

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

**In the Matter of:**

**CLAIMANT,**

**and**

**SAN DIEGO REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2023020061**

**DECISION**

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 21, 2023, by video conference.

Neil Kramer, Fair Hearings Manager, San Diego Regional Center, represented the service agency.

Claimant's mother and father, who are also his conservators, represented claimant.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 21, 2023.

## **ISSUE**

Is the regional center required to increase claimant's self-determination program (SDP) budget by \$10,080 to provide funding for in-home respite?

## **SUMMARY OF DECISION**

Claimant's request must be denied because funds for in-home respite were already included in claimant's SDP budget.

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is 32 years old. He lives with his parents, who are also his conservators and authorized representatives. He is qualified for regional center services due to diagnoses of autism spectrum disorder and intellectual disability. He has been a consumer of regional center services for over 20 years. His individual program plan (IPP) from August of 2022 notes that he can complete most self-care tasks with some reminders. He can prepare simple meals (without using the stove), eat with utensils, and participate in household chores upon request. He speaks in single words that are not easily understood by others. He communicates through pictures and simple gestures. He responds well to verbal reminders and prompts. He enjoys cycling and belongs to a bicycle team with Sports for Exceptional Athletes. He also enjoys skiing, swimming, and surfing. Before the coronavirus pandemic, he was taking community college classes with a one-to-one aide. He plans to enroll in community

college again. He would like to increase his independent living skills, verbal and written communication skills, and practice community safety skills and safety at home.

## **Self-Determination Program**

2. In 2013, the Legislature passed Welfare and Institutions Code section 4685.8, which required the Department of Developmental Services (department) to implement a statewide self-determination program to give participants and their families, within an individual budget, increased flexibility and choice, greater control over decisions, resources, and needed and desired services and supports to implement their IPPs. The department began pilot programs in certain regional centers, including San Diego Regional Center, and oversaw statewide working groups from various regional centers and consumer groups to develop policies and procedures to implement the program.

3. Amendments to section 4685.8 required regional centers to make the self-determination program available to all regional center consumers, who wished to use it, effective July 1, 2021. All regional center consumers now have the option to have their services delivered through the SDP model or continue to receive services in the traditional model. With the SDP model, while participants have more choice over which services they receive and who delivers those services, participants also have more responsibility because they must manage their own budget resources with the assistance of a financial management service and with support from the regional center.

4. Claimant enrolled in the SDP in the Summer of 2022. His SDP budget was based on a "traditional services blueprint" that identified the type, amount, and cost of traditional services and supports that the regional center expected to fund to meet his

IPP goals if he were to remain in the traditional service model. The regional center is required to certify that the cost of the SDP does not exceed the cost if claimant were to remain in the traditional service model.

5. Claimant's budget was based on, among other funds, \$10,231.20 for in-home respite at a rate of 30 hours per month, \$20,054.16 for independent living services at the rate of 42 hours per month, \$58,305 for community integration training of 115 hours per month, and \$4,189.68 for 23 days per month transportation. On June 16, 2022, claimant's mother signed and the regional center certified claimant's annual individual SDP budget for a total of \$93,530.60, for the budget year beginning September 1, 2022, through August 31, 2023.

6. After the budget is certified, the participant and regional center must develop a spending plan that identifies the cost of each good, service, and support that will be purchased with regional center funds. Each item in the spending plan must relate to goals in the participant's IPP and be identified by a specific service code from a list of codes that the department publishes. A participant can annually transfer up to ten percent of funds in any budget category to other budget categories without regional center approval. Transfers exceeding ten percent of the budget category require regional center approval.

7. Claimant's original SDP spending plan was not submitted in evidence. Claimant's mother testified that, after the budget was approved, it took "another month or two back and forth" to develop the spending plan. Claimant revised the spending plan in February 2023 to change allocation of funds, reducing funds for respite (Service Code 310) to increase funds for community living supports (Service Code 320) and community integration support (Service Code 331). In addition,

claimant requested, and the regional center approved, adding \$900 to claimant's budget to be used for skiing lessons (Service Code 331).

## **Claimant's Request to Convert Respite to the Traditional Service Model**

8. Claimant's parents testified that when claimant converted to the SDP model, they had difficulty understanding how it works to implement his budget. Claimant's mother testified that she initially believed all the funds in the SDP budget would be used for claimant's community integration and independent living services. When she realized the mistake that some of the money was designated for respite, she revised the spending plan to take funds from the respite category and add funds to independent living and community integration support. The family would still like to use respite services in the future, so she requested the regional center to convert claimant's in-home respite to the traditional model so he could receive it outside of the SDP budget. As of the end of December 2022, claimant had spent \$2,083.62 from the SDP budget for respite services.

## **Regional Center Response to the Request**

9. On January 4, 2023, the service agency held a planning team meeting to consider claimant's request. Claimant's mother attended as his representative. She told the team that she wanted to remove respite from the SDP services, keep his independent living and community integration services funded at the current level, and have respite delivered according to the traditional service model outside of the SDP. The team explained that the regional center was not allowed to fund respite services under the traditional model if he was in the SDP because respite funds were already earmarked in his SDP budget.

10. After the January 4 meeting, claimant changed the request and asked the regional center to increase the SDP budget by \$10,080 for in-home respite.

11. The regional center denied the request in a Notice of Proposed Action dated January 13, 2023. The service agency stated that the budget could not be increased because funding for respite was already included in the original budget.

12. At the hearing, the service agency personnel suggested that claimant had not submitted a request for out-of-home respite services, which is a different service code. Regional center staff stated at the hearing that if claimant wishes to submit a request for out-of-home respite, the regional center would evaluate the request.

## **LEGAL CONCLUSIONS**

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the everyday living pattern of similarly aged nondisabled persons and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized 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.

3. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) To comply with its statutory mandate, the department contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.) Each regional center is responsible for consumers within a geographic region of the state called a "catchment area."

4. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

5. Welfare and Institutions Code section 4646 requires that the IPP and services and supports be centered on the individual and consider the needs and preferences of the individual and family. The services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources. Services and supports must be designed to assist disabled

consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

6. Regional centers are not required to provide all the services a consumer may request but are required to “find innovative and economical methods of achieving the objectives” of the IPP. (Welf. & Inst. Code, § 4651.) Welfare and Institutions Code section 4648 requires regional centers to be fiscally responsible.

7. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports must be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) The regional center is also required to consider generic resources and family responsibility (Welf. & Inst. Code, § 4646.4.)

8. Welfare and Institutions Code section 4685.8 requires the department to implement a statewide Self-Determination Program. The Self-Determination Program must 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.

9. Participation in the SDP is voluntary; the consumer may leave the SDP at any time and return to the traditional services model. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).)

10. Self-determination is designed to give the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow



participants to innovate to achieve their goals more effectively. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(G).)

11. The SDP requires a regional center, 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, 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)(H)(i).)

12. "Individual Budget" means the amount of regional center purchase of service funding available to the participant to purchase services and supports necessary to implement the IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(3).)

13. An adjustment to the individual budget can be made if the regional center determines that it is necessary due to a change in circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures or if the IPP team identifies a prior unmet need that was not addressed in the IPP. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).)

14. "Spending Plan" means the plan the participant develops to use their available individual budget funds to purchase goods, services, and supports necessary to implement their IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).) The spending plan must identify the cost of each good, service, and support that will be purchased with regional center funds; the total amount of the spending plan cannot exceed the amount of the individual budget; and a copy of the spending plan must be attached to the consumer's IPP. (*Ibid.*)

15. The SDP requires participants to “only purchase services and supports necessary to implement their IPP . . .” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).)

16. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

17. In-home respite services are intermittent or regularly-scheduled temporary nonmedical care and supervision provided in the consumer's own home, for a consumer who resides with a family member, designed to assist family members in maintaining the consumer at home, provide appropriate care and supervision to ensure consumer safety, relieve family members from the constantly demanding responsibility of caring for the consumer, and attend to the consumer’s self-help, daily living, interaction, socialization, and continuation of usual daily routines that would ordinarily be performed by family members. (Welf. & Inst. Code § 4690.2.)

18. The evidence in this case established that the regional center made the correct decision to deny claimant’s request to add funds to the SDP budget for in-home respite. Since the SDP budget already included funds for respite, adding additional funds for respite would be a violation of the Lanterman Act’s cost-effectiveness requirement. Claimant’s self-determination choice to transfer funds from the respite service code to other service codes does not constitute a change in circumstances or an unmet need that the regional center must fund. In essence, if the regional center were to grant claimant’s request, public funds would be used to pay twice for claimant’s in-home respite services.

## **ORDER**

Claimant's request to increase the SDP budget to include \$10,080 for in-home respite is denied.

DATE: March 28, 2023

ALAN R. ALVORD

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.