parent during [claimant's] IPP meeting on 5/26/22.

Left V/M for [claimant's mother] reminding her the translation was discussed during the IPP meeting.

Exchanged emails with parent regarding request for funding of swim lessons with [military base] Aquatics. Parent attached a handout regarding the risks and benefits of water safety for children with ASD [Autism Spectrum Disorder]. [CSC] requested further information from parent regarding length of service, cost, and how much, if any, parent is able to contribute toward the cost of the program.

30. A June 3, 2022, email from claimant's mother to SDRC at 1:35 p.m., regarding the "swimming class safety for [claimant's] IPP" stated: "This service is for [claimant's] safety. I am requesting a fair hearing in order for us to know the specific timeline. I submitted the letter today requesting a fair hearing."

31. A June 3, 2022, email from SDRC at 2:29 p.m., to claimant's mother regarding the "swimming class safety" for claimant's IPP, requested that claimant's mother contact SDRC to discuss. The email further stated: "We are not denying a service, therefore we are not issuing an NOA. We discussed the process at the IPP meeting, and I am happy to discuss with you if you'd like over the phone."

32. Several June 9, 2022, emails between SDRC staff identified the swimming vendor claimant "wanted to use in the beginning" and claimant's responses to SDRC's inquiry regarding that service. SDRC staff also noted that claimant's mother provided the following information SDRC requested: the length of service would be "when [claimant's] coach said that he is good enough to swim and will not drown. I am not sure when." In response to the request for information regarding costs, claimant's mother wrote: "I am not sure how much will you pay for his safety service." In response to SDRC's request seeking the family's ability to contribute toward costs, claimant's mother wrote: "Let us know the poverty line and how much we are supposed to pay accordingly. The [In-Home Support Service] and pension of my husband are our income only." Claimant's mother's responses did not answer SDRC's questions.

33. A June 9, 2022, Title 19 Consumer I.D. note stated in part: "Developed [claimant's] IPP and submitted document to [program manager] to review. Parent has yet to sign the Summary Sheet. Planning team will work on translation of both the IPP and Summary Sheet for parent to review."

34. A June 13, 2022, Title 19 Consumer I.D. note documented that an email had been sent to the office manager requesting translation of "both IPP Summary and draft IPP into family's native language, Tagalog, to be forwarded to parent."

35. A June 14, 2022, email from SDRC to claimant's mother stated: "As stated previously, we understand you're interested in requesting SDRC fund swimming lessons for [claimant]. However in order to review your request, we need ALL of the following information: name of vendor/provider, frequency and duration (i.e. 1 time per week for 1 hour, for 6 weeks), cost per session, how much can family contribute to the cost of lesson (specific dollar, such as \$10 per lesson)." The email advised further that once claimant had submitted that information, SDRC "can proceed with process of review."

36. A June 14, 2022, Title 19 Consumer I.D. Note stated: "Met with [program manager] to discuss case and parent request for funding of swim lessons. [Program Manager] emailed parent reiterating need for specific information (please see T19 from [program manager] for details)." No evidence was offered that claimant ever provided that information to SDRC.

37. A June 14, 2022, Title 19 Consumer I.D. Note stated in part:

Responded to mom's email regarding request for swim lesson as when asking parent what her request is for length of service – she'd replied "when [claimant's] coach states he is good enough to swim and will not drowned" for cost, she noted "I'm not sure how much you will pay for his safety service". In response to how much parent could contribute to the cost of swim lesson, she requested the poverty line

guidelines. Clarified in email to parent that we need specific information in order to review the request: vendor, cost per session, frequency/duration (i.e. how many times per week, for how many weeks), how much parent could contribute to the cost of swim lesson. . . .

38. On June 14, 2019, claimant's mother emailed SDRC advising: "I have checked the swimming class here and the spots gets [*sic*] full faster. I would like to know if you have the swimming vendor around [our] community? Also, if I know someone how can they be your vendor? We would like [claimant] to be able to have swimming classes on weekends 2 times a week for one year. Cost of share: 0."

39. In a June 15, 2022, email regarding the request for swimming, SDRC asked claimant: "If you know of a vendor or someone that wants to become of vendor, we can work with Community Services on the process to become a vendor or to get paid through a fiscal management service. So we will need to know who would provide the swim classes and how much they cost each session in order to have your request reviewed."

40. A June 15, 2022, Title 19 Consumer I.D. Note stated in part:

Mom responded to email and noted they don't know the vendor for swimming classes, however she wants to request 2 x/week for one year. Let parent know we will need to know who would provide the swim classes, and cost of each session. We can assist potential vendors working with Community Services or through a FMS [Fiscal Management

Service] to be vendored/reimbursed. Mom stated parental contribution as 0 toward swimming lessons.

41. A June 21, 2022, Title 19 Consumer I.D. Note stated: "Received translated draft IPP and IPP summary as requested by parent. . . . Forwarded translated documents to parent via encrypted e-mail. Let parent know . . . if she wants to schedule another IPP meeting (as she'd requested to discuss additional respite), to let [CSC] and [program manager] know their availability and we will also need to coordinate with translator."

42. On June 21, 2022, SDRC emailed claimant a translated draft of the IPP. That IPP was translated to Tagalog.

43. In her June 21, 2022, email to SDRC, claimant's mother thanked SDRC for translating the IPP and she "can better understand now the IPP." She apologized for her confusion regarding scheduling the matter for hearing at [the Office of Administrative Hearings] and advised that the family was waiting to see if claimant's father would be having surgery. Regarding the request for swimming lessons, claimant's mother attached information regarding a swimming program and wrote:

I also found out an adaptive swimming class and I will attach the information here. We have two very close pool [s/c] around our area. [Claimant] loves the water. Yesterday, the first day our community pool open up. We have a play date. [Claimant] was very impulsive in the water. He will jump straight and fearless to keep going to a deeper part of the pool. His previous swimming classes he forgot the skills.

He elopes frequently and increases his eagerness to leave once the doors open. We are very fearful because of this behavior. Elopement and then no sense of fear to traffic safety in the community then water are the primary cause of autistic people life [*sic*]. We hope that we can get him safety service soon.

44. In a June 22, 2022, email SDRC advised claimant's mother: "We still would need to know who would provide swim classes, how often are sessions (i.e. once per week for 1 hour), length of time (i.e. 1 time per week for 6 weeks). The attachment doesn't provide this information, and is required to review/request service."

45. A June 22, 2022, Title 19 Consumer I.D. Note stated:

Mom responded via e-mail that she received translated IPP. See attached links related to swim classes building confidence and safety for autistic children, and a screen shot of [a swim lesson provider] with no information on when, where or cost included. Responded to mom to let her know that for a request for swimming, we need to know who provides, when/how often, cost per session. Informed parent that specific information is required in order to review/request service. Parent responded that she would look into information on swim classes and let PM/SC know.

46. Claimant's mother's June 22, 2022, email to SDRC stated: "I would like to ask if you can help me to contact them [presumably the swimming lesson provider] or [CSC] instead [*sic*]. I know that [claimant] as a consumer his service coordinator is

supposed to help him. If he [sic] can't do it, can I get a service coordinator that can help the family? The family ate [sic] already going through a lot. It will be very helpful if you can help me to connect with them. I called them up but no one answered me."

47. SDRC's June 23, 2022, email to claimant's mother regarding the swimming request stated: "You can call us to discuss. The one you forwarded looks like you'd have to have a pool or have access to a pool, and they need to discuss schedule with you. If a pool on base, you'd probably need to obtain permission from the base."

48. Claimant's mother sent an email to SDRC on June 23, 2022, regarding the request for swim lessons. Claimant's mother advised that she had not received a return call from the swim lesson provider "until now. Have you speak to them yet?" Claimant's mother further wrote that the "pool is very accessible to us. A walking distance and the gate is open. It is open Monday to Sunday. Our neighbor is in the picture. Her daughter is [claimant's] classmate. Just like we always do when we are getting a respite provider, we can pick them up at the gate and we will sponsor them to our pool access." Claimant's mother further advised it was difficult for her to discuss services on the phone as she needed to supervise claimant. She referenced how keeping claimant in the home made him bored, which increased his behaviors and elopement attempts. She wrote that she will "never exclude [claimant] in the community. This is why he needs it due to his disability." Her email indicated there were "community pool" attachments, but none were attached to the email submitted at hearing, and it was unclear if these attachments were part of the exhibits received.

49. A June 23, 2022, Title 19 Consumer I.D. Note stated:

Mom sent email requesting that [CSC] contact swim program she sent via e-mail as she called but hasn't heard

back yet. Replied to mom that the program she forwarded yesterday, indicates they need a pool or access to a pool for private lessons, so she would need to find out if they can use the base pool or if permission is needed. Requested she call [CSC]/PM if she wanted to provide additional information in order for us to clarify what she is wanting as far as resource info.

50. A June 29, 2022, email to claimant's mother from the swim lesson provider asked, "Are you still interested in getting swimming lessons at your home or community pool?"

51. On June 29, 2022, claimant's mother sent an email to SDRC "requesting an assistant from you to receive the swimming class in our community pool from them. We can pick up the instructor from the gate of [the military base]." On that same date SDRC replied, "We will discuss all of the requests at mediation tomorrow."

52. A June 29, 2022, email from claimant's mother to SDRC, sent at 10:34 a.m., requested "an assistant from you to receive the swimming class in our community pool from them. We can pick up the instructor from the gate of [the base]."

53. A June 29, 2022, email, sent at 3:33 p.m., from the swimming lesson provider to claimant's mother which was copied to SDRC stated: "Thank you for contacting us! Do you have any questions regarding our services or packages? For us to start looking for an instructor for lessons we'd need a completed registration form. Whenever you are ready you can book your lessons using this link [hyperlink provided]."

54. A July 1, 2022, email from the CSC to the SDRC regional manager attached documents regarding the request for swim lessons. Included in those documents were the dates of various swimming sessions offered on the military base, the cost for sessions, information regarding the instruction provided, and rules regarding enrollment. There were also articles attached regarding the risks and benefits of swimming for individuals with autism.

55. Documents from Disability Rights California, A Consumer's Guide to the Lanterman Act, and the Association of Regional Center Agencies set forth the various rights and responsibilities of regional centers and its consumers.

Witness Testimony

56. Neil Kramer, SDRC Fair Hearings Manager, testified about the IPP process, including applicable laws if consumers disagree with the IPP. Mr. Kramer was not present for claimant's IPPs so deferred questions regarding specifics of those meetings to those who were in attendance.

57. Ashlie Stephenson, SDRC Regional Manager, attended the May 26, 2022, IPP meeting. The issues raised in claimant's May 23, 2002, email were addressed during that meeting, and there were several emails exchanged between claimant and SDRC after that meeting. Ms. Stephenson explained how the IPP is prepared, testifying about how goals must be written in an IPP. Her testimony regarding why the items claimant's mother requested be added as "goals" in the IPP were not goals, but were, instead, matters that are written in the narrative section of the IPP was unrefuted, persuasive, and supported by the law. Her testimony that the IPP must be signed and cannot be altered otherwise it is invalid, and that services cannot be offered unless a valid IPP is in place, was supported by the evidence and the law.

Ms. Stephenson testified that because of the recent changes to the law allowing for funding of social recreation services, regional centers are currently in the process of locating vendors and relying on families to assist in this process. SDRC does not have a swim lesson vendor in claimant's location so requested information from claimant in order to evaluate claimant's request for that service. At one point while questioning Ms. Stephenson, claimant's mother indicated that the potential swimming lesson vendor "did not get back to me," and that she does not know the costs and it would be "better for SDRC" to contact the vendor as SDRC "specifically knows" the costs, but that did not address the issue that although SDRC has repeatedly provided claimant with a specific list of information required to evaluate the swimming lesson request, claimant has not provided it. Moreover, the assertion that SDRC knows the costs was unsupported by the evidence and demonstrated that claimant did not seem to understand his role when requesting services. In any event, Ms. Stephenson's testimony that SDRC has not denied claimant's request for swimming lessons was supported by the evidence.

58. Claimant's parents' testimony was heartfelt and sincere and established they clearly care deeply for their son. However, their requests either exceeded what the Lanterman Act provides or were unsupported by the evidence; in some instances, their claims were wholly refuted by the documents. In short, they have not provided all the requested information regarding the swimming lessons, they have fully participated in the IPP process, and it was unclear what further participation they were seeking given this record. The numerous emails and documents exchanged between the parties demonstrated extensive communication and participation by claimant in the IPP process. Moreover, the Lanterman Act does not support claimant's parents' request that they take part in writing the IPP, and there was no showing that SDRC did not comply with the law. However, their testimony did establish that they are confused

regarding many of the applicable laws, and that not having translated documents makes it difficult, if not impossible, for them to fully understand the process. Given their presentation at this hearing, it is highly suggested that going forward all IPP documents prepared by SDRC be translated to Tagalog prior to signing them.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Act is 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.” (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden and Standard of Proof

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate (1) that SDRC should fund swimming lessons, (2) that the 2022 IPP goals should be updated consistent with the goals listed in claimant’s mother’s May 23, 2022, email, and (3) that claimant did not fully participate in the IPP process.

3. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of

witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act and Regional Centers

5. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

6. 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.)

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

8. SDRC is one of 21 California regional centers. SDRC provides advocacy for and assistance to a large developmentally disabled population living in San Diego County and Imperial County. To qualify for SDRC services, a person must live within one of these counties and be diagnosed with a substantial disability as defined by Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000.

Applicable Statutes

9. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

[¶] . . . [¶]

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

10. Welfare and Institutions Code section 4646 requires that the Individual Program Plan (IPP) and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. The IPP is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of

the plan. The provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. Section 4646 specifically requires:

(g) At the conclusion of an individual program plan meeting, an authorized representative of the regional center shall provide to the consumer, in written or electronic format, a list of the agreed-upon services and supports, and, if known, the projected start date, the frequency and duration of the services and supports, and the provider. The authorized representative of the regional center shall sign the list of agreed-upon services and supports at that time. The consumer, or if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative shall sign the list of agreed-upon services and supports prior to its implementation. The consumer, or if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, may elect to delay receipt of the list of agreed-upon services and supports pending final agreement, as described in subdivision (h). If the consumer, or if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, elects to delay the receipt of the list of agreed-upon services and supports for 15 days, the list shall be provided in the preferred language of the consumer, or of the consumer's parent, legal guardian, or authorized representative.

(h) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative or if agreed to by the planning team. The list of the agreed-upon services and supports described in subdivision (g) and signed by the authorized representative of the regional center shall be provided, in writing or electronically, at the conclusion of the subsequent program plan meeting, and shall be provided in the preferred language of the consumer, or of the consumer's parent, legal guardian, conservator, or authorized representative. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative.

(i) An authorized representative of the regional center and the consumer or, if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative shall sign the individual program plan and the list of the agreed-upon services and supports prior to its implementation. If the consumer or, if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, does not agree with all

components of the individual program plan, the consumer may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative. If the consumer or, if appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, does not agree with the plan in whole or in part, the consumer shall be sent written notice of their appeal rights, as required by Sections 4701 and 4710.

(j) (1) A regional center shall communicate in the consumer's preferred language, or, if appropriate, the preferred language of the consumer's family, legal guardian, conservator, or authorized representative, during the planning process for the individual program plan, including during the program plan meeting, and including providing alternative communication services, as required by Sections 11135 to 11139.8, inclusive, of the Government Code and implementing regulations.

(2) A regional center shall provide alternative communication services, including providing copies of the list of services and supports, and the individual program plan in the preferred language of the consumer or the consumer's family, legal guardian, conservator, or

authorized representative, or both, as required by Sections 11135 to 11139.8, inclusive, of the Government Code and implementing regulations.

(3) The preferred language of the consumer or the consumer's family, legal guardian, conservator, or authorized representative, or both, shall be documented in the individual program plan.

11. Welfare and Institutions Code section 4646.4 states.:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports if appropriate. The individualized family service planning team for infants and toddlers eligible under Section 95014 of the Government Code may determine that a medical service

identified in the individualized family service plan is not available through the family's private health insurance policy or health care service plan and therefore, in compliance with the timely provision of service requirements contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations, will be funded by the regional center.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(5) Commencing October 1, 2022, consideration of information obtained from the consumer and, if appropriate, the parents, legal guardian, conservator, or authorized representative about the consumer's need for the services, barriers to service access, and other information.

(b) At the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the consumer, or, if appropriate, the parents, legal guardian, or conservator, shall provide copies of their health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, if appropriate, the parents, legal guardians, or conservators, do not have health benefits, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

(c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

(d) Final decisions regarding the individualized family service plan shall be made pursuant to Section 95020 of the Government Code.

12. Welfare and Institutions Code section 4646.5 sets forth the IPP development process which must include a statement of goals and the sources of the funded services.

13. Welfare and Institutions Code section 4647 states:

(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

(b) The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services, or persons described in Section 4647.2. The regional center shall provide the consumer or, where appropriate, his or her parents, legal guardian, or conservator or authorized representative, with written notification of any permanent change in the assigned service coordinator within 10 business days. No person shall continue to serve as a service coordinator for

any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

(c) Where appropriate, a consumer or the consumer's parents or other family members, legal guardian, or conservator, may perform all or part of the duties of the service coordinator described in this section if the regional center director agrees and it is feasible.

(d) If any person described in subdivision (c) is designated as the service coordinator, that person shall not deviate from the agreed-upon program plan and shall provide any reasonable information and reports required by the regional center director.

(e) If any person described in subdivision (c) is designated as the service coordinator, the regional center shall provide ongoing information and support as necessary, to assist the person to perform all or part of the duties of service coordinator.

14. 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. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(8) prohibits the regional center from

using its funds “to supplant the budget of an agency that has responsibility to serve all members of the general public and is receiving public funds for providing those services.”

15. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental entities and prohibits them from purchasing services available from generic resources, including other governmental entities, “when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage.”

16. Welfare and Institutions Code section 4710 states:

(a) Adequate notice shall be sent to the applicant or recipient and the authorized representative, if any, by certified mail at least 30 days prior to any of the following actions:

(1) The agency makes a decision without the mutual consent of the service recipient or authorized representative to reduce, terminate, or change services set forth in an individual program plan.

(2) A recipient is determined to be no longer eligible for agency services.

(b) Adequate notice shall be sent to the recipient and the authorized representative, if any, by certified mail no more than five working days after the agency makes a decision

without the mutual consent of the recipient or authorized representative, if any, to deny the initiation of a service or support requested for inclusion in the individual program plan.

(c) If the reason for denial of services or modification of services in a recipient's individual program plan is a lack of funds in the regional center budget, the regional center shall be the service agency responsible for giving adequate notice and participating in the fair hearing procedure under this chapter.

(d) The regional center shall, within 30 days after written notice is mailed to the applicant or client, notify the department in writing of the denial if a lack of funds in the regional center budget is the reason for one of the following:

(1) The denial of services to an applicant.

(2) The denial of services to a current regional center client requesting services not included in the client's individual program plan but determined to be necessary by the interdisciplinary team.

(3) Denial, cutback, or termination of current services to a recipient set forth in the individual program plan.

The notification to the department shall include the nature of the service requested, a request that the department allocate sufficient funds to the regional center within 30 days to provide the service, the projected cost for the service for the balance of the fiscal year, and information substantiating the reason for the lack of funds to purchase the service.

(e) If a person requests regional center services and is found to be ineligible for these services, the regional center shall give adequate notice pursuant to Section 4701. Notice shall be sent within five working days of the time limits set forth in Sections 4642 and 4643.

(f) The advance notice specified in subdivision (a) shall not be required when a reduction, termination, or change in services is determined to be necessary for the health and safety of the recipient. However, adequate notice shall be given within 10 days after the service agency action.

Evaluation

17. Claimant presented no evidence in support of his argument that his IPP needs to be "personalized for him" as opposed to being "a generic IPP for all individuals with autism." The IPPs introduced at hearing specifically reference claimant, his strengths, his goals, and facts about him. The proposed 2022 IPP was specific as to claimant and not a "generic IPP."

Claimant's argument that he has not been part of the IPP process was also unsupported by the evidence. Claimant's mother participated in the IPP meeting and had extensive communications with SDRC. Given those communications, there was no basis for claimant's assertion that his family did not participate in the IPP process. There was no showing that claimant's family has not been part of the decision-making; rather, the evidence established that they did not provide the requested information or that their requests are ones that cannot be met.

For example, their request to write the IPP and not simply provide input at the IPP meeting is unsupported by the Lanterman Act. Welfare and Institutions Code section 4646 sets forth the IPP procedure. As mandated by subdivision (g), SDRC is tasked with writing the "list of the agreed-upon services and supports" and providing that information "to the consumer, in written or electronic format." There is no provision for claimant to write the IPP; claimant's role is to participate in the IPP meeting, which happened here.

There was absolutely no evidence showing that SDRC did not allow claimant to participate in the IPP. It was unrefuted that SDRC went over all of the items set forth in claimant's mother's May 23, 2022, email, and a review of the 2022 IPP clearly shows that all of those items are contained therein, in one form or another. While claimant may not like the format of the IPP, that is not the same thing as being denied participation in the IPP process. Moreover, the evidence supported SDRC's position that the items listed in claimant's mother's May 23, 2022, email were not "goals," but rather items that were properly included in the IPP narrative.

Claimant's argument that the swimming lessons are for safety and should be funded under that category, and not under social recreation, is unsupported by the law. Swimming lessons clearly fall within the social recreation category and the

evidence was unrefuted that this is how that service is funded. Claimant's concern that funding swimming lessons in this manner will preclude him from being able to have other social recreation services funded was unsupported by any evidence. As the Lanterman Act clearly provides, a consumer's needs are identified during the IPP process, the services that will best meet those needs are identified, and then applicable laws control regarding how those services are to be funded. There was no evidence offered that there is a limited amount of social recreation funding available to claimant. Instead, recommended services are based on his needs and funded based on the law.

The record also was replete with requests from SDRC that claimant provide it with information needed to evaluate the request for swimming lessons. To date, claimant has yet to provide all the requested information. Claimant appears to misunderstand his role in this process. As SDRC explained, authority to fund social recreation services had been suspended since 2009, and has just recently been restored. As such, SDRC does not have a ready list of social recreation vendors and looks to families to provide that information. Claimant's parents' inquiry during this hearing as to why they should have to look for that service demonstrated that they do not understand their role in the process. Moreover, claimant resides on a military base so one of the requests from SDRC is that the parents provide information that the base has approved the use of its pool for an outside vendor to provide swimming lessons, which is an extremely reasonable request.

Welfare and Institutions Code section 4646, subdivision (g), further provides that when the IPP meeting concludes, a consumer "may elect to delay receipt of the list of agreed-upon services and supports pending final agreement." If a consumer chooses that option, the consumer may elect to delay implementation of the services

for 15 days so that the list can be provided in the consumer's preferred language. No evidence was offered that claimant elected to delay implementation; instead, claimant altered the 2022 IPP Summary Sheet. Section 4646, subdivision (h), provides that if the parties do not reach a final agreement at the IPP meeting "regarding the services and supports to be provided to the consumer," then "a subsequent program plan meeting shall be convened within 15 days, or later."

The audio recordings demonstrated that the parties did reach an agreement at the May 26, 2022, IPP meeting, but that when claimant received the IPP Summary Sheet, claimant's parents, instead, altered that document and returned it to SDRC, something which the law does not provide. As such, the evidence supported SDRC's position that services cannot be provided to claimant because there is not a valid IPP in place. Further, claimant requested a fair hearing when the IPP was not changed, so the matter was set for hearing and not a second IPP meeting. Even if such a meeting had been set, without the required information claimant has yet to provide, SDRC's position would likely be the same.

Accordingly, claimant did not establish by a preponderance of the evidence that SDRC should update his IPP to put as "goals" those items listed in the May 23, 2022, email. Those items were appropriately written in the narrative of the IPP and need not be placed elsewhere in that document.

Claimant did not establish by preponderance of the evidence that SDRC should fund his request for swimming lessons because he has failed to provide the necessary information to enable SDRC to evaluate his claim. As of the day this hearing, SDRC has never denied that request, rather it has repeatedly informed claimant of the information it needs claimant to provide so that SDRC can evaluate the request.

Finally, claimant did not establish by a preponderance of the evidence that he or his family have been excluded from being part of the IPP process. To the contrary, the evidence overwhelmingly established that claimant has fully participated in the process. The additional "participation" claimant requested, such as writing the IPP, are not allowed by law as that duty is borne by SDRC.

No credible evidence supported any of claimant's assertions set forth in his Fair Hearing Request or itemized with particularity prior to the start of this hearing.

ORDER

Claimant's appeal is denied in its entirety.

DATE: July 21, 2022

MARY AGNES MATYSZEWSKI
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.