

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2023020107

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 5, 2023.

Claimant was represented by her mother (Mother). Claimant did not participate in the hearing. Claimant and Mother are not identified by name to protect their privacy.

Ron Lopez, Director's Designee, represented Westside Regional Center (WRC or service agency).

The record closed and the matter was deemed submitted on April 5, 2023.

ISSUE

Whether Claimant can utilize funds included in her Self-Determination Program (SDP) budget to pay for two pairs of dance shoes and a specialized sports bra.

EVIDENCE RELIED UPON

Documents: WRC exhibits 1–11. Testimony: Alex Marquez, WRC Participant Choice Specialist; Mother.

SUMMARY

Claimant seeks to use SDP-budgeted funds to pay for two pairs of dance shoes and a specialized sports bra for a dance program approved as part of her SDP budget. WRC denied the request, contending the items should be paid out of generic resources or Claimant's earnings. Additionally, WRC contends the requested items constitute entertainment expenses that cannot be paid for with SDP funds. Claimant proved the shoes and the sports bra are necessary for her to participate in the approved dance program. Claimant also proved her social security benefits (SSI) are unavailable to pay for the requested items. However, Claimant did not prove her earnings are inadequate to cover the costs of the dance shoes and sports bra. Accordingly, based on the directives issued by the Department of Developmental Services (DDS), Claimant cannot use SDP-budgeted funds to pay for her dance shoes or sports bra unless she can demonstrate her earnings are insufficient to pay for the items.

FACTUAL FINDINGS

Jurisdiction

1. The service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (§ 4500 et seq.) (All undesignated statutory references are to the Welfare & Institutions Code unless otherwise stated.)

2. On a date not made known in the record, Claimant sought to use her SDP budget funds to purchase two pairs of dance shoes and a specialized sports bra. By Notice of Proposed Action dated December 13, 2022 (NOPA), WRC denied Claimant's request. According to WRC, SDP budget funds cannot pay for the requested items because the items are not a service or support approved by the federal Centers for Medicare and Medicaid Services or necessary to implement Claimant's Individual Program Plan (IPP). WRC cited sections 4646 and 4685.8 in support of its denial. (Exhibit 3, p. A15.)

3. Claimant filed a Fair Hearing Request, received by WRC on January 5, 2023, appealing the NOPA. Mother asserted Claimant required dance shoes and a specialized sports bra to participate in the dance classes authorized in Claimant's SDP spending plan. This hearing followed.

Background

4. Claimant is a 20-year-old woman who lives with her mother and her older brother, who is also a regional center consumer. She is eligible under the

Lanterman Act for services from WRC based on a diagnosis of "Other Orders of Psychological Development" also known as "Other Type of Developmental Disability."

5. Claimant attends community college part-time. She also works at the YMCA for up to 12 hours a week. The YMCA pays Claimant \$16 per hour. Her monthly after-tax income is approximately \$600, although Claimant sometimes is unable to work all her shifts and her earnings are often less. Mother expects Claimant to pay for her incidental expenses, including clothing, using her YMCA salary.

6. Claimant also receives \$600 in monthly SSI benefits because of her disability. The SSI benefits are dedicated to paying Claimant's share of her rent and board, which is \$700 per month. Mother testified her rent is \$3,000 a month. Claimant's SSI benefits were reduced once Claimant began working at the YMCA. As a result, Claimant's mother at times asks Claimant to contribute a portion of her salary to pay for household expenses when Claimant's mother is short of funds.

7. Claimant is an SDP participant. She has an approved SDP annual individual budget of \$54,715.44. (Exhibit 10, p. A84.) Claimant's spending plan for her budget totals \$53,995.44. (Exhibit 11, p. A86.) She has \$720 of unallocated budgeted funds in her current budget.

8. A dance program for social recreation is included in Claimant's SDP budget. (Exhibit 10, p. A82.) The budget was reviewed by Mother on December 1, 2022.

9. Claimant's spending plan was prepared on December 1, 2022, and is based on Claimant's SDP budget. (Exhibit 11.) Included in the spending plan under the Community Integration budget category are dance classes and sewing classes. Both activities are assigned a 331 service code. (*Id.* at p. A86.) Learning to dance and to sew

are identified in Claimant's Individual Program Plan (IPP) as activities Claimant would like to pursue to help her integrate into the community and engage in physical activity, respectively. (Exhibit 5, pp. A24, A26.) To help meet those goals, Claimant's spending plan allocates \$1,625 for five packages of 20 dance classes, at a rate of \$325 per package, and allocates \$2,600 for sewing classes. In addition, the spending plan allocates under the "Participant Directed Goods & Services" category, \$1,100 for sewing supplies and materials, including cloth, scissors, tape measures, zippers, and buttons. (Exhibit 11, p. A86.) The spending plan does not allocate any funds for dance shoes or a sports bra.

10. Claimant sought an appropriate dance program where she could interact with people her age and learn certain dances as a way of exploring her heritage. She found a program she liked that met the SDP budgetary requirements. The program requires Claimant to purchase two specially soled pairs of shoes of different heel heights to participate. The shoes have suede soles to allow them to glide across the floor while offering just the right amount of grip. The shoes can only be worn for dance; they are not intended for outdoor use. Based on Claimant's research, she can purchase the shoes from Amazon for \$50 to \$60 each. The shoes are not included in the dance program costs.

11. Claimant also requires a specialized bra to participate in any medium-intensity physical activity, such as dance. According to Mother, Claimant has difficulty finding an appropriate sports bra that fits because of her body type. Claimant's research has found she can purchase a sports bra that would fit her for \$70.

12. On January 11, 2023, WRC and Mother informally met to discuss the Fair Hearing Request. WRC again denied Claimant's request to fund dance shoes and a sports bra. In its Informal Meeting Decision letter dated January 25, 2023, WRC stated

it was Claimant's responsibility to purchase dance shoes and a sports bra because the items are not related to Claimant's disability, and she could make the purchase using generic resources, such as the SSI funds she receives, or her earnings from her part-time job. (Exhibit 4, p. A17.) WRC cited section 4659, subdivision (a), which states that a regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services, including SSI, in support of its position. Additionally, WRC asserted that because the shoes and sports bra are purchased for entertainment, they cannot be included in the SDP. (*Id.* at p. A18.)

Hearing

13. At hearing, Alex Marquez, WRC's Participant Choice Specialist, explained WRC's denial of Claimant's request. According to Mr. Marquez, every item in an SDP participant's spending plan must be connected to a service code, indicating the purchase qualifies for federal reimbursement and is not available through other funding sources. Because Claimant was requesting the use of SDP budget funds to purchase a product that did not qualify as medical or other specialized equipment, the only SDP service code available to Claimant was under the "Participant Directed Goods & Services" category. Mr. Marquez testified the purchase of dance shoes and the sports bra did not fall into this category because Claimant could use generic resources, i.e., her SSI benefits, and other funding sources, i.e., her part-time job income, to purchase the requested items. Mr. Marquez acknowledged, however, that if the cost of the dance program selected by Claimant included the purchase of dance shoes, WRC would not object to paying for the program. Mr. Marquez could not explain why WRC had approved the inclusion of sewing materials as "Participant Directed Goods and Services" as part of Claimant's SDP spending plan.

14. Mother contended that nowhere in section 4659 does it state that Claimant must use her SSI money or her earnings to pay for dance shoes or a sports bra. She further asserted she was unaware of any statute that required regional center consumers to use their own funds to purchase goods needed to fulfill an IPP need or goal. Mother confirmed special dance shoes and a sports bra are required for Claimant to attend dance class. She pointed out Claimant's SDP spending plan includes the purchase of sewing materials, and she asserted it was inconsistent for WRC to deny her daughter dance shoes when WRC agreed to pay for sewing materials. Mother acknowledged WRC had offered to allow Claimant to use a special fund to pay for the dance shoes but Mother declined the offer because she believed other consumers' financial predicaments were more difficult.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Individuals seeking government benefits or services have the burden of proving they are entitled to such benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents 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.) In this case, Claimant is seeking funding for the purchase of special dance shoes and a sports bra. Claimant therefore has the burden of proving by a preponderance of the evidence she is entitled to the funding. Claimant has failed to meet her burden.

Lanterman Act Principles

2. The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable developmentally disabled persons to approximate the pattern of everyday living of nondisabled persons of the same age 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.)

3. Only certain services and goods can be funded through the Lanterman Act. Under section 4512, subdivision (b), a regional center consumer is entitled to receive "specialized services and supports or specialized 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."

4. Under the Lanterman Act, the IPP process is used to determine the services and supports necessary to meet the needs of a regional center consumer. The IPP process is participant-centered, taking into account the "needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments." The identified services and supports must be effective in meeting the goals stated in the IPP, "reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (§ 4646, subd. (a).)

5. The regional center is considered the "payor of last resort" under the Lanterman Act. Thus, before the regional center funds a service or support, section

4659, subdivision (a), requires the regional center to “identify and pursue all possible sources of funding for consumers receiving regional center services.” These sources include, but are not limited to, “[g]overnmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program” and “[p]rivate entities, to the maximum extent they are liable for the costs of services, aid, insurance, or medical assistance to the consumer.” (§ 4659, subd. (a).)

6. Under section 4659, subdivision (c), the regional center cannot purchase any service that would be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Supportive Services, California Children’s Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

SDP Principles

7. The contours of the SDP are laid out in section 4685.8. DDS also has issued directives or similar instructions implementing or interpreting the terms of section 4685.8. Until DDS has promulgated regulations implementing the SDP, these directives and instructions are binding on the regional centers. (§ 4685.8, subd. (p)(2).)

8. The purpose of the SDP is to provide regional center consumers (also referred to as participants) and their families, with an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement the participant’s IPP. (§ 4685.8, subd. (a).) The SDP program allows “increased participant control over which services and supports best meet his or her needs and the IPP objectives.” (*Id.* at subd.

(b)(2)(B).) A participant's unique support system may include the purchase of existing services, hiring one's own support workers, or negotiating unique service arrangements with local community resources. (*Ibid.*)

9. SDP participants are required to submit a spending plan, not to exceed their individual budget, to detail how their available budget funds will be used to purchase the services and supports identified in the participant's IPP. (§ 4685.8, subd. (c)(7).) A participant's service plan must identify the cost of each good, service, and support that will be purchased with regional center funds. (*Ibid.*) 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." (§ 4685.8, subd. (d)(3)(B).)

10. On January 13, 2022, DDS issued a directive guiding the regional centers regarding the inclusion of goods and services in the SDP (2022 Directive). (Exhibit 6.) To be included in an SDP participant's spending plan, (a) the good or service must address the SDP participant's needs and IPP goals, (b) the good or service cannot be funded or provided by a natural support or generic source, and (c) the good and service must be allowed under the federal waiver or, under limited circumstances, constitute a participant-directed good as defined by DDS. (*Id.* at pp. A35–A38; §4658.8, subd. (d)(3)(B).) All goods and services eligible for inclusion in the spending plan are assigned a budget category and service code.

Analysis

11. To be eligible for funding through Claimant's SDP budgeted funds, the dance shoes and sports bra requested by Claimant must fall within an approved service category. The approved service categories are defined in the DDS Self-

Determination Program Service Definitions, dated June 7, 2018 (DDS Service Definitions), admitted into evidence as Exhibit 8. Those categories potentially relevant to Claimant's request for SDP funding are Community Integration Supports (service code 31) and Participant-Directed Goods and Services (service code 33). Based on the evidence provided at hearing, the requested items do not fall into either category, as shown below.

COMMUNITY INTEGRATION SUPPORTS

12. According to the 2022 Directive, eligible Community Integration Supports are those services that "help the participant attain or maintain their maximum level of functioning, interdependence and independence and /or increase and improve self-help, socialization, communication." (Exhibit 6, p. A42.) These services include recreation programs if such services assist the participant "through therapeutic and /or physical activities." (*Ibid.*) Thus, Claimant's dance classes are categorized as Community Integration Supports and thus eligible for funding as part of Claimant's SDP spending plan.

13. The Community Integration Supports billing category, however, is limited to services and does not include funding for specific products, even if such products would enable participation in the programs falling within the Community Integration Supports category. Thus, the sewing materials necessary for Claimant's sewing classes are not categorized under the Community Integration Supports billing category. Using the same analysis, Claimant's dance shoes and a sports bra, by themselves, even though required to participate in Claimant's chosen dance program, cannot be a covered cost under this category.

PARTICIPANT-DIRECTED GOODS AND SERVICES

14. For a requested item to fall within the Participant-Directed Goods and Services budget category, the requested good or service cannot be considered a “specialized good” under section 4512, subdivision (b), or otherwise provided through the SDP waiver or Medicaid. As set forth in the 2022 Directive, the good also must meet the following requirements: (a) the need for the good must be identified in the IPP; (b) the good must directly link to an identified IPP need or goal; (c) the good is not included in another service definition; (d) the good promotes interdependence and inclusion in the community, decreases the need for other Medicaid services, or increases the participant’s safety in the home environment; *and* (e) no generic resources or other sources of funding are available to provide the good. (Exhibit 6, p. A44 (emphasis added).)

15. The 2022 Directive makes clear that goods and services purchased for purely entertainment purposes that do not meet the disability-related needs of SDP participants or their IPP goals and outcomes are not permitted to be included in the SDP budget. (Exhibit 6, p. A42.) Those goods and services include amusement park or concert tickets, television, cable access, DVDs, or other recreation that provides no therapeutic or physical benefit. (*Ibid.*)

16. Claimant proved the requested shoes and sports bra are not goods purchased for purely entertainment purposes, as WRC asserts in its Informal Conference Letter. Indeed, the items meet almost all of the criteria required to be classified as a covered Participant-Directed Good. The items are required for Claimant’s dance classes, which were identified in her IPP, and thus are directly linked to an identified IPP goal. The items also cannot be included in another SDP service

definition, and providing the items to Claimant will allow her to participate in an activity that promotes interdependence and inclusion in the community.

17. However, Claimant also must prove the dance shoes and sports bra could not be funded through sources other than SDP funds for those items to qualify as a covered Participant-Directed Good. Claimant did not meet her burden of proof on this issue. Based on the relevant statutes and DDS directives, Claimant's SSI benefits and her earnings are potential sources of funding required to be considered in evaluating whether the requested items can be included in Claimant's spending plan.

18. Section 4659, subdivision (a)(1), expressly directs the regional center to pursue SSI benefits to pay for the costs of services. (See also § 4685.8, subd. (r)(6) [instructing regional center to ensure goods in SDP spending plan are not available through generic resources].) Thus, Claimant's SSI benefits are considered a generic resource to be used to purchase dance shoes and a sports bra. Although Mother correctly asserts SSI is not included as a source of income in subdivision (c) of section 4659, that subdivision only addresses the regional center's funding obligations when a consumer has medical coverage or IHSS support but chooses not to pursue that coverage, a scenario not present here.

19. However, although WRC is authorized to pursue Claimant's SSI benefits, those benefits can be used only if they are available to purchase the requested items. Mother proved Claimant's SSI benefits are unavailable to purchase the dance shoes and sports bra because those benefits are entirely dedicated to paying Claimant's share of her room and board. Thus, generic resources are not available to purchase Claimant's requested goods.

20. Claimant's earnings are considered another source of funding for the requested items under the DDS Service Definitions. Although Mother correctly asserted the statutes cited by WRC, including section 4659, are silent as to whether WRC is required to pursue Claimant's earnings to fund particular goods and do not include earnings as a generic resource, the DDS Service Definitions state that a participant-directed good, presumably because it is not a specialized good under section 4512, subdivision (b), can be included in the covered Participant Goods and Services SDP budget category only if the "participant does not have the personal funds to purchase the item or service." (Exhibit 8, p. A69.) Thus, under the DDS prescribed rules, Claimant's earnings are required to be considered in determining whether she has the personal funds to purchase the requested items.

21. Mother did not prove Claimant's earnings are inadequate to pay for the shoes and sports bra. Claimant makes up to \$600 a month; the purchase of two pairs of dance shoes and a sports bra will not exceed \$200 according to Claimant's research. Additionally, Mother acknowledged Claimant is responsible for paying for at least some of her clothing expenses with her earnings. Thus, WRC acted correctly in looking at Claimant's earnings to pay for the requested items.

22. The categorization of Claimant's Sewing Supplies and Materials as a covered Participant Directed Good in Claimant's SDP spending plan is not determinative of whether the dance shoes and sports bra should be paid by SDP funds as well. Each requested spending plan item must be reviewed separately. Additionally, WRC did not provide any evidence as to why it approved the Sewing Supplies and Materials as an SDP expense. However, according to Claimant's SDP spending plan, the cost of the Sewing Supplies and Materials is \$1,100, which well exceeds Claimant's earnings and could thus qualify as a Participant-Directed Good. Here, unlike the

approved Sewing Supplies and Materials costs, Claimant potentially can afford to pay for the two pairs of dance shoes and the sports bra from her earnings.

Disposition

23. Claimant's request to allow her SDP funds to pay for dance shoes and a sports bra is denied. Although Claimant proved her SSI benefits were unavailable to pay for the requested items, she failed to prove her earnings from the YMCA were insufficient to cover their cost. If Claimant can demonstrate to WRC she does not make enough money to pay for the shoes and sports bra, there are sufficient funds in Claimant's SDP budget for WRC to authorize funding for those items.

ORDER

The appeal by Claimant of WRC's decision to deny the use of SDP funds to pay for two pairs of dance shoes and a specialized sports bra is denied.

DATE:

CINDY F. FORMAN

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.