

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

In the Matter of:

CLAIMANT

v.

CENTRAL VALLEY REGIONAL CENTER

OAH Case No. 2022110606

DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, conducted a fair hearing on June 26, 2023, by videoconference and telephone from Sacramento, California.

Jacqueline Molinet, Appeals and Compliance Coordinator, represented Central Valley Regional Center (CVRC).

Claimant's authorized representatives Michelle Smith (independent facilitator) and Elizabeth Hergenrader (support staff team member) represented Claimant, who was not present.

Evidence was received and the record left open until June 28, 2023, to allow CVRC and Claimant to submit supplemental information regarding the smart phone funding request. CVRC filed its supplemental information on June 27, 2023, which was

marked and admitted as Exhibits 22 through 28. Claimant filed his supplemental information on June 28, 2023, which was marked and admitted as Exhibit O. On June 28, 2023, the record was closed and the matter submitted for decision.

ISSUE

Did CVRC appropriately deny the use of funds in Claimant's Self-Determination Program (SDP) spending plan and budget to purchase a refrigerator, printer ink cartridges, and a smart phone for his cookie business?

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 23 years old and qualifies for Lanterman Act services through CVRC under the condition of moderate intellectual disability due to Down Syndrome. He receives services through the Self-Determination Program (SDP). One of claimant's identified goals in his Individual Program Plan (IPP) was to start and operate a small cookie business. Claimant requested CVRC to approve funding through the SDP to purchase a refrigerator, printer ink cartridges, and a smart phone for his cookie business.

2. On October 24, 2022, CVRC issued a Notice of Action (NOA) denying Claimant's request. CVRC reasoned that the requested items were neither specialized services nor supports or adaptations of generic services directed toward the alleviation of a developmental disability. Additionally, it claimed that generic resources such as assistance through the Department of Rehabilitation (DOR) had not been exhausted.

3. On November 7, 2022, Claimant, through his mother and authorized representative Ms. Hergenrader, filed a fair hearing request to appeal CVRC's decision. Consequently, the matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

Claimant's Cookie Business

4. Claimant lives with his parents and older sister in Clovis, California. He can complete most of his self-care, personal hygiene, and general grooming with minimal supervision and reminders. He has a variety of interests, including archery, gymnastics, and baking. Initially, he wanted to work at a coffee shop. Unfortunately, the regular workforce could not accommodate Claimant's pacing limitations. Thus, one of his dreams when starting to participate in the SDP was to start his own business where he could work at his own pace.

5. Claimant decided to start his own cookie-making small business called "[Claimant's] Famous Bakery," where he is "baking the world a better place, one cookie at a time." He obtained his food handler's license, took business development courses, and obtained a \$500 small business grant, which he used to develop his business logo and purchase baking equipment and ingredients. He bakes shortbread cookies in different shapes, dipped in chocolate or plain, with optional add-ins like walnuts and cranberries. Claimant has been selling his cookies for over a year on social media and at special events, and he reinvests money earned into his business. He frequently donates cookies to various charitable causes.

Claimant's Evidence

6. Claimant's cookie business is identified in his IPP. It is also instrumental to his community participation and socialization. Claimant's authorized representatives

acknowledged that the requested items would not be approved under a traditional model. However, they believe that the SDP allows more flexibility as long as the requested items are tied to goals in the IPP.

7. To date, Claimant has been using the family's home refrigerator to store his cookie ingredients and dough. His business has been growing and because he shares that refrigerator with three family members, refrigerator space is limited. Claimant would like to purchase a refrigerator for approximately \$800 to dedicate to his cookie business. Without such a refrigerator, he would be forced to turn down larger orders or multiple orders at a time.

8. Claimant was previously allowed to buy a printer for his cookie business using SDP funds. He would also like to purchase a printer ink cartridge subscription for approximately \$300 a year from SDP funds. The ink would be used to create branding on the cookie packages and advertising materials.

9. Claimant would also like to purchase an Apple smart phone of approximately \$1,500 from SDP funds. The primary purposes for the phone would be personal safety and real-time tracking by family members. He sometimes travels out of state with a performing gymnastics team or with support staff members outside the presence of his family. Thus, he needs a phone to call family and/or emergency assistance, and with tracking capability for his family to know his whereabouts. Apple phones have an application called Life 360, which would allow Claimant's family to have real-time specifics about Claimant beyond just his location. Additionally, Claimant is already familiar with Apple's operating system, and the rest of his family all have Apple phones. Claimant also intends to use the Apple smart phone for his cookie business, but that is secondary to his personal safety concerns.

10. Claimant has been trying to work with the DOR for assistance with his cookie business. However, it has been an arduous process for him with numerous complex application packets to complete. The DOR provides little assistance with completing the applications, and Claimant has had to use more SDP funds to pay staff members to assist him with those applications. At the time of hearing, the DOR was still reviewing Claimant's application for assistance.

CVRC's Evidence

11. Barbara Hurtado, CVRC's Assistant Director of Case Management Services, and Deidra Nelson, CVRC's SDP Participant Specialist, both testified at hearing. They are both very supportive of Claimant's cookie business and goals. They lauded his initiative and determination. However, CVRC believes that the requested items do not constitute specialized services and supports or special adaptations of generic services and supports directed to the alleviation of a developmental disability as required by the Lanterman Act. They are of general utility and not related to Claimant's developmental disability. Any cookie business owner would require a refrigerator, printer ink, and a smart phone to conduct business. Thus, they cannot be funded through SDP funds.

12. Additionally, Claimant was required to first exhaust available generic resources. CVRC referred Claimant to the DOR, a generic resource for those with disabilities who want to start a small business. DOR offers training, mentoring, and funding for startup goods and inventory.

13. To the extent Claimant's request for a smart phone is related to safety concerns, CVRC provided Claimant with information on how to obtain a free smart phone through the free government smart phone programs based on his qualification

for Supplemental Security Income and Medi-Cal. The government free smart phone can call 911 at any time, whether or not connected to WiFi. Additionally, the phone's location can always be tracked with Google's find-my-device feature. Furthermore, the free government phone has Scam ID and Scam Block features, which are tools to protect users from scams. The free government phone is thus an appropriate generic resource to address both Claimant's safety and business needs.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700–4716.)

2. The Lanterman Act sets forth the regional center's responsibility for providing services and supports for eligible persons with developmental disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) An "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . to support their integration into the mainstream life of the community . . . [and to] prevent dislocation of persons with developmental disabilities from their home communities." (*Ibid.*) Additionally, "[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served." (*Ibid.*)

3. Here, Claimant asserts that he should be entitled to use funds from his SDP spending plan and budget to pay for a refrigerator, printer ink cartridges, and a

smart phone, and that CVRC's denial constitutes a violation of the Lanterman Act. Claimant bears the burden of proving such a violation by a preponderance of the evidence. (See Evid. Code, §§ 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. Welfare and Institutions Code section 4512, subdivision (b), provides:

"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 an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the

effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, daycare, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of the individual's family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, childcare, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, telehealth services and supports, as described in Section 2290.5 of the Business and Professions Code, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for

parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. This subdivision does not expand or authorize a new or different service or support for any consumer unless that service or support is contained in the consumer's individual program plan.

(Emphasis added.)

5. Before considering a request to fund a particular item or service, whether under the traditional model or the SDP, regional centers are required to exhaust generic resources. "Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subd. (a)(8); see also Welf. & Inst. Code, §§ 4659 & 4685.8, subd. (m).)

6. There is no dispute that Claimant's cookie business is identified in his IPP. Moreover, the requested items would further and support that cookie business. However, a refrigerator, printer ink cartridges, and a smart phone are not specialized services and supports or special adaptations of generic services and supports. These are items that anyone would need to further their business, regardless of whether they have a developmental disability. Thus, they are not allowable items to purchase with SDP funds. Claimant concedes as much in acknowledging that the requested items would not have been approved under a traditional model. The same principle applies to SDP funds. That Claimant was previously permitted to buy a printer using SDP funds in contravention of the foregoing does not justify further ineligible purchases.

7. Even if the requested items were allowable, generic resources must be exhausted first. The DOR offers training, mentoring, and funding for startup goods and inventory, and Claimant has a pending application with the DOR. Claimant's frustration with the length and complexity of the DOR process is understandable, but cannot supplant the requirement to exhaust that generic resource. As for the smart phone, whether for safety or business purposes, Claimant has the option of receiving a free government smart phone. That phone has adequate safety and location tracking features. Although Claimant's family may prefer an Apple phone with more advanced features, such a preference does not justify the use of SDP funds.

8. In sum, Claimant is commended for his business initiative and determination. However, regardless of any sympathy and understanding for his requests, the Legislature has placed limitations on the use of available funds. Because the requested items do not constitute specialized services and supports or special adaptations of generic services and supports, and generic resources are available, Claimant cannot use SDP funds to purchase the requested items.

ORDER

Claimant's appeal of the denial of his request to use funds in his Self-Determination Program spending plan and budget to purchase a refrigerator, printer ink cartridges, and a smart phone for his cookie business is DENIED.

DATE: July 3, 2023

WIM VAN ROOYEN

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.