

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2022090047

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on October 12, 2022.

Senait Teweldebrhan, Fair Hearing Representative, represented Inland Regional Center (IRC).

There was no appearance by claimant's authorized representative.

The record was closed on October 12, 2022, and the matter submitted for decision.

ISSUE

Is IRC required to increase claimant's Self-Determination Program (SDP) budget by \$2,500 to cover expenses for the Independent Facilitator for reviewing the Individual Program Plan (IPP), updating the Person-Centered Plan, and preparing the budget and spending plan?

FACTUAL FINDINGS

1. Claimant is a 21-year-old male who qualifies for regional center services under the Autism category. He is a participant in the SDP. "Self-determination" is defined as a voluntary delivery system consisting of a comprehensive mix of services and supports, selected, and directed by a participant through person-centered planning, to meet the objectives in IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. (Welf. & Instit. Code, § 4685.8, subd. (c)(6).)

2. On August 11, 2022, IRC issued a Notice of Proposed Action (NOPA) denying claimant's request to increase his SDP budget by \$2,500. IRC asserts in its NOPA that pursuant to Welfare and Institutions Code section 4685.8, subdivision (c)(2), SDP participants must pay the cost of the independent facilitator out of their own budgets. Per the NOPA, beginning May 1, 2022, IRC certified claimant's SDP budget in the amount of \$63,811.¹ IRC notes further in this NOPA it can only increase this

¹ The NOPA incorrectly refers to the amount as \$64,811.

amount if it determines that an adjustment is needed due to a change in claimant's circumstances, needs, or resources, and IRC can certify on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of claimant's participation in the SDP. IRC determined that an adjustment of \$2,500 is not warranted consistent with these factors.

3. On August 24, 2022, claimant submitted a Fair Hearing Request asking that the budget be increased to pay for the independent facilitator. Claimant was properly served with notice of the date, time and manner of the hearing. Despite this notice, claimant did not appear.

4. Claimant included a three-page statement in his fair hearing request. In this statement he states he wants the independent facilitator fee in the 2022-2023 spending plan under Aid Code 340 to come out of claimant's regular budget. This represents a change from the prior year budget because the cost of the independent facilitator was billed under Aid Code 024, and paid from funds IRC set aside "for only new SDP creations." Claimant states further that he mistakenly was told to remove the independent facilitator yearly fee under Aid Code 340 and bill it separately under Aid Code 024, as was done previously. Claimant states he seeks this increase because it is a correction, not an addition, to include the independent facilitator fee under Aid Code 340 to be paid from claimant's regular budget as first approved.

5. Per Department of Developmental Services (DDS) directive to Regional Centers dated December 21, 2018, independent facilitators assist in making informed choices regarding the individual budget, help locate and access services consistent with the IPP, identify immediate and long term needs, develop options to meet those needs, and obtain supports and services. Per this directive, the costs of the

independent facilitator are negotiated between the participant and the facilitator and come from the participant's individual budget. The budget may not be increased to cover the cost of the independent facilitator. (See Welf. & Instit. Code, § 4685.8, subd. (m)(1)(A)(iii).)

6. For SDP participants the IPP must be developed using a person-centered planning process. (Welf. & Instit. Code, § 4685.5, subd. (k)). A person may request person-centered planning, in addition to those used by regional center, to assist with the comprehensive planning to inform the development of the IPP. Pursuant to DDS's July 28, 2022, directive to regional centers, regional centers may purchase and make payment up to \$1,000 for the Initial Person-Centered Plan from vendored providers of person-centered planning services, or non-vendored providers who demonstrate they have received training or certification in the person-centered planning/facilitation process.

7. Under aid code 340, as identified in claimant's 2022-2023 spending plan and budget, \$1,944 was allocated for the independent facilitator. However, in claimant's 2021-2022, budget, which IRC certified March 9, 2021, IRC approved the total budget of \$53,200, but the cost of the independent facilitator and the cost of the person-centered plan were not included in this budget.

8. Shortly after IRC certified claimant's 2021-2022 individual budget, which as noted, did not include the cost of the independent facilitator and person-centered plan, IRC certified on May 3, 2021, claimant's spending plan, in the total amount of \$53,203.10. This spending plan included \$1,620 for the independent facilitator as an "unmet need/support staff for the family/monthly/\$27.00." A note immediately below the line for the independent facilitator category states that the budget may not be increased for an independent facilitator.

9. Robert Garcia, Program Manager at IRC for the SDP unit, testified that claimant is requesting funding to develop the person-centered plan. Aid Code 340 is for the independent facilitator. He stated that IRC paid \$2,495 to Empower PCP, the independent facilitator, from IRC's traditional funds for the initial PCP. (It appears claimant's request to increase the budget by \$2,500 is based on this sum.) An invoice from Empower PCP submitted into the record with the date July 21, 2021, identifies the sum of \$2,495, but contains no other information.

10. Mr. Garcia explained that IRC's SDP Committee's approval of the independent facilitator for the 2022-2023 budget year was an oversight on the Committee's part. He added that a person-centered plan was not identified in the individual budget. The allocation for the independent facilitator was supposed to be a one-time expense that comes from the traditional funding per the DDS directive cited above to help claimant develop his SDP budget consistent with the goals identified in his IPP. In the future, IRC will not be able to make an allocation for the independent facilitator.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether a regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center should increase his SDP budget by the amount requested. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

2. Welfare and Institutions Code section 4685.8, subdivision (c)(2), defines "Independent Facilitator" as:

a person, selected and directed by the participant, who is not otherwise providing services to the participant pursuant to their IPP and is not employed by a person providing services to the participant. The independent facilitator may assist the participant in making informed decisions about the individual budget, and in locating, accessing, and coordinating services and supports consistent with the participant's IPP. The independent facilitator is available to assist in identifying immediate and long-term needs, developing options to meet those needs, leading, participating, or advocating on behalf of the participant in the person-centered planning process and development of the IPP, and obtaining identified services and supports. The cost of the independent facilitator, if any, shall be paid by the participant out of the participant's individual budget. An independent facilitator shall receive training in the principles of self-determination, the person-centered planning process, and the other responsibilities described in this paragraph at the independent facilitator's own cost. The independent facilitator shall meet standards and certification requirements established by the department.

3. Welfare and Institutions Code section 4785.8, subdivisions (m)(1) and (2), provide as follows:

(m) (1) Except as provided in paragraph (4), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

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

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

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

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have

occurred regardless of the individual's participation in the Self-Determination Program.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator.

[¶] . . . [¶]

(2) The amount of the individual budget shall be available to the participant each year for the purchase of program services and supports. An individual budget shall be calculated no more than once in a 12-month period, unless revised to reflect a change in circumstances, needs, or resources of the participant using the process specified in clause (ii) of subparagraph (A) of paragraph (1).

4. Claimant's appeal is denied. Claimant failed to show he is entitled to an increase in his SDP budget due to a change in circumstances, needs, or resources and, further, any adjustment would have occurred regardless of claimant's participation in the SDP. Per Welfare and Institutions Code section 4685.8, subdivision (m)(1)(A)(iii), claimant's SDP budget may not be increased to cover the cost of the independent facilitator.

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ORDER

Claimant's appeal is denied.

DATE: October 25, 2022

ABRAHAM M. LEVY

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.