

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency.

OAH No. 2022100425

DECISION

Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on February 6 and 7, 2023, from Sacramento, California.

Erin M. Donovan, Attorney at Law, Musick, Peeler and Garrett LLP, represented Alta California Regional Center (ACRC or service agency).

Laurence F. Padway, Attorney at Law, represented claimant.

Evidence was received, and the record was held open for submission of written closing briefs. On March 8, 2023, OAH received ACRC's and claimant's closing briefs. The record closed, and the matter submitted for decision on March 9, 2023.

ISSUE

The issues to be determined are: (1) whether claimant's Year 2 Self-Determination Program (SDP) budget funding should continue at the Year 1 level, in the amount of \$214,085.92; or (2) whether claimant's Year 2 SDP budget should be certified at the reduced amount of \$149,301.15.

FACTUAL FINDINGS

Claimant's March 21, 2023 Letter

1. On March 21, 2023, claimant received an email from ACRC informing him that there will be no required Financial Management Services¹ (FMS) provider in place after March 31, 2023. ACRC advised claimant that a meeting must be scheduled to discuss options within traditional services model for supports until an FMS is available. ACRC further advised that there is a one-year wait period to re-enter SDP if he leaves, but ACRC will make an exception due to the circumstances.

2. Claimant wrote a letter to the undersigned ALJ requesting an "informal emergency hearing" to discuss an appropriate resolution. Copied on the letter were ACRC's attorneys and ACRC's Robin Black and Faye Tait.

¹ FMS are "services or functions that assist the participant to manage and direct the distribution of funds contained in the individual budget and ensure that the participant has the financial resources to implement their IPP throughout the year." (Welf. & Inst. Code, § 4685.8, subd. (c)(1).)

3. There is no provision under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) which allows for an informal emergency hearing. Thus, OAH has no jurisdiction over this issue and is unable to act on claimant's request. The lack of FMS provider issues was not raised at hearing and is not properly before OAH. Additionally, there is no provision under the Lanterman Act to allow a party to add issues to a matter after the record has closed and be heard in an informal emergency hearing.

Jurisdiction and Background

4. Claimant is a fifty-seven-year-old male eligible for regional center services under the Lanterman Act. He receives services and supports from ACRC. Claimant lives with his brother E.N. in Placerville, California.

5. In October 2021, claimant began receiving self-determination services and supports under the SDP. The SDP is a recently created program that establishes an individual budget, giving claimant "increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement [his] IPP²." (Welf. & Inst. Code, § 4685.8, subd. (a).) Under the SDP, the IPP team "shall utilize the person-centered³ planning process to develop the IPP" for claimant. (Welf.

² Individual Program Plan.

³ A person-centered plan describes what the SDP participant wants their life to be like in the future so they can work towards their goals. It is based on their strengths, capabilities, preferences, lifestyle and culture, and can be used to inform the writing of the IPP.

& Inst. Code, § 4685.8, subd. (j).) Claimant's IPP and SDP budgets are more specifically discussed below.

6. On August 9, 2021, ACRC approved claimant's 2021 to 2022 SDP budget (Year 1 budget) of \$214,085.92, stemming from his IPP approved on November 27, 2021 (November 2021 IPP). The Year 1 budget was for the period September 1, 2021, to August 31, 2022. Claimant's spending plan for the Year 1 budget was approved on October 25, 2021. Claimant's Year 1 SDP budget was one of the first SDP budgets ACRC helped to create.

7. In late 2021, ACRC began developing claimant's SDP budget for 2022 to 2023 (Year 2 budget). In doing so, ACRC discovered mistakes in claimant's Year 1 budget: (1) the cost of two full-time day programs were included although claimant could only attend one day program at a time; and (2) ACRC did not deduct the 233⁴ hours per month claimant was receiving through In-Home Supportive Services (IHSS), a generic resource, from the 461 hours for Supported Living Services (SLS) that ACRC provided in the Year 1 budget. Therefore, ACRC believes claimant's Year 1 budget mistakenly included funding for 461 hours of SLS per month, rather than the 228 hours of SLS to which he was entitled.

8. Due to these errors, claimant's Year 1 budget included funding for 1,100 total service hours per month, rather than 744 hours – the total number of hours in a month. Upon discovering the errors, ACRC deducted the corresponding amounts from

⁴ Claimant's November 2021 IPP shows claimant receiving 283 IHSS hours per month.

claimant's Year 2 budget, resulting in a significant reduction. Claimant's Year 2 budget was reduced to \$111,032.49.

Notice of Proposed Action

9. On October 11, 2022, ACRC issued a Notice of Proposed Action (NOPA) proposing to reduce claimant's Year 2 budget to \$111,032.49, effective 30 days after claimant's receipt of the NOPA.⁵ ACRC's reason for the budget reduction is because it "made errors in its initial SDP budget allocation" for claimant, including funds for services for which claimant was not assessed nor needed.

10. Specifically, the NOPA identified the errors in the Year 1 budget, stating:

Since ACRC did not assess you to need the full-time adult day health care program and the 233 additional SLS hours, it would not have paid for them under a traditional IPP. Thus, it cannot certify a Year 2 SDP budget for you that includes those additional funds, as required for budget approval and to release the funds for your use in SDP.

Fair Hearing Request

11. On October 15, 2022, E.N., serving as claimant's authorized representative, signed and thereafter filed a Fair Hearing Request for the following reasons: "claimant needs 24/7/365 protective supervision caregiving (PSC);" "he is at

⁵ ACRC continues to fund claimant's SDP at the Year 1 budget amount pending the outcome of the instant case.

risk of injury or death when he is alone,” and caregivers “will not work in Placerville for less than \$24/hr.” Claimant added:

One year ago, I filed an OAH case to force [ACRC] to provide SLS for me at the rate needed to hire caregivers in Placerville. My attorney and [ACRC’s] attorneys worked out an agreement that I would instead enter the SDP program. [ACRC] provided me with sufficient funds to hire four caregivers and obtain 24/7/365 PSC.⁶ Now, one year later, in a NOPA received October 15, 2022, [ACRC] is defaulting on this agreement and notifying me they will cut my SDP funding by 48%. This will require me to fire half of my caregivers and be alone for long periods of time.

Claimant requests that ACRC be ordered to continue his SDP funding at its present level. This hearing followed.

Claimant’s Evidence

CLAIMANT’S PROPOSED YEAR 2 BUDGET IN DRAFT 2023 SDP IPP

12. Claimant’s most recent IPP meeting took place on January 4, 2023. The individuals on the IPP team were claimant, E.N., and ACRC Service Coordinator Randall Sherman. The IPP, drafted by Mr. Sherman and E.N., set forth claimant’s SDP rights under the Welfare and Institutions Code, and provided background information,

⁶ Protective Supervision Care.

claimant's unmet and ongoing needs, his goals, and a proposed SDP budget for the period January 31, 2023, through September 30, 2023.

13. The IPP's "Background Information" section described the onset of claimant's developmental disability at age 14. He suffered a brain infection resulting in meningitis and severe fever. A brain shunt was installed, and claimant underwent chemotherapy and many other medical procedures. The shunt has failed "about a dozen times," over the years, requiring emergency neurosurgery to install a new device. Claimant has permanent brain damage and needs assistance with his activities of daily living.

14. The "Background Information" section further states that in May 2021, claimant filed a request for fair hearing in another case after ACRC "[blocked claimant's] access to round-the-clock qualified caregivers who could provide the supports and services needed for [claimant] to continue to live in [the] community." ACRC "settled" the case by offering a Year 1 budget amount of \$214,085, allowing claimant to hire four qualified caregivers and a part-time manager. Claimant's agency - Family Love Agency, an agency formed to administer claimant's SDP - was fully staffed in September 2021 and his life became safer and healthier.

15. The IPP identified claimant's unmet and ongoing needs. His unmet needs include legal representation in the amount of \$120,000, where claimant "has had to sue [ACRC] twice in order to force them to provide statutory benefits to which he is entitled, and in the amounts required." The other unmet need is the appropriate wage required to hire qualified in-home supports and services providers. In 2021, that hourly wage was \$24 per hour. E.N. believes that at the current Consumer Price Index of 7.1

percent, the hourly wage has increased to \$25.70.⁷ “The annual unmet need required to equalize the worker pay rate is \$8,618.” Claimant also needs “monthly RN-led [in-service] training for staff on [shunt] and medication protocols, how to handle a shunt failure . . . balance problems . . . walking backwards . . . incontinence, etc.,” ten hours of skills coaching per month, and an SDP IPP plan.

16. The IPP identified claimant’s ongoing needs as “round-the-clock supports and services, which includes protective supervision,” “co-employer and bill payor model of FMS services,” the assistance of a “house manager to recruit, screen, hire, train, and supervise his employees, as well as to schedule employees, process payroll and expense reimbursement, run [claimant’s] recruiting webpage, interact with [ACRC] and their attorneys, and also [claimant’s] attorney.” Claimant also intends to continue attendance at a day program twice a week.

17. The IPP identified claimant’s goals “to be free from the [two-and-a-half-year] war that [ACRC] has waged upon him.” Claimant wishes to live in the community without [ACRC] “opposing his efforts.” Claimant wishes E.N. “to continue to be his house manager and to run his SDP program and agency.” Claimant also wants a “budget to pay the cost of an attorney.”

18. Claimant included a table in the IPP titled “SDP Budget January 31, 2023 through September 30, 2023.” E.N. created the proposed Year 2 budget which represents “the past 12 months of supports and services” and the cost of unmet needs. Claimant identified 14-line items with their corresponding SDP billing code and annual costs, as follows:

⁷ This was the SLS caregiver rate at the time. It is now \$28.07 per hour.

SDP Billing Code	Expenditure Category	Annual Cost
320	Employee cost @\$25.70/hr, 5,058 hrs/yr	\$130,010.83
334	Skills coaching	\$3,084.48
320	Management of agency and employees	\$12,000
333	80 hrs training per new employee x 2 new emp/yr	\$4,112.64
333	CPR and First Aid	\$428.45
333	Live scan fee - 2 new employees/yr @ \$123 ea.	\$246
338	Milage [<i>sic</i>], 500 miles per month, 62.5¢ per mile	\$3,750
333	Web domain \$44.24 per year	\$44.24
333	Webpage hosting \$132.00 per year	\$132
333	Office supplies, computer cost, postage-\$50/mo.	\$600
316	FMS co-employer cost-25% of SDP worker cost	\$32,502.71
317	FMS fiscal agent-\$165 per month all non-employee costs	\$1,980
331	Day program, 6 hrs/day@24/hr two visits per week	\$14,976
320	Community Living Support: Legal Representation (as needed)	\$120,000
SUM		\$323,867.35

(Bold in original.)

19. This draft 2023 SDP IPP was admitted in evidence. It was never approved by the IPP team nor funded. Claimant's November 2021 SDP IPP, offered by ACRC and admitted in evidence, is discussed below.

BROTHER'S TESTIMONY

20. E.N. serves as the administrator of the SDP for Family Love Agency. E.N. also provides approximately 94 hours of IHSS to claimant.

21. E.N. testified regarding claimant's brain shunt, cautioning that caregivers must exercise "hyper-vigilance" in early symptom detection should claimant's shunt "back up from time to time," causing excess spinal fluid buildup in his brain. If claimant's symptoms are not identified early and he does not have surgery within 24 hours, claimant will sustain further brain damage and could die.

22. E.N. retained Keith R. Dippel, RN, to provide a report titled "Skill Level and Training Requirements for Non-Medical Caregivers." The report discusses claimant's brain shunt due to hydrocephalus, the causes, skills required for monitoring shunt failure, and a duty statement for caregivers. The greatest danger of brain shunt failure is cerebral spinal fluid accumulation in the brain, which can cause respiratory arrest and additional brain cell damage. Claimant's survivability is based on early recognition of the signs and symptoms of shunt failure. E.N. currently provides regular training to claimant's caregivers on detecting the subtleties of shunt failure and the importance of providing claimant with his anti-fungal medication. However, claimant desires an RN to provide training to his caregivers to meet the goals in his IPP and to ensure his health and safety.

23. E.N. also calculated the cost for a proposed RN trainer for claimant's caregiving staff at \$4,500 per year. The RN would write the protocols and teach the

caregivers about shunt protocol. The Year 2 budget prepared by ACRC proposes a licensed vocational nurse (LVN) at \$732.40 per year. E.N. disagrees with the use of an LVN for training caregiver staff.

24. E.N. asserts the high turnover of claimant's caregivers places a tremendous burden on him to provide regular training to caregivers, as well as hiring and firing them. Currently, claimant's agency is staffed with only two caregivers; he requires four in accordance with his November 2021 IPP. In order to retain qualified, competent caregivers, claimant must pay his caregivers at the rate of approximately \$30 per hour. Under the Year 1 budget, claimant can only pay his caregivers \$24/hour. Under the proposed Year 2 budget, the SLS caregiving rate is \$28.07 per hour. E.N. questioned the origin and accuracy of this rate, and in any case, he cannot hire caregivers at this rate, specifically in the Placerville area. E.N. asserted that ACRC has provided no evidence that qualified caregivers can be hired at \$28.07 per hour in his community.

25. Regarding the appropriate number of caregiver hours, ACRC posits there are 744 hours of caregiving hours per month, or 4,884 hours per year, a good starting point according to E.N. Subtracting claimant's 283⁸ hours of protective supervision under IHSS from 744 total hours, the difference is 461 hours. Multiply this by 12 months in the year, the total is 5,532 hours not covered by IHSS. Subtracting claimant's attendance at an adult development center at nine days per month (at six hours per

⁸ Claimant previously had 233 IHSS hours, which was the number used in ACRC's correction to the Year 2 budget.

day)⁹, or 672 hours per year, there remain 4,860 uncovered hours in a year. At \$30/hour, the annual cost for the uncovered hours is \$145,800.

26. In addition, E.N. asserted that claimant is required to use an FMS, but FMS is increasing its fee from 25 to 40 percent and there is no other FMS provider available. ACRC has not agreed to cover the increase in the FMS fee.

ACRC's Adjustment to the Year 2 Budget

27. On January 9, 2023, E.N. received a revised Year 2 budget from ACRC following the IPP meeting on January 4, 2023. ACRC increased the Year 2 budget from \$111,032.49, to \$149,309.15, which included an additional 20 hours per year for an LVN to train caregiver staff on claimant's shunt, medic alert, and an increase in transportation miles from 400 to 500.

28. Claimant rejected the increased Year 2 budget because it was not enough to cover his caregivers, as well as his current and unmet needs. E.N. requested:

- Please send us an SDP budget. What was sent is for SLS. SLS codes are used, and SDP codes are not used. Simply naming it "Self-Determination Program" does not make it an SDP budget.
- Also, please specifically address each of the 14 current and unmet needs described on p. 6 of

⁹ E.N. noted an error in his spreadsheet. It should have shown 56 hours per month of attendance at the adult development center.

[claimant's] SDP IPP budget. For convenience it is attached. These classify into seven SDP categories.

- Finally, please cite an authority that permits [ACRC] to involuntarily expel [claimant] from the [SDP], and to instead place him under a commercial SLS vendor omnibus services and payments cap, and into a budget that uses SLS codes (even if it is labeled "Self-Determination Program").

E.N. suggested that the proposed reserve of \$120,000 for legal representation would not need to be used if ACRC "stopped forcing [claimant] to litigate at OAH to obtain his rights."

29. On January 11, 2023, ACRC Client Services Manager Faye Tait assured E.N. that the Year 2 budget was "indeed the SDP Individual Budget calculation and certification tool (also known as the SDP budget or the IBCCT¹⁰)." She explained the SDP budget which is "formulated based on traditional services rates, and within traditional services Supported Living Services (SLS) is what most closely fits" claimant's

¹⁰ The ACRC Individual Budget Calculation and Certification Tool, or IBCCT, is a tool that guides the SDP Team in building the individual budget for the SDP Program participant. The IBCCT is table containing pre-entered formulas. It calculates the total annual costs of services based upon the type of service and the hourly or monthly rate of that service. Once all entries are made in the required fields, the amount of the SDP Annual Individual Budget is totaled at the bottom right of the table. The IBCCT must be certified by the regional center and the client. (Welf. & Inst. Code, § 4685.8, subd. (n)(1).)

needs. That is why "SLS" is shown on the budget. Claimant was not "expelled" from SDP. Ms. Tait also explained that the "budget and spending plan are [two] different things," in that the "budget is how much money we provide for services, based on what would be funded under traditional services." The spending plan is "how [claimant] chooses to use those monies within SDP." She addressed claimant's 14 current and unmet needs, stating the 14 needs are "covered under the traditional program" and would therefore be covered in the Year 2 budget as follows:

- 1) Employee Cost – This is covered under SLS
- 2) Skills coaching – This is covered under SLS and under Adult Development Center
- 3) [& 4)] Management of agency and employees – This is covered under SLS
- 5) Training of new employees – This is covered under SLS
- 6) CPR and First Aid – This is covered under SLS
- 7) Live scan fee – This is covered under SLS
- 8) Mileage – This is on the IBCCT under 880 and 875
- 9) Web domain – this is not a provision under traditional services
- 10) Office supplies – this would be included in SLS fees
- 11) FMS co employer cost – these are not a part of traditional services and are noted within the SDP to be

something that has to be accounted for out of the budget and that funds are not added to the budget to cover this¹¹

12) FMS Fiscal agent – [same as No. 10 above]

13) Day Program – This is covered under Adult Developmental Center

14) Legal representation – there are generic resources for legal supports and as such this would not be added to the budget

(As shown in original.)

30. E.N. disputed the use of traditional methods in SDP, and on January 12, 2023, he emailed Ms. Tait with his response, asserting that the “SDP is not a variant of traditional program [*sic*] such as SLS.” He further asserted, among other things, that “there is no legal basis to impose traditional program methods and constraints on an SDP budget,” and that doing so “violates both the federal contract that funds SDP, as well as pertinent state law.” E.N. again requested that ACRC provide an SDP budget counter-proposal or accept and fund claimant’s 2023 SDP IPP.

¹¹ Per a Department of Developmental Services Directive dated July 27, 2022, effective July 1, 2022, the cost of the FMS provider will be paid by the regional center outside of the participant’s individual budget.

CLAIMANT'S TESTIMONY

31. Claimant attends an adult day program two days a week. He enjoys the program and has many friends. He would like to attend every day but has not been approved for it. Claimant needs help with daily needs such as going to the bathroom and cleaning up. He believes he can cross the street by himself. He was recently hit by a car while riding his bike and broke his left tibia. Trina Butler is his caretaker. She cooks for claimant and takes him places. He cannot go places alone because he has no transportation. The places he likes to visit are not walking distance from his home. Claimant believes he could take the bus if he wanted to but does not have money for the bus. Claimant lives with his "older wiser brother. [His] choice."

ACRC's Evidence

ACRC SDP BUDGET PROCESS

32. ACRC's "Procedures Manual for SDP Procedures for Year 2 and Subsequent Years" (Year 2 Procedures Manual) sets forth, among other things, the SDP budget process. ACRC also has a Procedures Manual for the first year of SDP. Both manuals were admitted in evidence.

33. Both manuals state: "The [SDP] shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." In carrying out the federal mandate, "[a]ll [SDP] services are to be assessed under the traditional model of service delivery."

34. To initiate the budget process, the ACRC service coordinator schedules a planning team meeting to review the upcoming budget year. The purpose of the meeting is to: (1) review the prior year's IBCCT for any unmet needs or change in

circumstances; (2) discuss any additional services or services no longer needed, resulting in an increase or decrease to the budget; and (3) discuss current services and supports necessary to meet the participant's person-centered planning.

35. Based on the planning team's discussions, an SDP Participant Budget Worksheet (worksheet) is completed by the service coordinator and client services manager. They will then review the worksheet with the SDP team. The service coordinator then requests a copy of the IBCCT by sending an email to the SDP Budget mailbox, attaching the worksheet. The IBCCT is then generated. The service coordinator and client services manager review the IBCCT for accuracy. The service coordinator provides a copy of the IBCCT to the participant and planning team for final review and signature by the service coordinator and participant. A signed copy must be attached to the IPP.

36. If revisions need to be made to the IBCCT, the service coordinator will revise the IBCCT to reflect the following: services continuing with changes in hours/units, new services, unmet needs, and changes in circumstances. The service coordinator will then submit the revised IBCCT to the SDP Budget mailbox to request an updated copy of the IBCCT.

37. Once the budget is approved by the SDP team and certified by ACRC, the participant may draft a spending plan identifying the types and number of services and supports he intends to use. ACRC provides a spending plan guide/template for participants. The participant then selects an FMS agency to disburse funds in accordance with the spending plan. The participant may also choose an independent facilitator to negotiate with providers to determine the cost for each service, which includes wages, employee benefits, and payroll taxes.

CLAIMANT'S NOVEMBER 2021 IPP

38. The IPP meeting occurred on November 13, 2021. Present were claimant's IPP team consisting of claimant, E.N., and ACRC Service Coordinator Mr. Sherman. Claimant's goals were identified as participating in the SDP Program to support his living arrangements, community participation, and health and safety needs. Regarding claimant's caregiving hours, the IPP states:

[Claimant] receives maximum IHSS Protective Supervision hours. In August 2020 [ACRC's] Living Options Committee found [claimant] eligible for Supported Living Services (SLS) for all hours in the month wherein IHSS is not provided; however, waiver SLS vendorization and funding was not rapidly provided. Consequently, on May 20, 2021, attorney Laurence Padway filed an action on [claimant's] behalf with [OAH]. In partial settlement [ACRC] offered [claimant] participation in the new [SDP] with sufficient funding to hire round-the-clock caretakers for all hours in a month not already funded by IHSS. Funding details are seen below.

39. The IPP showed a table SDP Services, their corresponding SDP Codes, and a total cost for each service. The total amount of the Year 1 budget corresponding to this IPP was \$214,085.92. Despite legal counsel costs being a generic service under the traditional model, claimant was provided a \$12,000 annual budget for legal counsel, funded under SDP service code 333, Participant-Directed Goods and Services. The reason for this funding was to aid claimant with the complexities of running a business involving "finding and interviewing candidates, conducting a background

investigation, processing, hiring, training, and supervising employees, and also engaging with [ACRC] on a variety of matters related to [his] Lanterman Act benefits.”

40. The Year 1 budget was approved on August 9, 2021. The corresponding spending plan was approved on October 25, 2021. The IPP was reviewed, approved, and signed by claimant on November 27, 2021.

TESTIMONY OF ACRC CLIENT SERVICES MANAGER SHARON WIGGINS

41. Ms. Wiggins has been an ACRC Client Services manager for over 15 years. Part of her duties are to prepare SDP budgets. She became involved with claimant’s case when he sought emergency caretaking services. She is familiar with claimant’s IPP and the services he needs. When developing claimant’s Year 1 budget, the SDP team, consisting of Ms. Wiggins, Mr. Sherman and ACRC Service Coordinator Kerrie Palmer, reviewed the services provided to claimant in the prior year. They converted the services to SDP code services, looked at the cost paid for those services from accounting. Claimant’s SDP budget was “one of the first we developed,” and ACRC “was getting to know the process as we went.”

42. In September 2022, Mr. Wiggins learned of the errors in the Year 1 budget when discussing the Year 2 budget with the SDP team. She then advised E.N. of the Year 1 budget errors, and after taking into account the errors, she informed E.N. that claimant’s Year 2 budget would be significantly reduced to \$111,032.49. E.N. was “pretty angry, was not listening, and not wanting to hear” that Ms. Wiggins wanted to “get the budget started” by providing continuous services to claimant. E.N. did not approve the significantly reduced Year 2 budget on behalf of claimant.

43. On September 28, 2022, E.N. sent Ms. Wiggins an “actual estimate for SDP for [claimant] for fiscal year 2022-2023” in the amount of \$185,316.¹² He explained that “costs last year are not predictive of costs this year,” and that the unused costs were due to claimant “struggling to find and hire workers.” E.N. also added that claimant “needs \$1,300 per month for professional management and advising,” will use \$1,000 of that funding for an attorney in Sacramento once the present appeal is finished, and that E.N., as a non-natural support, charges “\$300/mo to hire, train, and manage” claimant’s employees, “as well as do payroll, a lot of other paperwork, and also interact with [the ACRC] team.”

44. On September 30, 2022, E.N. informed Ms. Wiggins of claimant’s fair hearing request in the instant case. ACRC agreed to keep claimant’s services in place pending the outcome of the hearing. Ms. Wiggins helped to prepare the NOPA filed on October 11, 2022.

TESTIMONY OF ACRC SERVICE COORDINATOR KERRIE PALMER

45. Ms. Palmer has been a Service Coordinator at ACRC’s Placerville office for seven years. She has managed a “traditional” caseload of adults and children clients. On March 12, 2023, she switched to an SDP caseload, and only works with clients participating in SDP.

46. Ms. Palmer did not assist with claimant’s Year 1 budget but was involved with claimant’s Year 2 budget. The SDP team began by reviewing the IBCCT and expenditure report provided by the accounting department, taking the amounts ACRC expended for claimant’s Year 1 budget, and completed a budget worksheet. The

¹² A cost breakdown for this estimate was not provided in evidence.

budget worksheet was sent to the "budget worksheet inbox" where staff would "plug in the numbers," including the set rates for service hours.

47. Ms. Palmer found a duplication of services for claimant's day program and additional SLS hours that "put claimant over 744 hours," representing the total number of hours in a month. She adjusted the budget accordingly, with a newly reduced budget amount of \$111,032.49. Concerned that claimant's Year 2 budget was much lower than his Year 1 budget, Ms. Palmer proposed some ideas to the SDP team to increase claimant's Year 2 budget, such as using the highest rates for some codes, and looking at unmet needs that were not previously discussed. She was not aware that claimant could not hire caregivers based upon the \$28.07 per hour rate, and is not aware of whether ACRC can request more money from DDS based on lack of SLS providers.

48. Ms. Palmer made clear to the SDP team in an email dated September 29, 2022, that E.N.'s September 28, 2022, budget estimate which he submitted to the SDP team, amounting to \$185,316, was really a "spending plan" showing how much he wanted to pay his providers without knowing the actual SDP budget. For instance, E.N. listed the hourly cost of the day program as \$24 per hour, which is what he paid his vendor. However, ACRC's vendor rate is \$67.23 per day, or \$11.20 per hour. The budget is based off the rates of vendors that ACRC uses, not what a client has agreed to pay his service providers. She advised the SDP team to explain to E.N. that the SDP budget is based on traditional services and ACRC's vendor rates, which are determined by DDS and are fixed. And, although claimant wished to fund professional advising (legal representation), ACRC does not fund the monthly cost of professional advising in traditional services and would therefore not include this item in an SDP budget.

49. The SDP team revised claimant's Year 2 budget following the IPP meeting on January 4, 2023. Ms. Palmer emailed E.N. the revised Year 2 budget of \$149,309.15 as discussed above.

TESTIMONY OF ACRC CLIENT SERVICES MANAGER FAYE TAIT

50. Ms. Tait has been an ACRC Client Services Manager over the SDP Program for over three years. Her main role is to support participant choice and ensure clients are receiving services in SDP. In December 2022, Ms. Tait reviewed claimant's IPP and IBCCT. She characterized the IBCCT as a "fancy word" for SDP budget.

51. Ms. Tait explained the Year 1 budget process, which is based on the service expenditures provided 12 months prior to claimant starting SDP. Claimant's Year 1 budget was based on traditional services. The SDP team completed a budget worksheet for the IBCCT, and it was sent to a participant choice specialist to enter the rates for the budget. Ms. Tait added that rate adjustments may happen if the minimum wage increases, or there is a rate increase in traditional services which the legislature approves. The rate increases are passed on to SDP providers. Ms. Tait referred to the Department of Developmental Services (DDS) Directive dated September 15, 2022. The Directive provides regional centers with guidance for adjusting an SDP participant's individual budget when there are rate adjustments for vendored service providers. A regional center cannot adjust rates on its own. Those rate adjustments "must come from DDS."

52. Ms. Tait also acknowledged that claimant's Year 1 budget included "several hiccups" due to the erroneous inclusion of two day programs and additional SLS hours. Adjustments were made to exclude these items in the Year 2 budget.

53. For the Year 2 budget, the SDP team looked at unmet needs and any changes in circumstances. Ms. Tait stated: "[t]raditional services are still factored in to ensure we are spending the same in SDP as we would have spent for traditional services," referring to Welfare and Institutions Code section 4685.8, subdivision (m)(1)(B)(ii) [sets for the methodology for determining initial and revised individual budgets].

54. Ms. Tait testified about the proposed Year 2 budget of \$149,309.15, and how the SDP team arrived at that amount. Looking at the IBCCT she prepared, Ms. Tait explained each line entry. The first line entry was for the "Adult Development Center." She explained that claimant attended for nine days per month, at a rate of \$67.23 per day, or totaling \$7,260.84 for the year.

55. The second entry was for "Transportation Companies," totaling \$8,199.36. She did not comment on this line item.

56. The third entry was for "Supported Living Services," or SLS. The SDP team added additional hours due to claimant's "wake hours," as he is often awake during the night, and "wake hours" have a higher average rate than SLS services for "sleep hours." Claimant was provided with 384 "wake hours" under SLS services, amounting to \$129,346.56 at a rate of \$28.07 per hour, the highest rate.

57. The fourth entry was "Transportation Additional Component," where additional mileage was added to allow claimant to go to the store or social events, amounting to 500 miles per month, for a total cost of \$3,720, at \$0.62 per mile.

58. The SDT team also added additional line items to the Year 2 budget: a Lifeline Emergency Monitoring Medic Alert Membership at \$49.99 annually, and an

LVN at five hours per quarter, for a total of \$732.40. The total Year 2 budget was calculated as \$149,309.15.

59. Ms. Tait explained that during the January 4, 2023, IPP meeting, E.N. asserted that caregiving staff needed to be trained on symptoms to watch for regarding claimant's shunt. Although claimant desired an RN to train staff, Ms. Tait did not address the use of an RN versus an LVN for training purposes. She testified that claimant wanted LVN hours to train staff on claimant's shunt, and that claimant needed LVNs full-time. However, Ms. Tait asserted that claimant did not provide documentation to support full-time LVNs, and he did not receive LVN care at home. If claimant required LVN care "24/7," Ms. Tait asserted that claimant would be required to use a generic resource instead of SLS.

60. Ms. Tait then discussed her January 11, 2023, email to E.N., wherein she went through the 14-line items provided by E.N., and informed E.N. that the SDP budget is based on traditional services. Her testimony was consistent with that email. Regarding the FMS costs, she stated they were not added to the Year 2 budget because ACRC will pay for those costs directly. Regarding claimant's legal counsel costs, she stated these are a generic resource and legal representation would come from the Office of Clients' Rights Advocacy. The legal counsel item was removed from the Year 2 budget.

Analysis

SDP AND YEAR 2 BUDGET

61. The purposes of the Lanterman Act are to minimize institutionalization and enable claimant to approximate the pattern of living of nondisabled persons of the same age and to lead a more independent and productive life in the community.

Claimant, although eligible to live in an Intermediate Care Facility for Individuals with Intellectual Disabilities under Medicaid, has chosen to live with E.N. in his community. He has also chosen to participate in the SDP.

62. The SDP is a “voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in [his] IPP.” (Welf. & Inst. Code, § 4685.8, subd. (c)(6).) Claimant’s SDP budget must assist him to achieve the outcomes set forth in his IPP, ensuring his health and safety. Claimant shall utilize the services and supports available within the SDP only when generic services and supports are not available. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

63. Claimant’s November 2021 IPP identified claimant’s long-range goals of participating in the SDP “to support his living arrangement[s], community participation, and health [and] safety needs.” The November 2021 IPP was approved on November 27, 2021, and funded with an approved Year 1 budget of \$214,085.92.

64. Another SDP IPP was completed by claimant’s IPP team in January 2023 reflecting the same goals. However, that IPP was not reviewed, approved, or signed by claimant’s IPP team. In addition, the proposed Year 2 budget attached to the 2023 IPP amounting to \$323,867.35 was not certified nor funded. The most recent IPP in effect is claimant’s November 2021 IPP. Claimant’s Year 1 budget pursuant to the November 2021 IPP continues to be in effect pending the outcome of the instant case.

65. The current proposed Year 2 budget, in the amount of \$149,309.15, prepared by Ms. Tait and rejected by claimant, contained the additional categories of a medic alert membership and training of caregiver staff by an LVN. Additional SLS hours were added as well as an increase in transportation costs. FMS costs will be paid

outside of the Year 2 budget pursuant to a July 27, 2022, DDS Directive. Legal counsel costs were erroneously provided in the Year 1 budget but have been removed from the Year 2 budget because they are a generic resource. ACRC properly removed the duplicative day programs and unapproved SLS hours, as well as legal counsel costs.

CLAIMANT'S CONTENTIONS

Traditional Program Methods Precluded

66. Claimant does not believe there is a "legal basis to impose traditional program methods and constraints on an SDP budget," and asserts that ACRC is violating the federal contract governing the SDP and state law.

67. In accordance with the Welfare and Institutions Code, the "individual SDP budget shall be determined using a fair, equitable, and transparent methodology." (Welf. & Inst. Code, § 4685.8, subd. (c)(3).) This methodology, using the traditional method of service delivery, is set forth in Welfare and Institutions Code section 4685.8, subdivision (m)(1), as well as in ACRC's SDP Procedures Manuals. Specifically, the SDP budget methodology includes using the total amount of the most recently available 12 months of purchase of service expenditures with adjustments made due to a change in circumstances, needs, or resources. When making the adjustments, the SDP team must document the specific reasons in the IPP and must "certify on the individual budget document that the regional center expenditures would have occurred regardless of the individual's participation in the [SDP]." (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).) "The completed individual budget shall be attached to the IPP." (Welf. & Inst. Code, § 4685.8, subd. (j).)

68. While the intent of the SDP is to give claimant greater flexibility, choice, and control over decisions, resources, and desired services and support to implement

his IPP, SDP budgets must be established using traditional methodology. The SDP shall only fund services authorized pursuant to Welfare and Institutions Code section 4685.8. Specifically, claimant must utilize the services and supports available within the SDP only when generic services and supports are not available. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

69. Based upon the foregoing, claimant's contention that there is no legal basis to impose traditional program methods in establishing the SDP budget is unpersuasive and unsupported by law.

Higher Hourly Wage Needed to Hire Caregivers

70. At the January 4, 2023, IPP meeting, claimant identified the unmet need to fund SLS services at the rate at \$30 per hour in the Year 2 budget. Currently, ACRC pays \$28.07 per hour, which is the maximum rate it pays to SLS vendors. E.N. testified at hearing that based on his research, \$30 per hour is the more appropriate rate to attract qualified caregivers in the local area. E.N.'s testimony is persuasive in this regard.

71. Ms. Tait testified that ACRC "cannot adjust rates on its own" and adjustments "must come from DDS." However, the evidence did not establish that specific rates are set by regulatory mandate. Pursuant to California Code of Regulations, title 17, section 58660, it appears that SLS rates may be negotiated between the regional center and SLS provider and need not be subject to approval by DDS. In addition, it is the IPP team, not DDS, that shall determine the individual budget to ensure it assists claimant to achieve the outcomes in his IPP and ensures his health and safety. Therefore, in order for claimant to attract and retain qualified

caregivers in his community, the SLS rate consistent with E.N.'s persuasive testimony, in the amount of \$30 per hour, shall be added to the Year 2 budget.

Appropriate Number of Caregiver Hours is the Maximum

72. The evidence established that the Year 1 budget contained errors of duplicate day program services and additional SLS hours exceeding the 744 total caregiving hours in a month. The evidence also established that ACRC made corrections by deducting the cost of one full-time day program, and 233¹³ hours claimant received through IHSS from the 461 hours for SLS approved in the Year 1 budget.

73. Claimant did not dispute that there are 744 total hours per month for caregiving services, and asserted he needs all of those 744 hours approved for SLS, minus his 283 IHSS hours and his 56 hours for the day program, for a total of (approximately) 405 additional SLS hours that are needed. The reason for the additional SLS hours is for claimant's "round-the-clock supports and services" to keep him health and safe. Moreover, claimant's November 2021 IPP shows claimant is eligible for sufficient funding to hire round-the-clock caregivers "for those hours in a month not already funded by IHSS." Thus, the intent and goal of claimant's IPP is to fully fund all available SLS hours. ACRC's upward adjustment to 384 SLS hours is insufficient. Claimant must be provided with 405 SLS hours in his Year 2 budget.

¹³ As indicated above, claimant currently has 283 IHSS hours.

Funding of FMS Fees Must be Included

74. Claimant asserts his Year 2 budget must include payment of the increase in FMS costs. E.N. testified that FMS has requested a 40 percent increase in its fees, which ACRC previously did not agree to fund. However, based upon a July 1, 2022, DDS Directive, the FMS costs will be paid by the regional center outside of the participant's individual SDP budget.

RN is Required to Train Caregiver Staff

75. Claimant desires that an RN train his caregiver staff at a cost of \$4,500 per year, in order to carry out IPP his goals and objectives. In contrast, ACRC proposes that an LVN train claimant's caregiver staff at a cost of \$732.40 per year. Claimant asserts that an RN trainer is necessary to develop and write the shunt protocols, and that an RN has the necessary skills and knowledge required to train staff to monitor shunt signs and symptoms of failure, and to take the appropriate actions and interventions needed. He provided a report written by Keith R. Dippel, RN, which explained claimant's brain shunt and the dangers of failing to recognize early signs and symptoms of shunt failure.

76. Ms. Tait disagreed with claimant's need for an RN to train his caregiver staff. Her testimony contradicts E.N.'s, in that she claimed it was E.N. who wanted an LVN to train claimant's caregiving staff, and that claimant needed LVNs full-time to care for him. Ms. Tait believed claimant's request for full-time LVN care is currently unjustified, and a generic resource would be required.

77. Based upon E.N.'s credible testimony of the need for an RN to train staff, supported by the report by Keith R. Dippel, RN, there exist real potential dangers to claimant, including death, if his staff are not trained by a high-level medical

practitioner like an RN. Claimant's November 2021 IPP did not address the need for an RN to train claimant's caregiver staff. This is a new need that must be addressed in the 2023 SDP IPP and added to Year 2 budget. ACRC's contention that claimant requires a full-time LVN for caregiving was not addressed at hearing.

Cost of Legal Representation

78. Claimant desires a "budget to pay the cost of an attorney." He has had to file two fair hearing requests to "force" ACRC to provide statutory benefits to which he believes he is entitled. This is an unmet need which claimant believes must be included in the Year 2 budget. The SDP team removed legal counsel costs from the Year 2 budget, as it is a generic resource. Claimant's need for legal counsel continues. Claimant relied to his detriment on the approved Year 1 budget allowing for legal counsel costs. Taking this valuable service away from him will cause him undue hardship, is not consistent with his November 2021 IPP goals and objectives, and will not ensure his health and safety due to loss of services. However, because the IPP team must employ traditional methodology in establishing the Year 2 budget, the IPP team must first consider generic sources for legal counsel costs. If none are to be had, the IPP team must include legal counsel costs in the Year 2 budget.

Conclusion

79. Equitable estoppel may be asserted against a governmental entity in an administrative proceeding. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 405-407.) Generally speaking, four elements must be present: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he

must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489.)

80. Despite claimant's contrary assertions, the elements of equitable estoppel are not all present here. Claimant was apprised of the Year 1 budget, agreed to manage his expenses within it, was not aware of the errors in the Year 1 budget, and relied upon the Year 1 budget by agreeing to participate in SDP. However, it cannot be established that ACRC was apprised of the facts. There is ample evidence that ACRC had no knowledge of the errors in the Year 1 budget when it was approved. Thus, ACRC is not estopped from reducing its Year 2 budget to address the errors and properly did so.

81. There is currently no SDP IPP to which the Year 2 budget can attach. A 2023 SDP IPP must address claimant's changes in circumstances and any unmet needs and ongoing needs. One of the changes in circumstances is claimant's inability to hire qualified caregivers in his community. Another change in circumstance is that claimant currently has two caregivers, while his November 2021 IPP approved four. Surely there are more, including any unmet and ongoing needs that still need to be addressed before the Year 2 budget can be finalized. Claimant's contentions discussed above may be addressed at that time.

82. Based upon the foregoing, claimant's Year 2 SDP budget funding shall continue at the Year 1 level. A 2023 SDP IPP shall be completed and approved in accordance with Welfare and Institutions Code section 4685.8. The Year 2 budget shall attach to the finalized 2023 SDP IPP for approval by the IPP team.

LEGAL CONCLUSIONS

Fair Hearing and Burden of Proof

1. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700 through 4716.) Claimant requested a fair hearing to appeal ACRC’s reduction to his Year 2 budget. ACRC, as the party seeking to reduce the Year 2 budget, has the burden to establish that the budget reduction is necessary and authorized by law. Claimant has the burden to establish that additional funding in the Year 2 budget is necessary to meet his goals and objectives in his IPP and to ensure his health and safety. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161. The standard of proof in this case is a preponderance of the evidence. (Evid. Code, § 115.)

“Developmental Disability” Under the Lanterman Act

2. Pursuant to the Lanterman Act, regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as “a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism.”

“Services and Supports” Under the Lanterman Act

3. Through the Lanterman Act, the Legislature created a comprehensive scheme to provide “an array of services and supports . . . 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.” (Welf. & Inst. Code, § 4501.) The purpose of the provisions of the Lanterman Act are: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750-4751; See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. “Services and supports for persons with developmental disabilities” means “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability, or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives Services and supports listed in the individual program plan may include, but are not limited to . . . special living arrangements, . . . adaptive equipment and supplies, . . . emergency and crisis intervention . . .” (Welf. & Inst. Code, § 4512, subd. (b).)

Implementation of Statewide Self-Determination Program

5. Welfare and Institutions Code section 4685.8 became effective on June 30, 2022. This section requires DDS to implement a statewide Self-Determination Program. Subdivision (a) provides:

The [SDP] shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice,

and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. As of July 1, 2021, the program shall begin to be available on a voluntary basis to all regional center consumers who are eligible for the [SDP].

PARTICIPANT'S RESPONSIBILITIES UNDER THE SDP

6. Welfare and Institutions Code section 4685.8, subdivision (d)(3), provides in pertinent part that the participant in the SDP shall:

(B) utilize the services and supports available within the [SDP] only when generic services and supports are not available.

(C) only purchase services and supports necessary to implement their IPP and shall comply with any and all other terms and conditions for participation in the Self-Determination Program.

PURCHASE OF SERVICES AND SUPPORTS TO ACHIEVE OUTCOMES IN IPP

7. Welfare and Institutions Code section 4685.8, subdivision (j) provides:

The IPP team shall utilize the person-centered planning process to develop the IPP for a participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the

participant to achieve the outcomes set forth in the participant's IPP and ensures their health and safety. The completed individual budget shall be attached to the IPP.

Subdivision (k) provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4685.5.¹⁴ A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

ANNUAL INDIVIDUAL BUDGET UNDER THE SDP, ADJUSTMENTS DUE TO CHANGE IN CIRCUMSTANCES

8. Welfare and Institutions Code section 4685.8, subdivision (m), provides in pertinent part:

(1) The IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

¹⁴ Welfare and Institutions Code section 4648.5 was repealed on January 1, 2022.

(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:

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.

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 [SDP].

(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).

[¶] ... [¶]

Subdivision (o) states:

Consistent with the implementation date of the IPP, the IPP team shall annually ascertain from the participant whether there are any circumstances or needs that require a change to the annual individual budget. Based on that review, the IPP team shall calculate a new individual budget consistent with the methodology identified in subdivision (m).

Conclusion

9. ACRC established by a preponderance of the evidence that reductions to the Year 2 budget were necessary and in accordance with the applicable law, as set forth in Factual Findings 65 and 80. Claimant established by the preponderance of the evidence that his Year 2 SDP budget funding should continue at the Year 1 level, in the amount of \$214,085.92, as set forth in Factual Findings 70 through 78, 81 and 82. ACRC's revised Year 2 budget, in the reduced amount of \$149,301.15 shall not be certified for the Year 2 budget.

10. Claimant's contentions at hearing are determined as follows:

(a) As set forth in Factual Findings 66 through 69, there is a legal basis to impose traditional program methods and constraints on an SDP

budget. Fair, equitable, and transparent methodology is to be utilized, and that methodology is provided in Welfare and Institutions Code section 4685.8, subdivision (m)(1), as well as in ACRC's SDP Procedures Manuals.

- (b) As set forth in Factual Finding 70, an appropriate SLS rate of \$30 per hour shall be addressed in claimant's 2023 SDP IPP and shall be included in the Year 2 budget. (Welf. & Inst. Code, § 4685.8, subd. (m)(1); Cal Code Regs., tit. 17, § 58660.)
- (c) As set forth in Factual Findings 38, 72, and 73 claimant must be granted the 405 per month SLS hours he requires to meet his unmet caregiving needs in his Year 2 budget. (Welf. & Inst. Code, §§ 4648, 4685.8, subd. (m)(1).)
- (d) As set forth in Factual Findings 29, 60, 65, and 74, claimant's FMS costs will be paid outside of his Year 2 budget per a DDS Directive dated July 27, 2022, which became effective July 1, 2022. Claimant's FMS costs were properly removed from the Year 2 budget.
- (e) As set forth in Factual Findings 21 through 23, and 75 through 77, claimant's unmet need for an RN to train his caregiving staff on his brain shunt and other medical needs is justified and warranted. His IPP team shall document this item in his 2023 SDP IPP and add it to the Year 2 budget. (Welf. & Inst. Code, § 4685.8, subds. (d)(3)(B) & (m)(1).)
- (f) As set forth in Factual Findings 29, 60, and 78, claimant's legal counsel costs, a generic resource, must be addressed by his IPP team in his

2023 SDP IPP. If no generic services or supports are available, and changed circumstances or unmet needs exist, the IPP team shall include this item in the Year 2 budget. (Welf. & Inst. Code, § 4685.8, subds. (d)(3)(B) & (m)(1).)

ORDER

Claimant's appeal is GRANTED.

DATE: March 23, 2023

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.