

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

In the Matter of:

CLAIMANT

vs.

CENTRAL VALLEY REGIONAL CENTER, Service Agency.

OAH No. 2022120643

DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on February 16, 2023, from Sacramento, California.

Jacqui Molinet, Appeals and Compliance Coordinator, represented Central Valley Regional Center (CVRC or service agency).

Vivian David-Nicolas, claimant's authorized representative, represented claimant.

Evidence was received, the record closed, and the matter submitted for decision on February 16, 2023.

ISSUE

The issues to be determined are: (1) whether funding for safety locks and installation should be added to claimant's self-determination budget; and (2) whether claimant can use his self-determination budget for safety locks and installation in his spending plan.

FACTUAL FINDINGS

Jurisdiction and Background

1. Claimant is an eight-year-old male eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.) Claimant lives with his parents and four siblings. His younger and older brothers have disabilities and receive services and supports. Claimant was a client of Valley Mountain Regional Center (VMRC) until the family moved from Turlock to Merced, California, in or around May 2022.

2. While a client of VMRC, claimant entered into an "Agreement for Purchase of Durable Medical Equipment" dated July 13, 2020, wherein VMRC agreed to pay the actual cost, up to a maximum of \$1,180, for two "Lock Key 2835 or equivalent" door locks for the front and back doors of claimant's Turlock home. A Lock Key 2835 is a mechanical door lock with a programmable numerical keypad on one or both sides. The door locks were purchased and installed in the family's home sometime after July 2020. It is unclear whether the door locks were double-sided.

3. VMRC's funding of the locks and installation were the result of an environmental occupational therapy (OT) assessment in March 2020 recommending

special locks be installed on the front and back doors of claimant's Turlock home. The therapist deemed the purchase "necessary and appropriate" to achieve the outcomes set forth in claimant's IPP and to ensure claimant's health and safety.

4. Claimant's VMRC Individual Program Plans (IPPs) for 2020 and 2021 identified various behaviors, including his "attempts to elope at any opportunity." Regarding claimant's "Safety Awareness":

His mother reported that he requires constant supervision and an adult nearby in all settings to ensure his safety; especially, since [claimant] is fascinated by trains and family lives near a train track. VMRC has funded for safety locks in the home to help ensure [claimant's] safety. [Claimant] has also received an Angel Sense GPS tracker and annual membership to wear at parent's discretion ... [Claimant] continues to benefit from wearing a Medic Alert identification emblem at all times while out in the community.

5. When the family moved to Merced, they removed and took the VMRC-funded door locks with them and placed them in storage, where they currently remain. The family's relocation caused claimant to transfer to the CVRC catchment area where he became a client of CVRC, met with his new IPP team on May 27, 2022, and developed an initial Individual Program Plan (IPP) with an implementation date of July 2022. An IPP is a plan developed by regional center representatives, regional center clients, and interested parties that identifies the goals, services, and supports that will allow the client to live independently and participate in community activities.

6. Claimant elected to continue to receive self-determination services and supports under the Self-Determination Program (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] IPP.” (Welf. & Inst. Code, § 4685.8, subd. (a).) Under the SDP, the IPP team “shall utilize the person-centered¹ planning process to develop the IPP” for claimant. (Welf. & Inst. Code, § 4685.8, subd. (j).) Claimant’s IPP, SDP, and person-centered plans are more specifically discussed below.

Request for CVRC Funding for Keyless Door Locks and Installation for Merced Home

7. In November 2022, claimant’s mother requested CVRC fund the cost and installation of four JounJip Double-Sided Keyless Mechanical Door Locks, and one Cal Security Enterprises Double-Bolt Lock for the master bedroom sliding door. The reason for the request was to prevent claimant’s consistent determination to elope from the family home and to ensure his safety.

¹ 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. Regional centers may purchase the Initial Person-Centered Plan from vendored providers or non-vendored providers with training or certification in the person-centered planning process. (<https://www.dds.ca.gov/wp-content/uploads/2022/07/Person-Centered-Planning-and-Self-Directed-Supports-Guidance-07282022.pdf>.)

8. CVRC issued a Notice of Proposed Action (NOPA) effective November 17, 2022, "denying Supplement locks for door within family home." CVRC's brief reason for the denial was because claimant's request did "not promote independence and is not least restrictive," and "the locks are not specialized or adaptive for a developmental disability."

9. Attached to the NOPA were 14 pages of excerpts from the Welfare and Institutions Code, and a four-page chart titled "Self-Determination Program (SDP): What can or cannot be paid for and why?" The chart provided an extensive list of goods and services that could or could not be funded under the SDP. Under the category "Home and Living Expenses," CVRC indicated expenses for "disability-related environmental accessibility adaptation necessary to implement [a claimant's] IPP" are allowed. CVRC explained in the chart that such adaptations are made to a person's home related to their disability, ensuring their health, welfare, and safety, or increasing the individual's independence within their home (for example, a ramp, grab bars, door opener)." CVRC posited that the requested locks are not the least restrictive means to ensure claimant's health, safety, and welfare or to achieve the outcomes set forth in claimant's most recent IPP, discussed below.

10. On December 12, 2022, claimant's mother signed and thereafter submitted a Fair Hearing Request appealing CVRC's denial of claimant's request for four JounJip Double-Sided Keyless Mechanical Door Locks, one Cal Security Enterprises Double-Bolt Lock for the master bedroom sliding door, and the cost of installation.

11. An informal meeting was held on or about December 28, 2023, to discuss claimant's appeal. Present at the meeting were claimant's mother, claimant's advocate Vivian David-Nicolas, and Jacqui Molinet, CVRC's Appeals and Compliance

Coordinator. At the informal meeting claimant's mother and Ms. David-Nicolas explained that claimant is inquisitive, active, and attracted to loud, moving objects. He will attempt to elope from the house and run towards the objects, such as cars, planes, and trains. He can move chairs or stack objects to reach and unlock the chain locks located at the top of the doors. He has successfully eloped from home, and on three occasions, sheriff's deputies were called to locate him. He has attempted to scale the backyard fence to access the neighbor's pool. Safety awareness is a goal he is working on. Despite this discussion, Ms. Molinet maintained that CVRC must consider the least restrictive and cost-effective options. In a letter dated December 28, 2022,² memorializing the informal meeting, Ms. Molinet wrote:

Not only are Double Sided Keyless Mechanical door locks not necessary nor cost-effective, [they create] a safety concern for anyone in the home by requiring a numerical code at all times to unlock the exits. Pursuant to the California Building Code, egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. (Cal. Code Regs., tit. 24, § 1010.1.9.)

Ms. Molinet thanked claimant's mother and Ms. David-Nicolas for meeting with her and reiterated that CVRC must continue to deny claimant's request for keyless locks and installation. This hearing followed.

² Ms. Molinet's letter was erroneously dated December 28, 2023.

Claimant's Evidence

CLAIMANT'S PERSON-CENTERED PLANS FOR YEAR 1 AND YEAR 2

12. As stated above, under the SDP, the person-centered planning process must be utilized to develop the IPP. Claimant's Year 1 Person-Centered Plan (PCP) was completed in November 2021 while he was still a client of VMRC. The 19-page PCP set forth claimant's strengths, interests, goals, and desires, and provided an action plan and spending summary for claimant's living arrangements, health and safety, and employment and community participation. The PCP described claimant's attempts at elopement as follows:

I have tried to jump the wired fence by my house as I live in an area that is open to the freeway and trains (see pictures) when I see something that I like (especially trains). In addition, I like to open the windows and climb out of them. I also don't like wearing my tracking device on my clothes as I don't like to have a lot of clothes on and wearing it also bothers me as it doesn't feel comfortable. Currently the regional center provides a tracker and medic alert.

13. Claimant's Year 2 15-page PCP was completed in August 2022 after he became a client of CVRC. The PCP addressed many of the same items in claimant's Year 1 PCP, including claimant's attempts at elopement. Claimant's "Desired Outcome" in keeping him safe was described as follows:

I need help managing my safety due to risk of elopement. I will need to undergo an environmental accessibility evaluation to determine if I can have a safety door(s) or

equivalent equipment help prevent me [*sic*] from easily eloping from my home.

Claimant's "Current Level" of elopement was described as follows:

I often become overstimulated by my environment or under stimulated where I will oftentimes take off my clothes and run outside. While there are cameras to help monitor my safety, they are not able to catch up to me quickly enough. Therefore, I need a safety door to prevent me from easily eloping from my home.

The "Action Steps" were to be as follows:

Pending on outcome of the evaluation, any services eligible will be requested of CVRC[.]

CLAIMANT'S CVRC JULY 2022 IPP

14. Claimant's IPP meeting with CVRC took place on May 27, 2022. An initial IPP was developed and completed in or around August 2022, by claimant's mother, claimant, and Houa Vang, CVRC's Service Coordinator (IPP team), while claimant's parents worked on getting claimant's services transferred to Merced, such as his Medi-Cal, school, medical providers, and SDP services. The IPP team identified claimant's long-range goals, including "maintain[ing] safety and increas[ing] awareness of his surroundings."

15. Under the heading "Behavioral Health," the IPP team noted in pertinent part: "When upset, [claimant] will yell, bolt (elope) outside if he sees an opportunity."

The IPP team identified the desired outcome as developing claimant's positive social skills and health boundaries with others.

16. The IPP team developed "Plans" to achieve the desired outcome, consisting of: (1) allowing claimant to verbally express his feelings; (2) increasing claimant's ability to verbally state his needs without getting upset; (3) helping and supporting claimant to stay calm and listen to what claimant is trying to communicate; (4) providing positive reinforcement through praise and encouragement; (5) receiving continued Applied Behavioral Analysis (ABA) services through Autism Learning Partners to develop positive coping skills and increase positive social skills; and (6) monitoring objectives on an annual basis as needed. The IPP plans did not mention performing an environmental accessibility assessment as set forth in claimant's PCP, or the use of double-sided keyless locks to keep claimant safe at home.

AUGUST 1, 2022 IPP ADDENDUM

17. Claimant's IPP team drafted an addendum dated August 1, 2022 to his original IPP referenced above. The addendum addressed the family's request to move monies from the community living support service code in his SDP budget to three new service codes that address the need for respite, the purchase of a tandem bike for socialization, and speech applications of communication support. The desired outcome of this addendum was for claimant to continue to reside with his family and to have his daily living needs met. The addendum did not address claimant's desire to manage his safety due to risk of elopement by the use of double-sided keyless locks.

ABA ASSESSMENT

18. Autism Learning Partners, claimant's ABA provider, completed a lengthy Behavioral Health Service Progress Report dated January 23, 2023. Dylan Albiani,

Behavioral Analyst for Autism Learning Partners, wrote the report. The report analyzed, among other things, claimant's elopement behaviors:

[Claimant] has increased maladaptive behavior such as elopement from the home and climbing unsafe objects.

[¶] ... [¶]

Clinical justification for current hours requested (20 per week) are due to increase in elopement, climbing, and sensory seeking behaviors. Elopement is a safety concern as [claimant] will elope by running out of the house or climbing the backyard fence. Family is currently working on making the house safer to avoid these behaviors, however it is still a medically necessary [*sic*] that [claimant] learn to communicate his needs to replace elopement behaviors.

19. Mr. Albani provided a Behavior Intervention Plan for claimant's elopement behaviors. His recommendations to claimant's parents included: engaging claimant in a less preferred activity before giving him access to a preferred activity; providing claimant with clear expectations for routines, activities, and expected behaviors in advance; giving claimant choice making to increase motivation and a sense of shared control; restricting access to preferred items/activities to encourage appropriate requesting for those items; and developing and following through with a daily routine for eating and sleeping to establish structure and encourage predictability.

20. In an email dated January 25, 2023, Mr. Albani informed claimant's mother that he "wrote up a document providing a brief overview of what we are

currently working on in sessions.” He was referring to his Behavioral Health Service Progress Report dated January 23, 2023, referenced above. Although he did not discuss the installation of safety locks in claimant’s Behavior Intervention Plan, Mr. Albiani expressed the opinion in his email that “installing these locks are critical in keeping [claimant] safe.”

MOTHER’S TESTIMONY

21. Claimant’s mother testified about claimant’s elopement behaviors. Claimant displays aggression and lacks safety awareness. She is familiar with the behavioral strategies set forth in Autism Learning Partners’ Behavioral Report, has received training and experience in ABA, and practices the strategies. Despite her efforts, she is not able to stop claimant from eloping from the family home, as he is very “quick” and “sensory active” to loud noises such as helicopters, lawnmowers, street sweepers, trucks, and motorcycles. He becomes “fixated” on the noises and is drawn to them.

22. The family had self-locking doors at their former home in Turlock, and despite these safeguards, claimant “escaped a lot.” She described one scary event when claimant climbed on a chair, unlocked the door, and ran out towards the nearby railroad tracks. The family could not find him, called the sheriff’s office, and eventually found claimant near the sound barrier by the train tracks. Eventually VMRC funded keyless door locks and claimant’s eloping ceased until the family moved to their current home in Merced.

23. Claimant’s family lives within walking distance to a main street and a nearby creek. The neighborhood is located in a flood zone. During recent rains the family had to evacuate due to flooding. As claimant gets older, he moves faster and

jumps higher. He is able to climb chain link fences. The neighbor next door has a built-in swimming pool which claimant's mother described as a "big trigger" for elopement. Claimant cannot swim. Thankfully, claimant has not yet climbed over the wooden fence between the two backyards to access the neighbor's pool. The pool does not have a safety fence or barrier surrounding it.

24. The family has window and door sensors, but claimant's mother claimed that the sensors can "pop off, get knocked off, or come out of alignment." She asserted that the sensors are not effective in preventing claimant from eloping.

25. Claimant has an "Angel Sense" Tracker - a global positioning system (GPS) tracking device, which helps to locate him. However, he does not always wear the tracker vest and claimant's mother asserted that the Angel Sense Tracker will not prevent him from eloping.

26. The family currently has regular door locks with slide bolt latches located at the top of the doors. Claimant is able to unlock both the door locks and slide bolt latches. Claimant's long-range goals in his IPP are to maintain safety and increase awareness of his surroundings. Claimant's mother asserted that unless the family installs double-sided keyless locks, they will not be able to keep claimant safe in conformance with his IPP, and they will not be able to remain living in their home. The family also faces the possibility of claimant living in a facility that is more restrictive. The family cannot afford to purchase and install the requested locks on their own.

TESTIMONY OF CVRC STAFF

27. Claimant called CVRC staff Samantha Carmichael, Amy Patterson, and Anthony Ash as witnesses. They testified as follows:

Ms. Carmichael is a Participant Choice Specialist in the Self-Determination Unit. She has not met claimant, nor has she visited claimant's home. Ms. Carmichael is aware that claimant frequently elopes from the home, and that claimant's home does not have double-sided keyless locks. She asserted that CVRC "will honor the services of the last regional center until [claimant's] next IPP."

Ms. Patterson is a Board Certified Behavioral Analyst for CVRC. She has not met claimant nor has she spoken to claimant's parents regarding their request for double-sided keyless locks. She has not spoken to claimant's ABA team members. She was not part of IPP team and does not know much about SDP, environmental accessibility, or emergency response systems.

Mr. Ash is an Associate Clinical Social Worker. He also was not part of the IPP team and generally does not attend IPP meetings unless invited. He was not invited to any of claimant's IPP meetings.

CVRC's Evidence

CLAIMANT'S SELF-DETERMINATION PROGRAM

28. Claimant's monthly SDP services include: 33 personal attendant hours; 30 respite hours; 30 financial management service hours; and funding for social recreation and occupational therapy. The current IPP stated that "a new budget/spending plan will be developed in July 2022 based on ongoing and unmet needs."

29. CVRC developed a new Individual Spending Plan for the period September 1, 2022 through August 31, 2023, based on ongoing and unmet needs. Claimant's spending plan includes: (1) "Community and Living Support Services" in the amount of \$8,895.37; (2) "Community Integrated Supports" in the amount of

\$11,608.94; (3) "Independent Facilitator" in the amount of \$2,500; (4) "Personal Emergency Response Systems" in the amount of \$749.40; (5) "Training and Counseling Services for Unpaid Caregivers" in the amount of \$380; and (6) "Health and Safety Requested Services" in the amount of \$1,129.40. The total budget amount is \$26,053.71. The "Health and Safety Requested Services" in the spending plan are for claimant's Personal Emergency Response System (\$749.40) and Training and Counseling for Unpaid Caregivers (\$380). Double-sided keyless door locks have not been approved for inclusion in the budget or spending plan under the category of Health and Safety.

CVRC'S WITNESSES

30. In addition to testifying in claimant's case, Ms. Carmichael, Ms. Patterson, and Mr. Ash testified on behalf of CVRC. Ms. Carmichael asserted the IPP team was aware of claimant eloping from the family home. Claimant's safety was considered when double-sided keyless locks were requested and reviewed. CVRC has a policy against purchasing items that pose a risk. Ms. Carmichael asserted that double-sided keyless locks are a safety risk. They create a safety concern for anyone in the home by requiring a numerical code at all times to unlock the exits.

31. Ms. Carmichael addressed budget adjustments that were made based on claimant's needs. Adjustments were made for 33 personal attendant hours per month, and 30 respite hours per month, totaling \$17,961.84 in budget adjustments. The budget was not adjusted to include the requested locks and installation. The locks were not approved to be added to the budget nor was money allowed to be allotted to locks and installation on the spending plan, due to reasons relating to claimant's safety.

32. Ms. Patterson asserted CVRC must use the least restrictive option to prevent eloping. Mechanical restraints such as a double-sided door locks with a numerical keypad are not the least restrictive means to achieve claimant's goal of increased independence, maintaining safety, and safety awareness.

33. Mr. Ash testified regarding the Department of Health and Human Services Home and Community Based Services (HCBS) Rule, and strategies and practices developed in the industry for individuals who "wander or exit-seek unsafely in HCBS settings." The HCBS Rule is described in a DDS Fact Sheet:

People with intellectual and developmental disabilities are provided with many services because of the Lanterman Act. Many services people receive are paid for with state and federal money from the federal Centers for Medicare and Medicaid Services (CMS). Therefore, California must comply with what is called the [HCBS] Final Rule. This rule sets requirements for HCBS settings, which are places where people live or receive services. Each state has until March 2022 to help providers comply with the HCBS Final Rule.

34. Services and supports may be purchased through the SDP only if they are HCBS Final Rule-compliant. The HCBS Final Rule applies to residential settings, among others, and the goal of the rule is to: maximize opportunities and choices for regional center clients; (2) promote community integration; (3) have clients spend time with other people in the community who do not have disabilities; (4) ensure individual preferences are supported and rights protected; and (5) establish person-centered service planning requirements which are process-driven and directed by the individual.

35. Strategies for compliance with the HCBS Final Rule to support individuals who elope from HCBS settings include: (1) focusing on person-centered services by knowing the individual's personal history, health condition, unmet needs, and unique circumstances; (2) meeting person-centered plan goals to support the individual's mobility and choice, ensuring the elopement behaviors are assessed and managed, and preventing unsafe wandering or exit-seeking.

36. Practice recommendations for compliance with the HCBS Final Rule include: (1) assessing patterns, frequency, and triggers for eloping; (2) using this baseline information to develop a person-centered service plan addressing the triggers, implementing the plan, and measuring its impact; (3) making periodic assessments and making adjustments to the person-centered plan as necessary; (4) using "environmental design" such as creating points of interest and places to rest, using signage for orientation, and disguising exit doors; (5) using technology to alert others to reduce the risk of eloping; (6) creating a lost person plan describing roles and responsibilities; (7) creating a comfortable environment and monitoring the individual closely for a few weeks; (8) distracting the individual with something he enjoys; (9) creating opportunities for safe wandering and exiting; (9) using silent alarms and medical ID bracelets; (10) labeling important doors such as bedrooms or bathroom doors, (11) frosting glass doors or windows to reduce a person's ability to look out, and ensuring this complies with fire and safety codes; and (12) where allowable, using window locks preventing the window from opening more than six inches. Mr. Ash pointed out that the use of double-sided keyless locks, or similar locks, are not a recommended practice to prevent eloping.

Analysis

37. 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's SDP budget must assist him to achieve the outcomes set forth in his IPP, ensuring his health and safety. Claimant's IPP identified claimant's long-range goals of "maintaining safety and increasing awareness of his surroundings" as a consequence of claimant's continued and escalating elopement behaviors as he ages.

38. Adjustments to claimant's current SDP individual budget may be made if the IPP team determines an adjustment is necessary due to a change in claimant's circumstances, needs, or resources. Here, claimant moved to another home in another city. The VMRC-purchased locks installed in his former home prevented claimant from eloping. His eloping resumed when he moved to his home in Merced. There are new environmental dangers impacting his safety. There is an acute elopement problem that creates a clear and present danger to claimant. The family cannot afford the requested locks. Claimant's mother asserted she has practiced ABA-recommended behavioral interventions with no success. Window and door sensors, a GPS tracker, and the family's existing door locks do not prevent claimant from eloping. A change in claimant's circumstances, needs, and resources are present. Double-sided keyless locks immediately meet the IPP goal of maintaining claimant's safety by preventing him from eloping.

39. Allowable services and supports include special living arrangements, supplies, adaptive equipment, and emergency crisis intervention, among other things. Claimant's elopement behavior is an emergency crisis that must be addressed now.

40. Lastly, claimant's mother has tried less restrictive means which have not worked. More restrictive means need to be implemented in the form of safety door locks. Then, and only then, will claimant be safe. Once safe, the family can work safely with claimant using the less restricted means set forth herein.

41. Based upon the foregoing, funding for the purchase of safety locks and installation should be added to claimant's self-determination budget. Claimant can use his SDP budget for safety locks in his spending plan.

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 Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, §§ 4700 through 4716.) Claimant requested a fair hearing to appeal CVRC's denial of his request for funding of safety locks and installation. The burden is on claimant to establish entitlement to the funding. (*See Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161. Claimant must provide his case by 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].

DDS'S RESPONSIBILITIES UNDER THE SDP

6. In establishing the SDP, DDS must address, among other things: (1) "increased participant and control over which services and supports best meet the participant's needs and IPP objectives"; (2) "comprehensive person-centered planning, including an individual budget and services that are outcome based"; and "[r]equiring the IPP teams, when developing the individual budget, to determine the services, supports, and goods necessary for each consumer based on the needs and preferences of the consumer, and when appropriate the consumer's family, and the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option." (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B), (b)(2)(C), (b)(2)(H) & (b)(2)(H)(i).)

PARTICIPANT'S RESPONSIBILITIES UNDER THE SDP

7. 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

8. 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 4685.5.³ 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

9. 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:

(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.

³ Welfare and Institutions Code section 4648.5 was repealed on January 1, 2022.

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

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

(3) The spending plan shall be assigned to uniform budget categories developed by the department in consultation with stakeholders and distributed according to the timing of the anticipated expenditures in the IPP and in a manner that ensures that the participant has the financial resources to implement the IPP throughout the year.

Subdivision (n) states:

Annually, participants may transfer up to 10 percent of the funds originally distributed to any budget category set forth in paragraph (3) of subdivision (m) to another budget category or categories. Transfers in excess of 10 percent of the original amount allocated to any budget category may be made upon the approval of the regional center or the participant's IPP team.

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

10. For the reasons set forth in Factual Findings 37 through 41: (1) funding for safety locks and installation should be added to claimant's self-determination budget; and (2) claimant can use his self-determination budget for safety locks and installation in his spending plan.

ORDER

Claimant's appeal is GRANTED.

DATE: March 1, 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.