

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

In the Matter of Claimant

and

INLAND REGIONAL CENTER, Service Agency.

DDS Case No. CS0004053

**OAH No. 2023040424 Consolidated with OAH No.
2023020441**

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard these consolidated matters on June 27, 2023, by videoconference and telephone.

Claimant's mother represented claimant.

Jennifer Cummings, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

The record was closed, and the matter was submitted for decision on June 27, 2023.

ISSUE

Did IRC improperly deny claimant's request to increase her Self-Determination Program (SDP) budget for vehicle modifications and funeral expenses?

SUMMARY

Claimant failed to prove by a preponderance of the evidence that IRC acted improperly when it denied claimant's request to increase her SDP budget to fund vehicle modifications and funeral expense. Based upon the evidence of record, claimant's appeal is denied.

FACTUAL FINDINGS

Background

1. Claimant was a 14-year-old girl who was eligible for regional center services due to a diagnosis of Trisomy 18.¹ She required constant supervision during waking hours to prevent injury in all settings.

2. Claimant participated in the home and community-based services (HCBS) waiver program. She was Medi-Cal eligible and received services from the Early Periodic Screening, Diagnostic and Treatment program (EPSDT).

¹ Claimant passed away on December 30, 2022.

Notice of Action

3. On March 16, 2023, IRC issued a Notice of Action (NOA), which denied claimant's proposed budget in the amount of \$61,980.85. The budget included expenses for a gas back-up generator and vehicle modifications. IRC was unable to assess those needs prior to claimant's death. IRC certified claimant's budget in the amount of \$45,000.85, an amount which excluded the expenses for a back-up gas generator and vehicle modifications.

4. IRC denied claimant's proposed spending plan in the amount of \$61,980.85, which included vehicle modifications and funeral expenses. As noted, IRC was not able to assess the need for vehicle modifications prior to claimant's death. IRC determined that the vehicle modifications were not unmet needs that would have occurred regardless of claimant's participation in the SDP because there was no assessment. IRC had previously issued a NOA denying reimbursement for claimant's funeral expenses as they are not a specialized regional center service or support.² IRC reaffirmed that denial in the NOA.

5. Claimant submitted an Appeals Request on April 3, 2023. Claimant attached a one-page document to her Appeals Request that made a number of statements regarding IRC's alleged failure to follow the Lanterman Developmental Disabilities Act (Lanterman Act) when it certified claimant's budget in the amount of \$45,000.85.

² The appeal of that NOA, issued on January 10, 2023, is the subject of OAH Case No. 2023020441.

The Self Determination Program

6. Claimant participated in the SDP which is a program designed to allow families more flexibility and choice with regard to their services. The SDP is a voluntary alternative to the traditional way regional centers provide services and supports. Participants have control of a certain amount of money, known as an individual budget (budget), to purchase needed services and supports. The budget is the total amount of regional center funds that are available to the SDP participant each fiscal year and is based upon the amount of purchase of service funds used by the individual in the most recent fiscal year. This amount can be increased or decreased if the Individual Program Plan (IPP) team determines that the participant's needs, circumstances, or generic resources have changed.

7. The IPP team may also adjust the budget to support any needs or resources that were not addressed in the IPP. Examples include a change in living situation, services that were previously provided but are no longer needed, and services that were included in the IPP but were not used due to illness or lack of provider availability, thus incurring no costs.

Claimant's 2022-2023 SDP Budget

8. Claimant was an SDP participant for two years. For fiscal year 2021-2022, claimant's budget was certified in the amount of \$43,283.04, and included one-time expenses that would not roll over to the following year's budget. Claimant and IRC agreed on a spending plan in May 2021. The spending plan included respite services, homemaker services, incontinence supplies, and a personal care attendant.

9. On April 13, 2022, an IPP meeting was held. Claimant requested that a backup power supply, and a shower chair be added to her 2022-2023 budget.

Claimant had identified a three-battery solar system and a Starfish Shower Chair and asked that the costs, \$35,850 for the solar battery system and \$9,286 for the shower chair, be added to claimant's budget. There were ongoing communications between IRC and claimant regarding the two items.

10. On June 15, 2022, IRC notified claimant that the SDP review team had approved a budget that did not include funding for the shower chair or solar battery system. IRC denied claimant's request for the solar battery system and the shower chair. More communication between the parties ensued and ultimately, a fair hearing was held on August 22, 2022, regarding those two budget items (OAH Case No. 2022070648) after which IRC's denial of claimant's request for those expenses was affirmed.

11. On October 6, 2022, Amy Clark, Program Manager at IRC, sent claimant a letter with the April 2022 IPP and budget attached asking her to review those items and informing claimant that if there were any changes needed to be made, to highlight them so that either the SDP compliance workgroup could review them or a meeting could be scheduled with claimant. The letter also gave claimant the option of going forward with the budget as approved in the amount of \$39,650.76.

12. On October 25, 2022, Consumer Services Coordinator (CSC) Jonathean Reese sent claimant an email following up on the email sent by Clark.

13. Claimant responded on November 1, 2022, and requested that a meeting be held to identify and document the "draft" April 2022 IPP, finalize it for signature and finalize the budget for certification. Claimant requested that someone with "decision-making authority" be present at the meeting.

14. On November 8, 2022, an IPP meeting was held. Claimant asked that her budget be increased to include the costs of vehicle modifications, a gas back-up generator, and a Starfish Pro Shower chair. Claimant was informed that the approval of these items would be subject to an assessment.

15. On November 10, 2022, IRC sent a draft IPP to claimant. On November 17, 2022, claimant sent revisions to the IPP draft. Subsequent to discussion regarding the requested revisions between CSC Reese and claimant, a second IPP draft was sent to claimant on November 29, 2022. On December 2, 2022, claimant requested revisions to the second IPP draft.

16. On December 15, 2022, a third IPP draft was sent to claimant by CSC Reese. In the email accompanying the draft, CSC Reese informed claimant that he would be "working on a [sic] OT/PT evaluation" and once that was completed, he would meet with the SDP workgroup.

17. On December 19, 2022, CSC Reese notified claimant that IRC had been informed that the shower chair would be covered by insurance and was therefore being removed from the budget draft.

18. On December 20, 2022, claimant requested further revisions to the IPP and agreed to drop the shower chair request from the budget.

19. On December 21, 2022, CSC Reese sent a fourth IPP draft and the 2022-2023 budget worksheet to claimant. The total budget on the worksheet was in the amount of \$61,980.85 and included expenses for a back-up generator and vehicle modifications.

20. On December 26, 2022, claimant informed CSC Reese via email that she approved of the IPP draft and proposed budget. She requested that the budget be signed and certified by an IRC director and that she be sent the signature page for the IPP. Of note, there was no mention of funding for end-of-life care in this IPP draft under the section entitled "Desired Outcome" and the subheading "Specialists."

21. On January 3, 2023, claimant's mother informed CSC Reese that claimant had passed away on December 30, 2022, and requested that IRC provide funding for funeral and burial expenses.

22. On January 9, 2023, CSC Reese informed claimant's mother that IRC would not be able to fund funeral and burial expenses. He stated that he would be reaching out to an organization called Another Way to see if some assistance could be provided from that organization. CSC Reese also included links to several other organizations that could possibly be of assistance.

23. On January 11, 2023, CSC Reese informed claimant's mother that Another Way would require an invoice from the mortuary showing a balance of \$1,000 which would then be paid by Another Way.

24. On February 7, 2023, CSC Reese requested that the invoice for \$1,000 be provided by claimant's mother.

25. On February 22, 2023, CSC Reese sent claimant's mother the final IPP draft and an SDP budget worksheet which included expenses for a gas back-up generator and vehicle modifications.

26. On February 24, 2023, claimant's mother signed the final draft IPP. Claimant's mother attached a document making several requests as follows: the

signature page she signed on November 16, 2022, be deleted; that she be provided a copy of the certified budget worksheet that she had signed on February 23, 2023, and that she be provided a "fully-executed" copy of the 2022-2023 spending plan that she had signed on February 24, 2023. In this final draft under the section titled "Desired Outcomes" and the subheading "Specialist," was the first mention of a request for "IRC funding/financial assistance services to pay for the Consumer's end-of-life costs."

27. On February 24, 2023, claimant's mother signed a spending plan for a total of \$61,980.85 which included \$17,373.48 for "Funeral/Burial Costs."

28. On March 6, 2023, CSC Reese notified claimant's mother that the 2022-2023 budget would be presented to the SDP workgroup that same week and he would inform her of the decisions made.

29. On March 8, 2023, CSC Reese informed claimant's mother that the SDP team had denied the vehicle modifications and back-up generator and therefore the proposed total budget amount was \$45,000.08. He stated the SDP workgroup would certify that budget amount. CSC Reese stated if claimant's mother found that acceptable then she would need to provide a new spending plan to match that budget amount.

30. On March 15, 2023, IRC certified the SDP budget for claimant in the amount of \$45,000.85 for budget year beginning July 1, 2022, for services rendered from July 1, 2022, through December 30, 2022. On March 17, 2023, IRC sent notice to claimant's mother denying the proposed budget total of \$61,920.85 which included expenses for a gas back-up generator and vehicle modifications. The denial of those items was due to IRC's inability to assess and authorize the services prior to claimant's

death. IRC requested a new proposed spending plan that matched the certified budget amount.

31. Alejandra Rivera testified on behalf of IRC. She is currently an Individuals with Disabilities Act and SDP Manager. Prior to that she was a participant choice coordinator. She has had extensive SDP training and now provides that training to others. Rivera stated that funeral expenses are not a service that can be approved for funding through the SDP. Rivera observed that pursuant to the "Participant-Directed Goods and Services Decision Tree," funeral services would fall under the branch of assisting a consumer with seeking funding from another source. IRC found Another Way to help claimant's mother with funding for the funeral expenses.

Claimant's Additional Evidence

32. Claimant's mother's testimony and argument at hearing is summarized as follows: Since end-of-life care was included in claimant's final IPP, IRC had agreed to fund the funeral expenses. IRC had agreed to pay for the funeral expenses by including them in the budget worksheet. IRC then reversed course without the benefit of a new IPP meeting or any input from claimant's mother. Claimant's mother was demonstrably frustrated with the process for reviewing and approving claimant's budget. She believes that including an item in the IPP requires that it be funded by IRC.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at

Welfare and Institutions Code³ section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Lanterman Act provides that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.)

3. Section 4512, subdivision (b) defines services and supports as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability." It further states that the "determination of which services and supports are necessary for each consumer shall be made through the" IPP process.

4. Section 4646.4, subdivision (a), requires regional center to establish an internal process to ensure compliance with federal and state laws and regulations when purchasing services and supports. It also requires regional centers to consider generic resources and the family's responsibilities for providing services and supports when considering purchasing services and supports for consumers.

³ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

5. Section 4648 requires regional centers to ensure that services and supports enable consumers to achieve the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, in conformity with the IPP. This section also requires fiscal responsibility from regional centers.

6. Section 4685.8, subdivision (a), establishes the SDP and requires it be available in every regional center catchment area and provide participants and their families with “an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. . . .”

7. Section 4685.8, subdivision (m)(1)(A)(ii) authorizes the IPP team to develop and finalize a budget and to adjust the budget so long as there is either a “change in the participant’s circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures,” or the IPP team identifies need or resource that was unaddressed in the IPP and the regional center certifies that the “expenditures on an individual budget, including any adjustment, would have occurred regardless of the individual’s participation in the [SDP].”

Discussion

8. Claimant did not prove by a preponderance of the evidence that she is entitled to have her SDP budget increased to cover the costs of funeral expenses or vehicle modifications. The necessity for the vehicle modifications were not assessed prior to claimant’s death. IRC determined correctly that it was unable to certify that the expenditures would have occurred regardless of the individual’s participation in the SDP. The funeral expenses are not a service or support as defined by Section 4512, subdivision (b).

ORDER

Claimant's appeal of IRC's proposed action denying an increase to her SDP budget for funeral expenses and vehicle modifications is denied.

DATE: July 6, 2023

TRACI C. BELMORE
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023040424

Vs.

DECISION BY THE DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On July 7, 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 this _____ day of _____.

Nancy Bargmann, Director

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023040424

Vs.

**RECONSIDERATION ORDER, DECISION
BY THE DIRECTOR**

Inland Regional Center,

Respondent.

RECONSIDERATION ORDER

On August 17, 2023, the Department of Developmental Services (Department) received an application for reconsideration of a Final Decision issued by the Director on July 31, 2023.

The application for reconsideration is denied. A review of the Final Decision and record does not support a finding of factual, legal or clerical error that would change the Final Decision. The Final Decision remains effective as of July 31, 2023. All parties are bound by this Reconsideration Order and Final Decision.

Each party has the right to appeal the Final Decision to a court of competent jurisdiction within 180 days of receiving the Final Decision.

IT IS SO ORDERED this _____ day of _____.

Nancy Bargmann, Director