

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022110559

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 4, 2023.

Michael Nelson, Program Manager, represented Westside Regional Center (WRC or Service Agency).

Claimant's mother, who is claimant's authorized representative, and claimant's father represented claimant, who was not present. The names of claimant and his family members are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 4, 2023.

ISSUE

Whether the Lanterman Developmental Disabilities Services Act (Lanterman Act) requires the Service Agency to fund for an iPhone 13 (or another appropriate iPhone model to replace claimant's iPhone 7) through claimant's Self-Determination Program (SDP) budget.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1 through 11; claimant's exhibits C1 through C5.

Witnesses: Claimant's mother and father.

FACTUAL FINDINGS

Parties, Jurisdiction, and Claimant's Individual Program Plan

Claimant, a 17-year-old male, is an eligible consumer of WRC based on his diagnoses of Autism Spectrum Disorder (ASD) and mild intellectual disability (ID). He lives in his family home with his parents and a sister; two other siblings reside elsewhere.

1. Around early October 2022, claimant's parents asked WRC to allow claimant to reallocate SDP budget funding to permit him to purchase a more recent iPhone model to replace his iPhone 7. (See ex. 11, Purchase of Service Request dated October 11, 2022.)

2. By a Notice of Proposed Action (NOPA) and letter dated October 18, 2022, WRC informed claimant's parents that it had decided to deny their "request to fund for an iPhone 13 . . . as part of the Self-Determination Program (SDP)" (Ex. 3, p. A15.) (The NOPA also addressed claimant's request for funding for AirTags; claimant's mother withdrew that request in the Fair Hearing Request, so the related NOPA language is omitted here.) WRC based its decision on requirements that "a participant in SDP shall utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available," citing Welfare and Institutions Code section 4685.8 (subsequent statutory references are to the Welfare and Institutions Code); that claimant's parents must exercise responsibility, citing section 4646.4; and that the iPhone upgrade is not cost effective, citing sections 4646, 4648, subdivision (a)(6), and 4651. (Ex. 3, p. A15.)

3. On October 25, 2022, claimant's mother filed a Fair Hearing Request requesting, in part, that WRC fund through the SDP budget an iPhone 13 or equivalent to replace claimant's iPhone 7.

4. In a letter dated November 17, 2022, WRC noted there had been an informal meeting on November 10, 2022, to discuss the Fair Hearing Request. WRC again denied the request to reallocate some SDP budget funding to upgrade claimant's iPhone 7. WRC wrote that a cellphone is a generic commodity, that claimant "can Google transportation routes and maps," and that claimant may be able to download apps other than the Metro app he desires, as well as "other generic options for tracking and location of devices" to assist him in the community. WRC also again wrote that a new cellphone would not be cost effective. (Ex. 4.) The matter did not resolve. This hearing ensued.

Claimant's May 2022 IPP

5. Claimant's most recent Individual Program Plan (IPP), dated May 6, 2022, notes that claimant "is learning to take the local bus and he is learning community independence through the support of his personal assistant staff." (Ex. 5, p. A17.) "[Claimant] can independently make a purchase without his parent's presence while at his favorite restaurant, Chipotle. [Claimant] cannot use the phone to make a call; he does not know his home or his parents' cell phone numbers." (Ex. 5, p. A19.) "[Claimant] continues to desire to reside in an apartment with a friend when he is twenty-two years old. He would also like to obtain a job and to drive a car. Presently, [claimant] is learning to take public transportation, specifically the bus, which he can take on his own using familiar routes and with a shadow." (Ex. 5, p. A20.) Claimant attends high school, with transportation via cab. "[Claimant] also enjoys going for walks around his neighborhood He also has fun going on car rides, taking the metro, bus and train. He is learning to take the bus" and doing other tasks to "[h]elp him be more independent." (Ex. 5, p. A22.) "The IPP planning team concluded that client's community integration and participation could be safe and enhanced through the use of public transportation services" and "has determined that generic transportation services are available and accessible. (Ex. 5, p. A23.)

6. According to the IPP, WRC funds, through claimant's SDP budget, adaptive skills training at To Live and Play in LA, for 11 hours per week for 26 weeks, to be renewed if appropriate. (Ex. 5, p. A32.)

Goods and Services in the SDP

7. A Department of Developmental Services (DDS) directive to regional center executive directors, dated January 13, 2022, offers guidance regarding goods

and services in the SDP, the key principles of which provide for participants' authority to control their budget to purchase needed services and supports to achieve their IPP goals. (Ex. 6, p. A35.) If a good or service is identified in the IPP, directly links to an identified IPP need or goal, and is not included in another service definition, and if there is no generic community resource available to provide the good or service, and the good or service promotes interdependence and inclusion in the community, then it qualifies for inclusion in the IPP and Spending Plan as a participant-directed good and service.

8. According to SDP service definitions, participant-directed goods and services include "equipment or supplies not otherwise provided through the SDP Waiver or through the Medicaid State plan that address an identified need in the IPP . . . and meet the following requirements: the item or service would decrease the need for other Medicaid services; promote interdependence, and inclusion in the community; . . . and the participant does not have the personal funds to purchase the item or service and the item or service is not available through another funding source. The participant-directed goods and services must be documented in the participant's Individual Program Plan and purchased from the participant's Individual Budget." (Ex. 7, pp. A62-A63.)

Adaptive Skills Training

9. An August 8, 2022 adaptive skills report from Clayton J. Johnson, M.A. LMFT, at To Live and Play in LA, identifies claimant's goals. "Client Goal #4" includes the following: claimant "will learn how to utilize and access public bus transportation independently. He will learn where he can locate the various bus stops are [*sic*] in his community and the difference between big blue bus, and LA metro bus. Client will

learn how to read a bus schedule and map to assist in identifying where the bus travels in Los Angeles community.” (Ex. C3, p. B10.)

10. “From not being able to take the bus as all, [claimant]'s progress has been steady and improving. For instance, [claimant] understands the steps of getting on the bus and utilizing his TAP card [a card passengers can pay to add value to in order to use the card to gain entry to a train or bus] . . . Client does not grasp how to read a bus schedule but does have mild to moderate understanding of how the bus map works. Client mildly understands that bus stops vary between distances. Client needs to understand where he is going beforehand so he can plan his destination and the appropriate bus stop to avoid confusion or getting lost in the community.” (Ex. C3, p. B10.)

11. Therapist treatment strategies are to include having claimant sequence the steps to access and read the bus schedule from the city website and save it to his phone; having claimant walk around his community with the therapist to observe and make memories to understand where the bus stops are and which number bus to take; and to have claimant make sure his phone is charged before leaving home.

Claimant’s Parents’ Testimony

12. Claimant’s mother testified that claimant’s iPhone 7 is obsolete. Apple no longer services the iPhone 7. The phone is not capable of downloading apps needed to allow claimant to access transportation and the community in ways that foster claimant’s independence. Claimant needs a fully functional and reliable replacement. Claimant’s mother requested an iPhone 10, 11, 12, or 13. Any recent model will suffice; it need not be the iPhone 14, the most recent model.

13. Claimant's current phone does not allow him to reach his IPP goal or his adaptive skills goal at To Live and Play in LA. Claimant cannot download the TAP app to his current phone. Although one may use a plastic TAP card, to which one may add value at a machine at certain transit stops, doing so rather than using the app and adding value through the app will limit his mobility and is not what his contemporaries do. It is important for claimant to use the TAP app to help him learn to manage his funds and further his goal of achieving independence.

14. Claimant's cellphone will not allow the TAP app to be installed. It will not allow claimant to install the Uber app or other rideshare apps, or taxi apps, to allow him to learn to schedule transportation and reach his destinations. The operating system, iOS 15.7.2, cannot be updated to a newer version and will not run the current version of useful transit apps. And the iPhone's storage is near capacity, and despite claimant's parents' attempts, additional storage space cannot be created.

15. Claimant's mother testified there is no generic source of the information claimant needs in order to access public transit and ridesharing services. His cellphone promotes independence and inclusion in the community, and should be included in the IPP and Spending Plan. Claimant's IPP planning team concluded claimant needs training to access public transport safely. (Ex. C4, p. B15.) Claimant's mother believes that includes technological support, and specifically an up-to-date cellphone. Because his old phone does not function adequately to support claimant's IPP goals, the price of a newer version of the iPhone should be paid out of the SDP budget. Claimant's parents cannot afford to purchase one themselves.

16. Claimant's mother just wants to reallocate funds already in the SDP budget to obtain this technology; claimant is not asking to increase the SDP budget. The one-time reallocation, claimant believes, will better help him achieve his goals.

17. Claimant's mother also testified claimant accesses the community by taking photographs, especially of cars, as he walks outside, but he must delete the photos because his phone's storage is at capacity.

18. Claimant's mother testified claimant's support staff told her they have been printing out transit timetables for claimant because his cellphone is unable to download transit and rideshare apps. That does not help him make progress toward achieving independence. She would like to use a few budgeted staff support hours to purchase the new iPhone. Claimant's SDP budget shows claimant has incurred community integration supports expenditures of \$16,225.59, out of \$38,632.20 in authorized expenditures, as of July 20, 2022. (Ex. 10.)

19. Claimant's father testified that To Live and Play in LA has found claimant's cellphone is not adequate to maintain his independence in the community. A phone with a current operating system and capacity would give him access to his hobby, photography in the community. The hobby builds claimant's self-confidence, lets his parents monitor his safety, and lets him communicate with his peers using the same electronic tools they use.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of his request to

reallocate funds in his SDP budget to purchase a newer iPhone. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

2. Because claimant seeks new benefits or services, he bears the burden of proving he is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence, which requires him to present evidence that has more convincing force than that opposed to it. (Evid. Code, § 115; *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act and the SDP

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

4. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (§§ 4502, subd. (b)(1); see also 4640.7, subd. (a).)

5. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for

the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, address the cost-effectiveness of the services and supports, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(D) & (E).) The IPP shall be modified by the planning team in response to the consumer's changing needs; if the consumer requests an IPP review, the IPP shall be reviewed within 30 days of the request. (§ 4646.5, subd. (b).)

6. As of July 16, 2021, the Lanterman Act requires DDS to implement a statewide SDP available in every regional center "to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP." (§ 4685.8, subd. (a).) The SDP is "a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning (PCP), in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion." (§ 4685.8, subd. (c)(6).)

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

8. Consumers in an SDP may only purchase services and supports necessary to implement their IPP. The services and supports must be eligible for federal financial

participation. Participants may use services and supports available within the SDP only when generic services and supports are not available, and shall manage SDP services and supports within their individual budget. (§ 4685.8, subds. (c)(6), (d)(3)(A-F), (e).)

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

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

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

12. Regional centers must ensure continuation of services and supports while the consumer transitions to an SDP, certify individual budgets, and train all service coordinators and fair hearing specialists regarding SDP. (§ 4685.8, subd. (r)(9).) They must review spending plans to verify that all goods and services are eligible for federal financial participation and are not available through a generic resource. (§ 4685.8, subd. (r)(6).)

Community Integration Services for Claimant

13. Claimant established that WRC must permit claimant to reallocate funding in his SDP budget sufficient to purchase a recent iPhone model, such as an iPhone 13. Doing so is consistent with, and is a cost-effective means of achieving, claimant's IPP goals for independence and community integration and his adaptive skills training goals. (Factual Findings 7-21.) The reallocation is the type of decision consumers in the SDP are encouraged to make in order to tailor their program more efficiently to their service needs. Service Agency failed to establish there are any generic resources available to meet this goal. This is a one-time purchase for the foreseeable future and not apt to jeopardize a balanced SDP budget claimant has so far developed and maintained. This is a need not provided for in the budget and would have existed regardless of claimant's participation in the SDP. Thus, an allocation of existing funds in claimant's budget to cover this expense is warranted.

14. WRC shall promptly convene an IPP meeting to include in claimant's IPP the purchase of a recent-model iPhone to help claimant achieve his community integration and independence goals. WRC will modify the SDP budget and spending plan to reflect a reallocation of already-budgeted funding.

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ORDER

Claimant's appeal from the Service Agency's decision to permit reallocation of SDP budgeted funds to pay for a recent-model iPhone is granted. The Service Agency shall promptly convene an IPP meeting to achieve this goal and to modify the SDP budget and spending plan to reflect the reallocation of funds.

DATE:

HOWARD W. COHEN

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.