

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Appeals of:

CLAIMANT,

vs.

**FRANK D. LANTERMAN REGIONAL CENTER; and
DEPARTMENT OF DEVELOPMENTAL SERVICES.**

DDS No. CS0003938

OAH No. 2023030259 (Primary)

and

DDS No. CS0007209

OAH No. 2023070104 (Secondary)

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated appeals on August 19-20, 2024, in Los Angeles, California.

Claimant was represented by his father, who is an attorney licensed to practice law in California, and his mother. Claimant's parents are his conservators. The names of Claimant and his parents are not used in this proposed decision for privacy reasons.

Aaron Abramowitz, Esq., Enright & Ocheltree, LLP, represented the Frank D. Lanterman Regional Center (FDLRC).

Darin L. Wessel and Summer M. Bosse, Deputy Attorneys General, represented the Department of Developmental Services (Department).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 20, 2024.

ISSUES

1. Whether FDLRC must make out-of-state funding request(s) to the Department "until such time as a proper transition plan is successfully developed and implemented." (Exhibit 2, p. A16 [Appeal Request No. 1].)

2. Whether Claimant has the right "to use self-determination funding for otherwise eligible services and supports at Waterfall [Canyon] Academy in Ogden, Utah." (Exhibit 3, p. A35 [Appeal Request No. 2].)

EVIDENCE RELIED UPON

Claimant's evidence: exhibits A through HHHHH [exhibits KKKK through MMMM and WWWW are demonstrative only]; testimony of Claimant's father.

FDLRC's evidence: exhibits 1 through 4 and 6 through 24; testimony of Megan Mendes and Srbui Ovsepyan.

Department's evidence: exhibits 100 through 143; testimony of Brian Winfield.

FACTUAL FINDINGS

Background

1. The Department administers the Lanterman Developmental Disabilities Act (the Lanterman Act or the Act) to ensure that necessary services and supports are provided to persons with developmental disabilities to help them lead more independent, productive, and normal lives. (Welf. & Inst. Code, § 4500; undesignated statutory references are to this code.) FDLRC is one of 21 nonprofit regional centers established by the Act "to evaluate the developmentally disabled persons (whom the Act calls 'consumers'), develop individually tailored plans for their care, enter into contracts with direct service providers to provide the services and support set forth in the plans, and monitor the implementation of those contracts and the consumers' plans. [Citations.]" (*Shalghoun v. North Los Angeles County Regional Center, Inc.* (2024) 99 Cal.App.5th 929, 937.) Each regional center serves consumers within a particular geographic area of the state known as a "service catchment area," as specified in a contract with the Department. (§§ 4620, subd. (a), 4640, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(58).)

2. Claimant is a 28-year-old man who qualifies for Lanterman Act services and supports due to a diagnosis of autism. He has lived in the State of Utah since late 2013, when his parents moved him there. Claimant currently lives alone in an apartment in Ogden, Utah. While Claimant lives by himself, his day-to-day therapy,

care, and support are provided by Waterfall Canyon Academy, a special needs provider licensed in Utah with facilities close to Claimant's apartment.

3. Claimant has been a regional center consumer since he was six years old. Until late 2013, Claimant lived with his parents within FDLRC's service catchment area in Los Angeles County. In June 2013, Claimant started experiencing intense anxiety and exhibited increased behaviors of physical and verbal aggression. These behaviors culminated in Claimant stabbing his school aide with a pencil, chasing his parents with a kitchen knife, jumping out of a moving vehicle on two occasions, attempting to jump out of a window, and physically assaulting his mother on multiple occasions leaving bruises.

4. In early October 2013, Claimant was placed on an involuntary psychiatric hold at UCLA's Resnick Neuropsychiatric Hospital. At the time, Claimant's parents told FDLRC that Claimant could not return to the family home after discharge. Claimant's parents initially researched local apartments and requested funding or reimbursement from FDLRC for local supported living services (SLS) and a transitional living program. But in November 2013, Claimant's parents ultimately decided to transfer Claimant to the University of Utah's Neuropsychiatric Institute in Salt Lake City, Utah for treatment.

5. Following that treatment, Claimant was enrolled in Logan River Academy in Logan, Utah. There, Claimant completed his high school education that he had begun in Southern California. Claimant's school district in California funded and approved Claimant's attendance at Logan River Academy. Upon graduation in August 2014, Claimant received high school diplomas from both Logan River Academy and his high school in California. Following graduation from high school, Claimant returned to Southern California for approximately one week.

6. In July 2014, Claimant's parents informed FDLRC that they were placing Claimant at Waterfall Canyon Academy in Ogden, Utah, and requested regional center funding for the program. Waterfall Canyon Academy offers a residential treatment program, a transitional living program, and an independent living program for clients. At the time, Claimant's service coordinator at FDLRC told Claimant's parents that regional centers are required to identify support services in California before considering out-of-state funding for consumers.

7. In August 2014, Claimant's parents agreed to pay his tuition at Waterfall Canyon Academy while FDLRC tried to identify an appropriate residential placement for Claimant in California. After FDLRC was unable to identify an appropriate in-state placement with a vacancy, FDLRC agreed to consider temporary funding for Claimant's placement at Waterfall Canyon Academy. In March and May 2015, FDLRC contacted the Department to request out-of-state funding for the temporary placement.

8. In June 2015, the Department denied the funding request because Claimant's parents placed him at Waterfall Canyon Academy without FDLRC's involvement and agreement. Claimant's parents appealed the denial, and the parties reached a resolution under which the Department agreed to fund Claimant's out-of-state placement through December 2015. While that funding was in place, FDLRC identified the first of several SLS service providers to assist with Claimant's transition back to California. According to FDLRC, the SLS provider (Inclusion Supported Living Services) recommended a three-to-six-month transition plan, but FDLRC decided to identify a new SLS provider "due to major staff changes and retention issues which could possibly affect quality of service." (Exhibit 102, p. Z24.) FDLRC therefore requested a further extension of out-of-state funding for Claimant from the Department, which the Department granted.

9. In late 2016, FDLRC identified a new SLS provider (CHOICES) to complete a new SLS evaluation and transition assessment for Claimant. CHOICES completed its evaluation in June 2017 and recommended a three-to six-month transition phase for Claimant starting on October 1, 2017. FDLRC authorized funding for Claimant's transition process back to California.

10. According to FDLRC, when CHOICES met with Claimant's parents in November 2017 to develop a transition plan, the parents did not want to move forward because Claimant was doing well in Utah. Shortly thereafter, Claimant's father informed FDLRC that he wanted Claimant's transition placed on hold. After a meeting with FDLRC, Claimant's parents agreed to allow transition planning to proceed, and CHOICES tried to schedule another transition planning meeting with them. But by the end of January 2018, CHOICES had still not been able to schedule the meeting, and FDLRC therefore requested a meeting with Claimant's parents and CHOICES. During the meeting in March 2018, Claimant's parents expressed concerns that Claimant could not afford to live independently in California with only his Supplemental Security Income (SSI), and they requested a statewide search for residential placement options. This request delayed the transition process while FDLRC evaluated residential living options for Claimant.

11. FDLRC conducted a statewide search and identified a residential program placement option for Claimant in Whittier, California. Claimant's parents initially agreed to proceed with that option, but they later claimed Claimant was not ready for the transition back to California based on a therapist's recommendation that Claimant first transition to independent living in Utah with his existing support system.

12. By April 2019, Claimant had transitioned to Waterfall Canyon Academy's independent living program, where he resided in his own apartment. Claimant no

longer required 24-hour per day supervision, but he had Waterfall Canyon Academy staff available nearby on an on-call basis if needed.

13. FDLRC's attempts to plan Claimant's transition back to California continued into late 2019. CHOICES was again selected to complete a new SLS evaluation and transition plan, with CHOICES to perform an in-person assessment of Claimant in Utah in March 2020. But with the onset of the COVID-19 pandemic, the transition process was effectively placed on hold. At the request of FDLRC, the Department approved further extensions of Claimant's out-of-state funding due to COVID-19 stay-at-home mandates and public health concerns.

14. By April 2021, CHOICES was able to resume Claimant's SLS evaluation and transition planning. CHOICES completed its SLS evaluation, but Claimant's parents objected to starting a transition without a "whole person assessment" of Claimant for purposes of evaluating the next steps. (Exhibit 127, p. Z121.) CHOICES updated its transition plan in November 2021, after receiving Claimant's latest whole person assessment and a functional behavior assessment. CHOICES scheduled a meeting with Claimant's parents to discuss the revisions, transition timeline, and any concerns before the transition plan was implemented.

15. Around the same time, Claimant's parents told FDLRC that they did not think a near-term transition was prudent based on Claimant's whole person assessment and their concerns Claimant might regress. (Exhibit 20, p. A174.) The whole person assessment by Stephanie Young Consultants included a recommendation that Claimant "remain[] in his home with supports from Waterfall Canyon Academy." (Exhibit D, p. B65.) Claimant's parents requested he be reevaluated after "a suitable interval" and "we can then discuss whether further planning by CHOICES is advisable [sic]." (Exhibit 20, p. A174.) But during a quarterly meeting with Claimant's father in late

November 2021, FDLRC stated it wanted to move forward with Claimant's transition process and would not request an extension of out-of-state funding beyond March 31, 2022.

16. FDLRC continued to meet with Claimant's parents in an effort to have CHOICES update the transition plan and ensure that services and staff would be in place and ready for Claimant's return to California by April 2022. A meeting was held in early January 2022 with Claimant's parents to discuss the development of the transition plan and the service providers that were available to meet Claimant's needs. After the meeting, Claimant's parents accepted CHOICES and the recommended crisis support vendor as service providers, but they rejected FDLRC's other proposed providers. Efforts to identify additional providers acceptable to Claimant's parents continued through the end of January 2022. At that time, CHOICES resumed its transition support services and scheduled a February 2022 meeting with Claimant's parents. However, Claimant's parents refused to meet on grounds that an updated Individual Program Plan (IPP) for Claimant was not in place. FDLRC and Claimant's parents agreed to an updated IPP on February 4, 2022, which included Claimant's return to California as a desired outcome. Thereafter, FDLRC obtained another six-month extension of out-of-state funding from the Department through September 2022, to allow for the transition process by then.

17. When the time for transition to California neared, Claimant's father expressed concerns over CHOICES's identified living arrangements and support services. Claimant's father also expressed concerns about using videoconferencing to introduce Claimant to his new service providers, and about typographical errors in one service provider's reports. FDLRC held an IPP meeting with Claimant's parents on September 20, 2022, to discuss continued out-of-state funding and continuing

attempts to transition Claimant back to California. With Claimant's parents appearing to agree with the proposed revisions to the transition process, FDLRC made another request to the Department for six more months of out-of-state funding. (Exhibit T, p. B156.) FDLRC noted in its request that CHOICES had expressed concerns about its ability to move forward with the transition plans given "perceived hesitancy on the part of the parents" to move forward with the plans. (*Ibid.*; see also Exhibit U, p. B159; Exhibit 126, pp. Z100 & Z102.) The Department approved only four months of the requested out-of-state funding until January 31, 2023. (Exhibit 123, p. Z90.)

18. In October 2022, CHOICES informed FDLRC that "[r]egretfully after nearly six years of discussion and efforts to move forward with [Claimant]'s potential return, we feel we are not the right agency to be providing [Claimant] services when he moves back to California. We did not come to this decision lightly; however, due to everchanging timelines and expectations, we do not feel we will be able to satisfactorily provide services to [Claimant]." (Exhibit U, p. B159.) The decision of CHOICES required FDLRC to identify a new SLS provider. By January 2023, FDLRC retained a new SLS provider acceptable to Claimant's parents (Modern Support Services) to provide transition services. By that point, Claimant's transition back to California by the end of January 2023 was no longer practical. FDLRC therefore requested, and the Department approved, a further 60-day extension of out-of-state funding until March 31, 2023.

Notices of Action and Appeals

19. On February 27, 2023, FDLRC sent Claimant's parents a notice of action informing them that FDLRC "will not be contacting the Department . . . to request continued regional center funding for [Claimant's] services at Waterfall Canyon Academy in Ogden, Utah. This means [Claimant's] out-of-state funding will end March

31, 2023.” (Exhibit 1, p. A1.) According to FDLRC, it “confirmed that [Claimant’s] support needs can be met in the State of California in 2023,” and FDLRC had “identified a combination of comparable support services in the State of California.” (*Id.* at p. A11.) “These supports include, but are not limited to, 24/7 Supported Living Services (SLS) from Modern Support Services,” along with services and supports from four other vendors: “Specialized Therapeutic Services (STS) from the Center for Applied Behavior Analysis (CABA), Supported Employment Services from Elite Employment Services, Crisis Support Services from Stephanie Young & Consultants, and Social Skills programming through Education Spectrum.” (*Id.* at pp. A11, A14.) Furthermore, “[Claimant] can also receive individual and family counseling through his health insurance plan, which is a generic resource.” (*Ibid.*)

20. Considering these support services, FDLRC concluded Claimant “does not have an unmet need for continued out-of-state funding,” and FDLRC would no longer request it from the Department. (Exhibit 1, p. A11.) However, FDLRC promised to “continue to offer in-state regional center services and facilitate [Claimant’s] transition back to the State of California.” (*Id.* at p. A14.) FDLRC further stated it “is still committed to providing [Claimant] with transition services and your consent and collaboration are necessary to ensure [Claimant’s] smooth and timely return.” (*Ibid.*)

21. Claimant’s father filed a timely fair hearing appeal requesting: “(1) FDLRC to make out-of-state funding request(s) to [the Department] until such time as a proper transition plan is successfully developed and implemented; (2) Replacement of current FDLRC team with new staff untainted by improper prejudice/animus toward Claimant and his entitlement to benefits.” (Exhibit 2, p. A16.) After an informal meeting on the appeal, Claimant’s father also asked FDLRC for a statement of position on whether Claimant could use funds from the Act’s Self-

Determination Program (see § 4685.8) to offset or pay for Waterfall Canyon Academy expenses, if Claimant chose to enter that program. On March 17, 2023, FDLRC issued a second notice of action stating that such out-of-state funding was not available under the Self-Determination Program for the same reasons as stated in the first notice of action. Claimant's father filed another fair hearing appeal requesting a "[d]eclaratory [j]udgment . . . regarding claimant's right to use self-determination funding for otherwise eligible services and supports at Waterfall [Canyon] Academy in Odgen, Utah. (Exhibit 3, p. A35.)

22. The two appeals were consolidated for hearing, and the hearing on the appeal was continued on several occasions. On January 29, 2024, Administrative Law Judge Howard Cohen ruled: (1) the Department was a necessary party to the appeals; and (2) Claimant's request to replace current FDLRC staff members in the first notice of action would not be considered at the hearing. Claimant thereafter pursued a separate appeal of his request to replace the FDLRC staff members.

23. While these appeals have been pending, Claimant has continued to receive out-of-state funding from FDLRC pending a final administrative decision as specified in section 4715.

FDLRC's Case

24. FDLRC contends Claimant's service needs can be met in California, and FDLRC should not be ordered to continue requesting out-of-state funding from the Department. FDLRC has funded out-of-state services for Claimant since 2015, and the supports and generic resources identified in FDLRC's first notice of action are adequate to meet those needs. According to FDLRC, Claimant's parents have also refused to engage in the IPP process since filing the appeals, making further transition

planning and compliance with out-of-state funding requirements “all but impossible.” (Exhibit 24, p. A191.)

25. Megan Mendes, an associate director of client and family services at FDLRC, testified Claimant’s needs could be met in California. According to Mendes, the types of services and supports Claimant needs are available within California, and the vendors identified in FDLRC’s first notice of action could provide those services. Furthermore, the relationship between FDLRC and Claimant’s parents has been “somewhat adversarial” since May 2022, with multiple starts and stops in transition planning. Claimant’s parents have not been amenable to discussing any transition services for Claimant since November 2023.

26. At one point, Claimant’s father expressed concern about Claimant incurring a break lease fee if Claimant relocated to California while his lease in Utah was still in effect. Mendes testified FDLRC would have considered funding that fee as part of Claimant’s return to California. With respect to the recommendation of Stephanie Young Consultants that Claimant remain in Utah, Mendes testified the recommendation was outside the scope of that vendor’s contracted work. The recommendation is also not determinative of whether a transition to California is appropriate. In FDLRC’s view, it is appropriate.

27. Srbui Ovsepyan, FDLRC’s Associate Executive Director, is a licensed marriage and family therapist who has been involved in Claimant’s case since 2021. Ovsepyan testified FDLRC could not justify asking the Department for additional out-of-state funding for Claimant without an agreed-upon transition plan in place. Like Mendes, Ovsepyan believes Claimant’s needs can be met in California. Ovsepyan testified a typical transition from out of state to California lasts three to six months. But in Claimant’s case, his parents only cooperated with the transition at “very

occasional intervals,” during which there was “just enough progress, and then there wasn’t.” Eventually, it became clear to FDLRC that a transition “would not happen,” and FDLRC declined to request additional out-of-state funding in the hope Claimant’s parents would either cooperate with the transition or decide not to proceed with transition planning.

28. On March 31, 2023, the end date for out-of-state funding, a representative of Modern Support Services emailed Claimant’s father stating that after visiting Claimant earlier that month, it would take about 45 days to write an assessment report; “it may take 3-6 months+” to identify an in-state apartment for Claimant; and “hiring and training a team of DSPs (Direct Support Professionals) may take 7-9 months+. . . .” (Exhibit AAAA, p. B383.) Ovsepyan testified FDLRC would have worked with Modern Support Services to shorten those timelines if Claimant’s parents had proceeded with the transition. FDLRC has successfully implemented transition plans more quickly before.

29. With respect to the Self-Determination Program, FDLRC contends Claimant’s out-of-state services cannot be funded through the program because the program can only fund services and supports determined eligible for federal financial participation, and the manner of providing out-of-state services to Claimant – direct reimbursement to his parents – has not been determined to be eligible for federal financial participation. Furthermore, the Self-Determination Program incorporates the IPP process, making the same out-of-state funding limitations inherent in that process applicable to the Self-Determination Program.

///

///

Department's Case

30. The Department contends it should be dismissed from Claimant's appeals because it has not issued any decision denying out-of-state funding, and the case is therefore not ripe as to the Department. Barring dismissal, the Department takes the position Claimant is now a domiciled resident of Utah and therefore no longer eligible for Lanterman Act services and supports. According to the Department, Claimant's years of living, working, and socializing in Utah, and the "obstructive actions" of Claimant's parents during multiple transition attempts, demonstrate Claimant is no longer a California resident. (Exhibit 143, p. Z182.) But even if Claimant is determined to be a California resident, the Department agrees with FDLRC that Claimant's needs can be met in California.

31. Brian Winfield, the former Chief Deputy Director of Program Services at FDLRC, was responsible for approving Claimant's out-of-state funding requests over the years. Winfield testified Claimant is one of just two regional center consumers statewide who still receives out-of-state funding, apart from two other consumers attending out-of-state schools and six consumers attending out-of-state camps. Winfield also testified he initially approved only four months of FDLRC's last six-month request for out-of-state funding to "mak[e] a point" that there needed to be progress with Claimant's transition. The funding requests from FDLRC evidenced many starts and stops, and granting more time appeared to just be "pushing the issue down the road." At the same time, Winfield has not concluded that Claimant's parents failed to act honestly and earnestly with respect to a transition.

32. According to Winfield, in-state services are typically ready for a consumer in a transition plan when a consumer returns to California from out of state. Winfield testified this is necessary to make the transition successful.

Claimant's Case

33. Claimant's parents contend FDLRC issued the notice of action to deny further out-of-state funding requests without proper cause. According to Claimant's parents, even before receiving final reports from its service providers, FDLRC conspired with the Department to terminate Claimant's out-of-state funding irrespective of available resources. After repeatedly failing to find suitable vendors, FDLRC finally "threw up its hands" and worked with the Department to "trump-up an excuse for termination." (Exhibit HHHHH, p. B538.) Thereafter, FDLRC issued a "bogus" notice of action falsely claiming Claimant's needs could be met in California, which was "gamesmanship" and "indisputably . . . a sham." (*Ibid.*)

34. In late November 2022, a meeting between the Department and FDLRC attorneys had a reported outcome of "FDLRC intends to issue a NOPA [i.e., a notice of proposed action] at the end of December." (Exhibit SSSS, p. B498.) At the time of the meeting, CHOICESS had withdrawn from serving as Claimant's SLS provider, and FDLRC had no replacement SLS provider in place. According to Claimant's parents, the decision to issue a notice of action under those circumstances proves FDLRC's subsequent actions were not part of a good faith attempt to proceed with a transition plan for Claimant.

35. Furthermore, in December 2022, Ovsepyan wrote to Melinda Sullivan, FDLRC's Executive Director, recommending that FDLRC request an additional 60 days of out-of-state funding for Claimant past January 31, 2023. In the email, Ovsepyan stated "our team feels that if we go to hearing now, we really have nothing to offer in terms of an agency that is able to work with [Claimant]." (Exhibit HH, p. B193.) But "if we receive an additional 60 days, we can use this time to either confirm an SLS agency and issue the 30 days prior to that end date or confirm that family is interfering with

the referrals and use that when we have no support [for] our NOA [i.e., notice of action]." (*Ibid.*) Sullivan agreed with Ovsepyan's recommendation, and the Department approved FDLRC's request for additional funding through March 31, 2023. According to Claimant, this is additional proof FDLRC was acting in bad faith regarding Claimant's continued out-of-state funding.

36. Furthermore, Claimant contends the vendors identified in the notice of action were not ready to service Claimant's needs in California before the funding deadline of March 31, 2023, based on the following:

- Modern Support Services had not spoken to or met with Claimant when the notice of action was issued on February 27, 2023. After the out-of-state funding deadline passed, this SLS provider reported it needed "7-9+ months" to identify, hire, and train appropriate staff to support Claimant's case. (See Exhibits AAAA, p. B383, BBBB, p. B386, CCCC, p. B389, and DDDD, p. B410.)
- Center for Applied Behavior Analysis (CABA), FDLRC's identified behavioralist for Claimant, planned to discharge its proposed program over an additional three-month period after Modern Support Services first hired staff. (See Exhibit I, p. B102.)
- Elite Employment Services, the vendor FDLRC identified to help find and support Claimant's employment in California, had not spoken with or evaluated Claimant before FDLRC issued the notice of action on February 27, 2023. (See Exhibit EE, p. B186-B188.)

///

- Stephanie Young Consultants recommended against transitioning Claimant back to California on three occasions. (See Exhibits B, p. B36 [2020], D, p. B65-66 [2021], and EEE, p. B270 [2023].)
- Education Spectrum, the identified social skills vendor, was not under contract with FDLRC as of February 27, 2023. Additionally, Education Spectrum had no current evaluation of Claimant at the time. (Exhibits QQQ, p. B364 and YYY, p. B378.)

37. With respect to the Self-Determination Program, Claimant contends the restrictions on out-of-state funding under the traditional service model for Lanterman Act consumers do not apply. The Self-Determination Program statute does not contain an explicit prohibition against out-of-state funding, and even the traditional service model allows out-of-state funding under some circumstances.

38. With respect to the Department's residency argument, Claimant's parents deny Claimant is now a Utah resident. Claimant has maintained his California ID card, he is registered to vote and votes in California, and his address for insurance and other benefits is in California. From 2021 through 2023, Claimant also visited California on a regular schedule of about one week each July, five days each November, and about 10 days each December.

39. Furthermore, Claimant's father testified he and his wife want Claimant to return to California. Claimant's father denies their advocacy for Claimant is evidence of obstruction of a transition or a change in residency to Utah. Moreover, FDLRC currently pays \$3,000 per month for Claimant's services in Utah, which is much less than the estimated costs to FDLRC of returning Claimant to California, which would initially be about \$30,000 per month. (See Exhibit EEE, p. B271.) Claimant's parents

contend the cost savings also weigh against FDLRC's decision to stop requesting out-of-state funding.

Analysis of Evidence

40. The evidence supports a finding that the types of services and supports Claimant needs can be provided in California. Those types of services – including supported living services, specialized therapeutic services, supported employment services, crisis support services, and social skills services – are available in California and are not unique to Waterfall Canyon Academy or to Utah. Nothing in the record indicates Claimant requires any service that can only be provided out of state.

41. With no unique type of service at issue, the primary issue in dispute is whether FDLRC was (or would have been) ready to meet Claimant's needs as of the out-of-state funding cutoff of March 31, 2023. The weight of the evidence supports a finding that FDLRC was not sufficiently ready to do so. Claimant's evidence indicates the identified service providers in FDLRC's notice of action needed more time to prepare for the transition than the funding cutoff date allowed. FDLRC did not overcome Claimant's showing with evidence that the providers would have been ready to meet Claimant's needs on March 31, 2023, had the transition occurred. FDLRC did not call any representatives of the service providers as witnesses, relying instead on the testimony of FDLRC's own employees that the service providers were ready to meet Claimant's needs. That testimony of FDLRC employees is not direct evidence of readiness sufficient to undermine Claimant's evidence.

42. The Department faults Claimant's parents for impeding the transition process over the years; FDLRC also faults Claimant's parents for refusing to engage in the IPP process after filing the appeals, making further transition planning

requirements “all but impossible.” (Exhibit 24, p. A191.) The evidence supports a finding that the exacting requirements of Claimant’s parents for Claimant’s transition planning have contributed to the now years-long delay in Claimant’s return to California. But on the evidence presented, FDLRC’s decision not to request additional out-of-state funding before the identified vendors were ready to meet Claimant’s needs was an incorrect response to the contributions of Claimant’s parents to the delay. Winfield testified that having in-state services in place is necessary to make a consumer’s transition from out of state successful. That necessity still applies to Claimant despite the long delay, some of which was beyond any party’s control (e.g., the COVID-19 pandemic). Furthermore, FDLRC’s argument that the post-appeal refusal of Claimant’s parents to participate in transition planning justifies denying relief on the appeals themselves is illogical.

43. That being said, Claimant’s transition back to California is long overdue, and the evidence does not support the request of Claimant’s parents for indefinite out-of-state funding requests from FDLRC to the Department. The shared interest of FDLRC and the Department in returning one of the last consumers receiving out-of-state funding to California is legitimate, and their actions to accomplish that goal were not a conspiracy or a sham, as Claimant’s parents allege. Ovsepyan persuasively testified a typical transition takes three to six months. Here, Claimant still has not transitioned back to California after about 10 years. Ovsepyan also persuasively testified FDLRC would have worked with Modern Support Services to shorten its longer transition estimate if Claimant’s parents had agreed to the transition. Considering this evidence – and the need to restart transition planning once again after the final administrative decision in this case – one more out-of-state funding request from FDLRC is warranted to accomplish Claimant’s transition to California.

44. With respect to the Department's request to be dismissed from the cases, Administrative Law Judge Cohen previously joined the Department as a necessary party, and this decision need not revisit that ruling. With respect to Claimant's state of residence, the issue was not raised in either of FDLRC's notices of action. Furthermore, denial of Claimant's request for indefinite out-of-state funding makes a residency determination unnecessary. With respect to the Self-Determination Program, Claimant's request for a declaratory judgment on that issue raised a purely legal issue, which is addressed below.

LEGAL CONCLUSIONS

Legal Standards

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under the fair hearing and appeal procedures in the Act. (§ 4706, subd. (a).) "'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." (§ 4512, subd. (b).) The determination of Claimant's services and supports "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." (*Ibid.*; see also § 4646, subd. (a).)

2. With respect to out-of-state funding for services and supports, the Act allows such funding under limited circumstances. "The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the consumer's individual program plan" (§ 4519, subd. (a).) "Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs." (*Ibid.*)

3. "The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state." (§ 4519, subd. (a).) "Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California." (*Ibid.*) "An extension shall not exceed six months." (*Ibid.*) "For the purposes of this section, the department shall be considered a service agency under Chapter 7 (commencing with Section 4700)." (*Ibid.*)

4. The Self-Determination Program allows participants and their families to have an annual budget for services and supports to meet the objectives of the participant's IPP. (See § 4685.8.) "'Self-determination' means a voluntary delivery

system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion.” (*Id.*, subd (c)(6).)

5. “The Self-Determination Program 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.” (§ 4685.8, subd. (a).) “The Self-Determination Program shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation.” (*Id.*, subd. (c)(6).)

6. FDLRC notified Claimant’s parents it would no longer request out-of-state funding for Claimant that FDLRC had requested for almost a decade. As the party proposing to change the status quo, FDLRC bears the burden of proving the change is justified. (See Evid. Code, § 500; *In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) With respect to the Self-Determination Program, Claimant is not currently in that program, and Claimant has requested a declaratory judgment about that program. As the party seeking relief on that issue, Claimant has the burden of proof. (Evid. Code, § 500; see *Lindsay v. San Diego County Retirement Board* (1964) 231 Cal.App.2d 156, 161.) The burdens of proof on both issues require proof by a preponderance of the evidence, because nothing in the Lanterman Act or another law provides otherwise. (Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].)

///

Determination of Issues

ISSUE NO. 1 – CONTINUED REQUESTS FOR OUT-OF-STATE FUNDING

7. The first issue for resolution is whether FDLRC must make out-of-state funding request(s) to the Department “until such time as a proper transition plan is successfully developed and implemented.” (Exhibit 2, p. A16.) The evidence supports a conclusion that one more out-of-state funding request from FDLRC is warranted to accomplish Claimant’s transition to California. However, the evidence does not support the request of Claimant’s parents for indefinite out-of-state funding requests from FDLRC to the Department. (Factual Findings 40-44.)

8. Resolution of this issue as described above makes a conclusion about Claimant’s residency unnecessary. This decision does not address the Department’s contention that Claimant is now a resident of the State of Utah. It also does not revisit the prior order adding the Department as a necessary party to the appeals.

ISSUE 2 – RIGHT TO USE SELF-DETERMINATION PROGRAM FUNDING FOR WATERFALL CANYON ACADEMY

9. The second issue for resolution is whether Claimant has the right “to use self-determination funding for otherwise eligible services and supports at Waterfall [Canyon] Academy in Ogden, Utah,” if Claimant elects to enter the Self-Determination Program (Exhibit 3, p. A35.) Claimant’s parents contend he would; FDLRC contends he would not. FDLRC’s contention is correct. The Self-Determination Program is subject to the limitations on out-of-state funding in section 4519, which is one of the “General Provisions” of the Lanterman Act. (Welf. & Inst. Code, div. 4.5, ch. 1.6.) There is no express (or implied) exception to those limitations in the Self-Determination Program

statute. (§ 4685.8.) Furthermore, it is illogical to interpret that statute as allowing Claimant to use the Self-Determination Program to fund services and live outside FDLRC's service catchment area and the state indefinitely without the limitations.

ORDER

Claimant's appeal with respect to request(s) for out-of-state funding is granted in part. FDLRC shall request additional out-of-state funding for a period not to exceed six months to accomplish Claimant's transition back to California. The request shall comply with Welfare and Institutions Code section 4519, subdivision (a), and the requested time period of funding shall be inclusive of any period of continuation of funding following receipt of the final administrative hearing decision under Welfare and Institutions Code section 4715, subdivision (a)(3) and (4). Claimant's appeal is otherwise denied.

Claimant's appeal requesting a declaratory judgment with respect to the Self-Determination Program is denied.

DATE:

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case Nos. 2023030259/2023070104

Vs.

DECISION BY THE DIRECTOR

Frank D. Lanterman Regional Center (FDLRC),

Respondent.

ORDER OF DECISION

On August 30, 2024, the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision:

The Proposed Decision is adopted except as modified as follows:

- Page 14, paragraph 31, of the Proposed Decision incorrectly states that “Brian Winfield is the former Chief Deputy Director of Program Services at FDLRC”. Brian Winfield is the former Chief Deputy Director at DDS, not FDLRC.
- FDLRC shall submit to DDS a request for authorization to fund additional out of state services for claimant at Waterfall Canyon Academy in Ogden, Utah pursuant to Welfare and Institutions Code 4519, subdivision (a), within 45 calendar days from the date of issuance of this Order of Decision. DDS shall respond to the request for authorization to fund out of state services within 30 calendar days after DDS receives FDLRC’s request.

The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day September 5, 2024.

Original signed by:

Nancy Bargmann, Director

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023030259/2023070104

Vs.

**RECONSIDERATION ORDER,
DECISION BY THE DIRECTOR**

Frank D. Lanterman Regional
Center (FDLRC), and Department
Of Developmental Services,

Respondent.

RECONSIDERATION ORDER

On September 16, 2024, the Department of Developmental Services received from Claimant an application for reconsideration of a Final Decision in the matter referenced above, that was issued by the Director on September 5, 2024.

The application for reconsideration is denied.

IT IS SO ORDERED on this day _____.

Pete Cervinka, Acting Director