

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency.

OAH No. 2023040155

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 15, and June 27, 2023, by videoconference.

Claimant's brother (Brother) represented Claimant. The names of Claimant and Brother are omitted to protect their privacy and maintain confidentiality.

Robin M. Black, Legal Services Manager, represented Alta California Regional Center (ACRC or Service Agency).

Evidence was received, and the record was held open for submission of written closing arguments. The parties timely submitted closing arguments. Claimant did not submit a rebuttal argument. The record was closed, and the matter submitted for decision on October 27, 2023.

ISSUES

The issues to be determined are: (1) whether Claimant's Self-Determination Program (SDP) budget funding can be used for the purchase of administrative hearing transcripts in a matter involving Claimant and ACRC, and if so, (2) whether the Financial Management Services (FMS) provider may pay SDP budget funds to Claimant in the form of reimbursement for the purchase of hearing transcripts, rather than directly pay the provider of the transcripts.

SUMMARY OF DECISION

Claimant's request to use SDP budget funds for administrative hearing transcripts must be denied because the purchase of transcripts is not necessary to implement his Individual Program Plan (IPP). For this reason, it is not necessary to address the issue of whether the FMS may use SDP budget funds to directly reimburse Claimant for the purchase of hearing transcripts.

FACTUAL FINDINGS

Background

1. Claimant is an adult male eligible for regional center services based on an intellectual disability caused by a brain infection he suffered when he was 14 years old. He receives services and support through ACRC. Brother has durable power of attorney for Claimant.

2. In October 2021, Claimant began receiving self-determination services and supports under the SDP. The SDP is a recently created program through which a regional center client can establish an individual budget and IPP, giving the regional center client "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, participants "shall only purchase services and supports necessary to implement their IPP" (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).

3. Claimant's IPP, in effect at the time he requested reimbursement, reflects amounts in his approved spending plan, and states the following:

Due to the complexity of running a business that involves finding and interviewing candidates, conducting a background investigation, processing, hiring, training, and supervising employees, and also engaging with [ACRC] on a variety of matters related to [Claimant's] Lanterman Act benefits, [Claimant] was provided a \$12,000 annual budget in order to obtain the support of legal counsel, as funded under SDP service code 333 [participant-directed goods and services]. [Claimant's] SDP budget was approved August 9, 2021, and his spending plan was approved October 25, 2021.

Claimant's Request for Reimbursement and ACRC's Denial

4. By letter dated March 1, 2023, Brother asked Claimant's FMS for reimbursement in the amount of \$553.45 for the purchase of a portion of the

administrative hearing transcripts in a separate matter involving Claimant and ACRC. ACRC advised the FMS not to reimburse Claimant for the purchase of hearing transcripts.

5. ACRC issued a Notice of Action (NOA) dated March 21, 2023, stating the reasons for its denial of Claimant's reimbursement request. The NOA states, in relevant part, as follows:

Your Spending Plan specifies that the \$12,000 per year from your SDP is included to purchase Participant-Directed Services (under Service Code 333). Your IPP states that those funds are to pay for "the support of legal counsel" that you need "due to the complexity of running a business." . . . [C]opies of legal transcripts do not constitute legal counsel or attorney advisor services. Finally, FMS agencies must pay the provider of the service, support, or good directly. . . .

Analysis

6. One of the limitations under the SDP is that participants "shall only purchase services and supports necessary to implement their IPP" (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).) Claimant's IPP provides for "a \$12,000 annual budget in order to obtain the support of legal counsel" The purposes of the legal support as set forth in the IPP are to assist Claimant with "the complexity of running a business . . . and also engaging with [ACRC] on a variety of matters related to [Claimant's] Lanterman Act benefits."

7. There is no substantial evidence that the transcripts in question will assist Claimant with the operational management purposes outlined in his IPP, or help Claimant engage with ACRC. Though the outcome of administrative litigation may affect the availability of benefits under the Lanterman Act, litigation management and operational management under the SDP are different. The IPP does not include services and supports for litigation management. For this reason, and all the reasons stated above, the hearing transcripts are not necessary to implement Claimant's IPP.

8. ACRC appropriately denied Claimant's request for reimbursement for the costs of obtaining the hearing transcripts. It is not necessary to a decision in this matter to make any determination whether the FMS is permitted to reimburse an SDP participant for expenses paid for goods or services.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that FMS Cambrian is required to reimburse Claimant for the cost of reporter's transcripts ordered by Brother from OAH. (Evid. Code, § 115.) Claimant has not met his burden.

"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; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. “Services and supports for persons with developmental disabilities” includes “specialized 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” (Welf. & Inst. Code, § 4512, subd. (b).)

5. The Department of Developmental Services (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."

6. 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).)

Implementation of Statewide Self-Determination Program

7. Welfare and Institutions Code section 4685.8 requires the Department to implement a statewide SDP. The SDP 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.

8. 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).)

9. 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).)

10. "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).)

11. "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. . . . The Self-Determination Program shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (Welf. & Inst. Code, § 4685.8, subd. (c)(6).)

12. "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.*)

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

Conclusions

14. Based on the Factual Findings and Legal Conclusions as a whole, Claimant did not establish that the purchase of hearing transcripts is necessary to implement his IPP. For this and all the foregoing reasons, Claimant's request for reimbursement for the cost of hearing transcripts must be denied.

ORDER

Claimant's appeal is DENIED.

DATE: November 2, 2023

TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023040155

Vs.

DECISION BY THE DIRECTOR

Alta California Regional Center,

Respondent.

ORDER OF DECISION

On November 2, 2023, an Administrative Law Judge (ALJ) at 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 of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. 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 _____.

Nancy Bargmann, Director