

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**FRANK D. LANTERMAN REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2023040906**

**DDS No. CS0004262**

**PROPOSED DECISION**

Erlinda Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 2, 2023, at the Frank D. Lanterman Regional Center (Service Agency or FDLRC) in Los Angeles, and by videoconference on November 6, 7, and 28, 2023, and December 21, 2023. Korean-language interpreters provided interpreter services for all hearing days.

Claimant was represented by his mother (Mother), who is also his conservator. Claimant and his family members are identified by titles to protect their privacy.

Service Agency was represented by Ruth Kim, Executive Director's Designee.

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

## **ISSUE**

Whether Service Agency was required by law to increase claimant's Self-Determination Program (SDP) Year 1 Individual Budget in April 2023 to include funding for an additional 62 hours per month of adaptive skills training services and 139 hours per month of behavioral personal assistance services.

## **EVIDENCE RELIED UPON**

Documentary: Service Agency exhibits 1-30; claimant's exhibits C1-C20.

Testimonial: Adrian Jimenez, FDLRC SDP Specialist; Srbui Ovsepyan, FDLRC Associate Director; Megan Mendes, FDLRC Assistant Director; and Mother.

## **Jurisdictional Matters**

1. Claimant is a 36-year-old conserved male who is eligible for regional center services. He is diagnosed with moderate intellectual disability, seizure disorder, and psychosis. Mother is claimant's conservator. Claimant lives at home with his father and Mother. Claimant is a participant in the SDP as of September 1, 2022.

2. By a Notice of Action dated April 4, 2023, Service Agency notified Mother her SDP funding request for an additional 62 hours per month of adaptive skills training services and 139 hours per month of behavioral personal assistance services was denied. (Exh. 1.)

3. On April 22, 2023, Mother filed an appeal request, on claimant's behalf, to appeal Service Agency's denial of her SDP funding request. (Exh. 2.) This hearing ensued.

### **Claimant's Person-Centered Plan (PCP)**

4. Adrian Jimenez, FDLRC's SDP Specialist, supported claimant in the process of transitioning to the SDP and developing his annual individual budget.

5. Mr. Jimenez explained that developing a Person-Centered Plan (PCP) is one of the first steps for an individual to participate in the SDP. An individual who participates in the SDP is referred to as a "participant." The PCP helps the regional center learn about the participant by, among other things, identifying their short-term and long-term goals and the services needed to achieve their goals. Mr. Jimenez explained that an "independent facilitator" is a resource outside of the regional center who supports a participant in developing a PCP, an individual budget, and a spending plan.

6. Claimant's PCP was developed in May 2022 by Mother and claimant's independent facilitator, Jamie McGrath. (Exh. 5.)

7. In July or August 2022, Mr. Jimenez held a meeting on Zoom with Mother, Ms. McGrath, and claimant's service coordinator, to discuss claimant's PCP (PCP meeting). The PCP noted family activities, outdoor activities, and participating in church and community activities were important to claimant. (Exh. 5, p. 7.) The PCP also noted some of the barriers to claimant participating in his preferred activities were seizures, limited expressive language skills, and a lack of safety skills. (Exh. 5, p. 8.)

8. Based on his review of the PCP, Mr. Jimenez's understanding of claimant's seizures was that claimant had seizure activity but very rarely, and anytime he had a seizure episode, he experienced fatigue or loss of appetite. Mr. Jimenez testified that, during the PCP meeting, Mother did not mention claimant's seizures or any behavioral issues. She also did not request funding for 24-hour support. Mr. Jimenez testified the PCP did not include a request for behavior intervention services. (See Exh. 5, p. 14.)

9. Mr. Jimenez testified the PCP reflected Mother's request that Service Agency continue to fund claimant's existing services at the time consisting of adaptive skills training, 182 hours per month, from Jay Nolan Community Service (Jay Nolan); community integration training services, 80 hours per month, from In2Vision Programs (In2Vision); and respite, 16 hours per month, from Accredited Respite Services. (Exh. 5, p. 14.)

### **Claimant's Individual Budget for Year 1**

10. Service Agency developed and proposed an SDP individual Budget for claimant. As part of the process, Service Agency prepared a "12 Month Payment History Detail" report, which showed the expenditures for claimant's services over a 12-month period (12-month report). (Exh. 7.)

11. The 12-month report for claimant was prepared on March 29, 2022. The services listed in the 12-month report were: independent living services, 80 hours per month; adaptive skills training, 182 hours per month; and a one-time purchase of dental services. The 12-month report showed a total expenditure amount of \$91,113.36. Mr. Jimenez noted the 12-month report did not show the 16 hours per month of respite referenced in claimant's PCP.

12. Service Agency next used the SDP Individual Budget Tool to generate claimant's individual budget. Mr. Jimenez explained the term "individual budget" refers to the annual dollar amount granted to a participant to use in their SDP.

13. An Individual Budget Tool report (IBT report) for claimant was presented at hearing (Exh. 6.) The IBT report included a section for identifying any rate changes for the services listed on the 12-month report. The IBT report indicated the hourly rate for claimant's adaptive skills training provider would increase to \$52.40, resulting in a new annual cost for the service of \$114,441.60. (Exh. 6, p. 2.)

14. The IBT report also included a section for determining the cost of the participant's services for the next 12 months. (Exh. 6, p. 3.) Service Agency included in that section the cost of the 16 hours per month of respite omitted from the 12-month report. Service Agency also included the unused funding for independent living services (\$22,292.09) carried over from the 12-month report. (See, Exh. 7.) Mr. Jimenez explained the section in the IBT report for listing "Newly Identified Needs/Services" was blank because there were no newly identified needs or requested services. (Exh. 6, p. 3.)

15. Based on the information in the PCP, the 12-month report, and the IBT report, Service Agency certified claimant's SDP annual individual budget for \$158,699.52 on July 19 and 20, 2022. (Exh. 6, p. 5.) Mother agreed with the certified annual individual budget amount by signing the IBT report on July 22, 2022. (Exh. 6, p. 5.)

### **Claimant's Spending Plan for Year 1**

16. After Mother agreed with the certified budget amount of \$158,699.52, Mother and Ms. McGrath developed a spending plan and identified a financial

management service (FMS) to support claimant. The spending plan was signed by Mother on August 15, 2022. (Exh. 8, pp. 2, 5.) Service Agency approved the spending plan on August 22, 2022. (Exh. 8, p. 2.) Claimant started in the SDP on September 1, 2022.

17. The three budget categories of an SDP spending plan are Living Arrangement, Employment & Community Participation, and Health and Safety. (Exh. 8, pp. 1-2.) Claimant's spending plan indicated total expenditures of \$158,599.52, all in the category of Employment & Community Participation, as follows: service code 331-community integration supports, \$148,143.52; service code 338-non-medical transportation, \$8,400; and service code 340-independent facilitator services, \$2,156. (Exh. 8, p. 1.)

18. According to pages 4 and 5 of the spending plan, the funding in claimant's individual budget was repurposed to purchase, under service code 331, fitness training (\$4,000), community inclusion support (\$94,988.16), community inclusion participation (\$51,555.36), and golf (\$6,000); under service code 338, non-medical transportation (no total amount specified); and under service code 340, independent facilitator services (\$2,156). (Exh. 8, p. 4.) The spending plan indicated the total expenditures with the repurposed funding amounts remained at the certified budget amount of \$158,699.52. (Exh. 8, p. 5.) That was an error.

19. The error in claimant's spending plan arose as follows: The repurposed funding under service code 331 for fitness training (\$4,000), community inclusion support (\$94,988.16), community inclusion participation (\$51,555.36), and golf (\$6,000), totaled \$156,543.52. That amount (\$156,543.52) plus the funding under service code 340 for independent facilitator services (\$2,156) equals \$158,699.52, which is the total amount of claimant's individual budget. There is a discrepancy,

however, because the repurposed budget allocations in the spending plan omit the expenditure for non-medical transportation under service code 338; the box on the spending plan form for that amount is blank. (Exh. 8, p. 4.) However, the spending plan reflects the rate of payment for non-medical transportation is \$500 per month (maximum of 12 months) plus \$200 per month for 12 months, for a total amount of \$8,400. (Exh. 8, p. 4.) Elsewhere in the spending plan also reflects the \$8,400 amount for non-medical transportation. (Exh. 8, p. 1.)

20. When the \$8,400 amount for non-medical transportation under service code 338 is added to the total repurposed funding amount under service code 331 (\$156,543.52) and the independent facilitator services under service code 340 (\$2,156), the total expenditures under claimant's spending plan is \$167,099.52, which exceeds claimant's individual budget of \$158,699.52. According to Mr. Jimenez, Service Agency did not discover the discrepancy in claimant's spending plan until after he had already transitioned to the SDP.

## **Claimant's SDP Individual Program Plan (IPP)**

### **SEPTEMBER 2022 IPP**

21. At the hearing, Service Agency presented claimant's Triennial Individual Program Plan dated September 1, 2022 (September 2022 IPP). (Exh. 4.) The September 2022 IPP stated that the SDP team reviewed claimant's PCP and related supports, and claimant's SDP transition date was set for September 1, 2022.

22. The September 2022 IPP indicated claimant was receiving 283 hours per month of In-Home Supportive Services (IHSS), with 168 hours of protective supervision. (Exh. 4, p. 2.) Additionally, the September 2022 IPP stated that claimant's SDP spending plan would fund the following services from September 1, 2022, to

August 31, 2023: financial management services (service code 316); independent facilitator services, (service code 340); adaptive skills for community integration support (service code 331); independent living skills support (service code 331); and fitness training and golf (service code 331). (Exh. 4, pp. 2-5.)

23. The September 2022 IPP summarized claimant's health status, in pertinent part, as follows:

[Claimant] maintained general good health. No major medical concerns are reported. Neither unplanned hospitalization, nor emergency room visits occurred in the past year. [Claimant] is currently on prescription medication to manage his behaviors and seizure activity. Dr. Chang [claimant's neurologist] regularly monitors his medication and behavior every three to four months. [Claimant] shared that when he is denied access to preferred activities and objects[,] he tends to exhibit disruptive and aggressive behaviors. He also has constant supervision at home and in the community. According to mother, [claimant] has improved in his behaviors although he still demonstrates challenging behaviors.

(Exh. 4, p. 5.)

24. Regarding claimant's behaviors, the September 2022 IPP noted claimant "still exhibits challenging behaviors; throwing objects, tantrums, and emotional outbursts. [Claimant] is physically aggressive toward his mother at times when he



really gets upset. [Claimant] also doesn't like unexpected events or plans." (Exh. 4, p. 2.)

25. Mr. Jimenez testified Mother did not sign the September 2022 IPP, but her refusal to sign did not prevent claimant from receiving services in the SDP. The September 2022 IPP presented at the hearing was signed by claimant's service coordinator and FDLRC's regional manager on June 20, 2023, and July 9, 2023, respectively, and was stamped as "Mailed" on July 25, 2023. (Exh. 4, p. 6.)

### **OCTOBER 2022 IPP – ANNUAL REVIEW**

26. At the hearing, Service Agency presented claimant's annual review IPP dated October 14, 2022 (October 2022 IPP). (Exh. 9.)

27. Megan Mendes, FDLRC Assistant Director, testified that an annual review IPP is used by Service Agency to ensure the information in a consumer's file is current. An annual review IPP is an internal document that is not shared with the consumer's family unless it is requested. An annual review IPP does not have a signature page for the family.

28. The October 2022 IPP stated that claimant participates in the SDP as of September 1, 2022. It also states that claimant is authorized to purchase services under service codes 316 (financial management service), 331 (community integration supports), 338 (non-medical transportation), and 340 (independent facilitator), as specified in his spending plan. (Exh. 9, p. 4; Exh. 8.)

29. The October 2022 IPP noted: "[Claimant] still demonstrates challenging behaviors; throwing objects, tantrums, emotional outbursts, aggressive behavior toward his mother. Mother reported at the current meeting that his behaviors have

improved.” (Exh. 9, p. 1.) Regarding mental health issues, the October 2022 IPP noted: “Mother stated that [claimant’s] behaviors have improved. However, when he is frustrated or upset, he still demonstrates challenging behaviors; throwing objects, tantrums, emotional outbursts, aggressive behavior towards his mother.” (Exh. 1, p. 3.)

30. Regarding current health issues, the October 2022 IPP noted: “No Major medical concerns are reported at the time of AR [Annual Review]. Mother reported that [claimant] sees his neurologist regularly to review medications for seizures and behaviors, but hasn’t seen his PCP [primary care physician] for a while.” (Exh. 9, p. 2.) The October 2022 IPP further noted that claimant’s last visit to his neurologist, Dr. Chang, was in October 2021 and his last seizure was in November 2021. The October 2022 IPP described claimant’s seizures as follows: “Seizures within 10 to 20 seconds, or less than a minute, have sometimes occurred. Sometimes it can be a seizure that the family can’t notice, and the family can find it, but it’s not a major seizure.” (Exh. 9, p. 2.) The October 2022 IPP also noted: “Mother reported that [claimant’s] seizure activity has decreased.” (Exh. 9, p. 3.)

### **Mother’s Request to Increase Year 1 Budget**

31. Claimant’s individual budget for his first year in the SDP covered the 12-month period from September 1, 2022, through August 31, 2023 (Year 1 Budget). Claimant is currently in his second year in the SDP. His second-year SDP individual budget covers the 12-month period from September 1, 2023, through August 31, 2024 (Year 2 Budget). The issue in this appeal only concerns claimant’s Year 1 Budget.

32. In early 2023, Mother requested Service Agency increase claimant’s Year 1 Budget to pay for two additional hours per day of adaptive skills training (62 hours per month) and four hours per day of behavioral personal assistance services (139

hours per month). Mother reported claimant was experiencing increased seizures and behaviors and required 24-hour care. Mr. Jimenez testified it was his understanding that claimant's independent facilitator, Ms. McGrath, did not agree with Mother's request for additional services, and Ms. McGrath terminated her services as claimant's independent facilitator.

33. Mr. Jimenez explained that behavioral personal assistance is a service typically provided to consumers who are already receiving intensive behavior services, such as Applied Behavior Analysis (ABA) therapy. Behavioral personal assistance services use ABA techniques and are intended to support and train consumers who are receiving ABA therapy. When assessing a consumer's need for behavioral personal assistance services, Service Agency will consider whether the consumer has any incident reports on file, any hospitalizations or police reports, and whether the consumer is already receiving ABA therapy or other behavior intervention services. At the time of Mother's request, claimant was not receiving ABA services.

34. Mr. Jimenez explained a special incident report is typically a report submitted to a regional center when there has been an incident with the consumer involving the police, hospitalization, or when there is a higher level of intervention by a service provider. Mr. Jimenez testified, to his knowledge, Jay Nolan and In2Vision did not submit any special incident reports to Service Agency regarding claimant's behaviors. Mr. Jimenez testified, to his understanding, claimant's last hospitalization occurred in 2009.

35. Mr. Jimenez testified Mother submitted documents to support her request to increase claimant's Year 1 Budget, including notes from doctors and claimant's current service providers. Mother also submitted a weekly schedule showing the additional hours of adaptive skills training and behavioral personal assistance

services being requested. (Exh. 11.) According to the weekly schedule, Mother intended the additional adaptive skills training (two hours per day/62 hours per month) would be used from 7 a.m. to 9 a.m., seven days a week, and the behavioral personal assistance services (four hours per day/139 hours per month) would be used from 5:30 p.m. to 10 p.m., seven days a week.

36. Mr. Jimenez testified he had concerns about Mother's weekly schedule for claimant. Mother requested the additional services to address claimant's seizures and behaviors, but she provided no information about how the additional services would decrease claimant's seizure activity or address his behaviors after a seizure. She provided no clarification on how additional adaptive skills training would support claimant in decreasing his behaviors after a seizure episode.

### **March 9, 2023 Behavior Planning Meeting**

37. On March 9, 2023, Service Agency held a Behavior Planning Meeting to discuss Mother's funding request for additional adaptive skills training and behavioral personal assistance services (March 9 meeting). The March 9 meeting was attended by Mr. Jimenez, two clinical specialists, an autism coordinator, claimant's service coordinator, and a regional manager. The discussion at the meeting was summarized in a written report. (Exh. 10, pp. 1-2.) The team reviewed all information available to them at the time of the March 9 meeting, including information provided by Mother.

38. At the time of the March 9 meeting, claimant's Year 1 Budget provided for 80 hours per month of independent living skills (ILS) training, 182 hours per month of adaptive skills training in lieu of day programming, and 16 hours per month of respite. However, the Year 1 Budget was "repurposed to fitness training, community inclusion support, golf lessons, and non-medical transportation, such that budgeted

services of ILS training, and adaptive skills provided in lieu of day programming, are no longer received.” (Exh. 10, p. A134.)

39. At the March 9 meeting, the team discussed claimant’s behavioral issues occurring in the home, including that he “has difficulty controlling his anger and needs constant supervision,” and he “exhibits challenging behaviors in the home that may include throwing objects, tantrums, emotional outbursts, [and] aggressive behavior toward his mother.” (Exh. 10, p. A134.) The team was unaware of the frequency and severity of claimant’s behaviors, and his history of behavior intervention services.

40. At the March 9 meeting, the team considered “the high likelihood that [claimant’s] behaviors have increased over time, common with seizure medications.” (Exh. 10, p. A134.) However, the team lacked clinical information regarding claimant’s medical, adaptive, supervision, and behavior support needs. The team also noted claimant’s current services did not provide for structured interventions to meet his PCP goals. The report of the March 9 meeting stated: “Information regarding current frequency of seizures, current incidents of problematic behaviors, and current levels of adaptive support need is required to evaluate client’s needs for additional supervision or adaptive training services. Determination of client needs will require assessment in the area(s) of need.” (Exh. 10, p. A134.)

41. Based on the discussion at the March 9 meeting, the team made recommendations including: (1) updating claimant’s medical records, and consultation with Service Agency’s medical professionals to evaluate claimant’s safety needs given his seizure condition; (2) obtaining a functional behavior assessment of claimant’s adaptive deficits and problematic behaviors by a Board-Certified Behavior Analyst (BCBA), and caregiver training in behavior management and adaptive skills support strategies; (3) assess training needs of claimant’s support staff; and (4) follow up with

behavior planning meeting once an assessment was received and reviewed. (Exh. 10, p. A134.)

42. After the March 9 meeting, Service Agency asked Mother to provide current medical records for claimant and offered to fund a functional behavior assessment by a BCBA to determine claimant's need for additional supervision and supports. Mother did not agree to a functional behavior assessment for claimant and did not provide the requested medical records.

#### **April 4, 2023 Notice of Action**

43. On April 4, 2023, Service Agency issued a Notice of Action, notifying Mother that her request to increase the Year 1 Budget was denied. (Exh. 1.) In the Notice of Action, Service Agency explained the basis for the denial as follows:

To support your request, you [Mother] provided FDLRC with letters from [claimant's] doctors. These letters described [claimant's] birth history, his medical diagnoses, and his medication. You also provided a letter from [claimant's] caregiver explaining that [claimant] gets frustrated easily. FDLRC's Clinical Department reviewed these documents and determined there is not enough information to approve your request. For these reasons, FDLRC requested [claimant's] current medical records and asked you to provide more information about [claimant's] seizures. FDLRC also asked you to provide more information about [claimant's] behaviors (the intensity and frequency) and asked you to describe these behaviors and the incidents

you have observed. FDLRC also offered to fund a Functional Behavior Analysis (FBA) Assessment so a professional can assess [claimant's] adaptive skills needs and behavior deficits, determine his level of need, and establish adaptive skill development and behavior reduction goals. His services will be determined following review of the FBA. The Clinical Department also recommended that the training needs of [claimant's] staff be assessed. You informed FDLRC you were not in agreement with [claimant] receiving a[n] FBA Assessment and you did not want to provide any additional information or medical records.

(Exh. 1, p. A2.)

44. Mother filed an appeal request on April 22, 2023. (Exh. 2.)

### **May 2, 2023 Informal Meeting**

45. On May 2, 2023, FDLRC Appeals Coordinator Alexis Cuevas held an informal meeting with Mother to discuss her appeal (May 2 meeting). Following the meeting, Ms. Cuevas sent Mother a letter dated May 4, 2023, notifying Mother that she was upholding Service Agency's original decision to deny her request. (Exh. 3.) The May 4, 2023 letter summarized the information provided by Mother during the May 2 meeting, the discussion between Ms. Cuevas and Mother, and the basis for Ms. Cuevas's decision to uphold the denial.

46. During the May 2 meeting, Ms. Cuevas and Mother discussed Service Agency's recommendation for a functional behavior assessment. Ms. Cuevas explained that "the FBA is needed so FDLRC can determine [claimant's] individualized need for

additional hours. Once the FBA is completed, FDLRC can consider funding additional hours based on the professional's recommendation." (Exh. 3, p. 2.) In response, Mother explained she did not agree with the FBA because she thought she would be responsible for the cost of the assessment and training claimant's caregivers. (Exh. 3, p. 2.) Ms. Cuevas explained that claimant's budget would be amended to cover the cost of the FBA and any recommended training. Mother still declined the FBA, and claimed she had already submitted a letter from claimant's psychiatrist to Service Agency.

47. Ms. Cuevas noted the psychiatrist's letter submitted by Mother recommended behavioral personal assistance and behavioral training for claimant, but the letter could not serve as a functional behavior assessment because the psychiatrist "did not complete any behavioral assessments for [claimant] and there is no information about [claimant's] behaviors." (Exh. 3, p. 3.) FLDRRC did not have any information about the types of behaviors Mother was concerned about, such as physical aggression, verbal aggression, self-injurious behaviors, property destruction, and elopement. (Exh. 3, p. 3.) The psychiatrist's letter also did not describe the intensity, frequency, and duration of the behaviors, and did not identify the cause of the behavior or behavior treatment goals. (Exh. 3, p. 3.)

48. At the end of the May 2 meeting, Mother informed Ms. Cuevas she was "requesting a total of six (6) hours per day of Adaptive Skills [T]raining (AST) or six (6) hours per day of Behavior Personal Assistance Services because [claimant's] IPP and PCP states that he requires 24-hour care." (Exh. 3, p. 2.) Mother also claimed that an FBA "is not necessary" and she already "provided FDLRC with all of the information they need to approve [her] request." (Exh. 3, p. 2.)

49. In the May 4, 2023 letter, Ms. Cuevas explained the basis for denying Mother's request to increase claimant's Year 1 Budget, as follows:



Based on my review of the available records, [claimant's] circumstances have not changed since he transitioned into the Self-Determination Program in September 2022. There is no information about increased maladaptive behaviors or increased seizure activity that require 24-hour care. Additionally, FDLRC would not authorize funding for an additional 186 hours per month of Adaptive Skills Training or Behavioral PAS without an assessment from a qualified professional. For these reasons, FDLRC recommended a Functional Behavioral Assessment. The FBA is completed by a Board-Certified Behavior Analyst (BCBA) who can assess [claimant] in his home and in the community. This assessment is necessary to determine [claimant's] behaviors (physical aggression, verbal aggression, self-injurious behaviors, property destruction, elopement) as well as the intensity, frequency, and duration of the behaviors, for purposes of developing behavior treatment goals. Since [claimant's] circumstances have not changed and FDLRC would not authorize 186 hours per month of AST or Behavior PAS based on insufficient information, I have little choice but to uphold FDLRC's original decision.

(Exh. 3, p. 3.)

### **Subsequent Discussions between Service Agency and Mother**

50. During June, July, and August 2023, Service Agency continued to have discussions with Mother in an effort to resolve her appeal request. Srui Ovsepyan,

FDLRC Associate Director, and Megan Mendes, FDLRC Assistant Director, were involved in the discussions with Mother.

51. In August 2023, Mother hired a new independent facilitator and participated in IPP meetings with Service Agency. During the meetings, Mother requested reimbursement of \$33,175.60 for claimant's services for July and August 2023 provided by Jennifer Yoon and claimant's brother. Mother requested \$15,848.98 for July services, and \$17,326.71 for August services. (Exh. 20.) Mother submitted cover letters and timesheets from claimant's care providers, Jennifer Yoon and claimant's brother. (Exh. 21.) Ms. Mendes testified that, during an IPP meeting, Mother reported she was requesting reimbursement because she had overspent claimant's SDP budget.

52. (A) In August 2023, Mother provided Service Agency with medical records from claimant's neurologist, Dr. Chang, regarding claimant's visits with Dr. Chang on June 13, 2022, and on July 18, 2023. (Exh. C8, pp. B74 to B76, and B80 to B82.) Ms. Mendes testified Service Agency had not seen these documents until Mother provided them in August 2023. These records were not available to Service Agency at the time it issued the Notice of Action on April 4, 2023.

(B) The record of claimant's June 13, 2022 visit with Dr. Chang indicated that in October 2020, claimant had "No obvious seizure but sometimes feeling like having seizure"; that in November 2021, claimant had a break through seizure at Disney World; and that there might be an issue with claimant's medication compliance. (Exh. C8, p. B75.) There was no indication in the June 13, 2022 record that claimant's family reported an increase in seizures at that time.

(C) The record for claimant's July 18, 2023 visit with Dr. Chang was the indicated claimant had "about 2 seizures a month" and that he "needs behavior

therapy.” (Exh. C8, p. B80.) According to Ms. Mendes, the July 18 record was the first document Service Agency received from any of claimant’s physicians stating he had two seizures monthly and mentioning claimant’s need for behavior therapy.

53. In August 2023, Mother provided Service Agency with a functional behavior assessment report (FBA report). (Exh. 22.) The FBA report indicated claimant was evaluated on July 20 and 26, 2023. (Exh. 22, p. 4.) Service Agency’s clinical department reviewed the FBA report on September 26, 2023. (Exh. 24.) After reviewing the FBA report, the clinical department had several questions about the assessor's qualifications, the data that was collected, and the provider's service recommendations. Service Agency requested additional information from Mother to confirm claimant's need for a higher level of care and behavior support services. As of October 25, 2023, Service Agency did not receive additional information from Mother and, consequently, was unable to determine Claimant's behavior support needs.

54. Ms. Mendes testified she discussed the FBA report with Dr. Jean Johnson, who is a BCBA and serves on FDLRC’s clinical team for review of reports. Dr. Johnson found the frequency of behaviors reported in the FBA report was a concern because it was not based on data collected but on parent report. The FBA was also unclear on how the 25 hours per week of recommended ABA services would be implemented. It was unclear if the ABA services would be provided by a BCBA, a behavior interventionist, or a combination of both. Dr. Johnson also noted the FBA report did not include the license number of the person who drafted the report, which is expected of BCBA's. For these reasons, Dr. Johnson recommended that revisions to the FBA report should be requested.

55. In August 2023, in its continuing effort to meet claimant’s needs and resolve Mother’s appeal, Service Agency agreed to authorize funding for 62 hours per

month of adaptive skills training services, 139 hours per month of in-home care services, and a functional behavior assessment. On August 15, 2023, Service Agency sent Mother a Budget Amendment reflecting these services. (Exh. 23.) Mother agreed to the Budget Amendment and signed it on August 29, 2023.

56. Ms. Mendes explained the Budget Amendment signed on August 29, 2023 was only for services in August 2023, because there was no agreement regarding additional services for June and July 2023, and Mother had informed Service Agency she already obtained a functional behavior assessment. Also, August 2023 was the final month of claimant's Year 1 Budget. Claimant would be entering his second year in the SDP on September 1, 2023, and he would have a new individual budget and spending plan for his second year in the SDP.

57. (A) Ms. Mendes testified the Budget Amendment signed on August 29, 2023 did not resolve Mother's appeal request. Although Mother signed the Budget Amendment after many meetings, Mother continued to request retroactive reimbursement for services not authorized for July and August 2023. Ms. Mendes testified that, as Service Agency tried to resolve Mother's appeal request, Mother's service requests changed. For example, Service Agency is unsure whether behavioral personal assistance services are still needed because claimant's individual budget for his second year in the SDP, which began on September 1, 2023, did not identify such services.

(B) Ms. Mendes testified Mother prepared a weekly schedule of services for claimant's second year in the SDP. (Exh. 25.) The weekly schedule indicates Mother is requesting adaptive skills training, additional hours for ABA therapy, and some additional hours for golf, gym, and a drum class. Ms. Mendes noted the weekly schedule has claimant programmed with services for all his waking hours up to 11

p.m., seven days a week. Ms. Mendes testified the weekly schedule does not include any behavioral personal assistance and has a significantly higher amount of adaptive skills training than was previously requested.

(C) Ms. Mendes asserted the many changes in the services being requested by Mother suggests the services that are the basis for Mother's appeal request may no longer be relevant. Ms. Mendes noted it has been difficult to assess claimant's needs because Mother keeps changing the services she is requesting. It appears that Mother is attempting to obtain the rate paid for adaptive skills training, which is a higher rate than the rate paid for other services. Ms. Mendes testified she believes Mother's current request for the Year 1 Budget is to obtain reimbursement for services provided in July and August 2023.

58. (A) Ms. Mendes testified regarding discrepancies in the documents Mother submitted in support of her reimbursement request for claimant's services provided by Ms. Yoon and claimant's brother in July and August 2023 (See Finding 51, above.)

(B) Mother requested a total reimbursement of \$33,175.69, consisting of \$15,848.98 for July and \$17,326.71 for August. (Exh. 20.) These figures, however, do not match the reimbursement amounts stated in the letters and timesheets from Ms. Yoon and claimant's brother. (Exh. 21.) For July, Ms. Yoon requested \$5,360 and claimant's brother requested \$7,729.92, for a total of \$13,089.92, instead of the \$15,848.98 Mother requested. (Exh. 21, pp. 1, 13.) Similarly, for August, Ms. Yoon requested \$6,332 and claimant's brother requested \$5,447.72, for a total of \$11,779.72, but Mother requested reimbursement of \$17,362.71 for August. (Exh. 21, pp. 1, 13.)

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(C) Ms. Mendes testified regarding a discrepancy in Ms. Yoon's cover letter and her timesheets. In her cover letter, Ms. Yoon wrote that she worked a total of 180 hours in July. However, her timesheets for July indicated she worked 24 shifts at 9 hours per shift, for a total of 216 hours. Ms. Mendes testified there were similar discrepancies for Ms. Yoon's August hours, and with the cover letter and timesheets for claimant's brother for July and August.

(D) Service Agency contends claimant's spending plan authorized funding for 184 hours of community inclusion support and 22.2 hours per week (the equivalent of 96 hours per month) of community inclusion participation. (Exh. 8, p. 4.) Thus, claimant's caregivers, Ms. Yoon and claimant's brother, were only authorized to provide a total of 280 hours each month of community inclusion support and participation services. But their letters and time records indicate they collectively provided a total of 394.72 hours in July and a total of 307.77 hours in August. (Exh. 21, pp. 1, 13.)

(E) Ms. Mendes testified that when the accounting of funds in the SDP does not match timesheets, spending plans, and authorized hours, this raises concerns of possible fraud and misappropriation or misuse of SDP funds. To avoid those concerns, SDP requires the use of financial management services to ensure funds are used and managed according to the law. Service Agency became concerned when Mother requested reimbursement for unauthorized services. Ms. Mendes testified these concerns were discussed with Mother at an IPP meeting, but Mother was unable to explain why the amounts of her reimbursement request did not match the cover letters and timesheets for Ms. Yoon and claimant's brother.

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## **Service Agency's Contentions**

59. Service Agency contends that, in April 2023, it properly denied Mother's funding request for an additional 62 hours per month of adaptive skills training and 139 hours per month of behavioral personal assistance services due to insufficient information. Service Agency contends it did not have sufficient information to confirm claimant's circumstances or behavior support needs had changed since he entered the SDP on September 1, 2022. Mother's documentation did not provide sufficient information regarding the current frequency of claimant's seizures, current incidents of problematic behaviors, and current levels of adaptive support, to enable Service Agency to evaluate claimant's need for additional services. Since Mother declined to provide current medical records and did not consent to a functional behavior assessment, Service Agency was unable to confirm claimant's need for additional supports or a higher level of care.

60. Service Agency contends claimant is not entitled to reimbursement or retroactive funding for unauthorized services provided in July and August 2023. Welfare and Institutions Code section 4646, subdivision (i), required Mother to sign IPP documents before agreed-upon services could be implemented. In claimant's case, Mother did not sign any IPP documents authorizing these services until August 2023. Service Agency further contends Mother mismanaged claimant's SDP funds and allowed his caregivers, Ms. Yoon and claimant's brother, to provide and bill for unauthorized services. Service Agency is not required or permitted by law to reimburse Mother due to overspending and mismanagement of claimant's SDP funds.

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## **Mother's Testimony and Contentions**

61. Mother explained her reasons for requesting an increase in claimant's Year 1 Budget to fund additional adaptive skills training services and behavioral personal assistance services. Mother contends claimant has unmet needs that justify increasing his Year 1 Budget. Mother contends records of claimant's IPP meetings show that claimant had behavioral issues requiring services, but those services were not provided. Mother contends claimant has not received professional behavioral services. Mother contends the records indicate claimant needs consistent and constant supervision, but he has not received those services.

62. Mother testified she requested the additional two hours per day of adaptive skills training and four hours per day of behavioral personal assistance service to address concerns about claimant's safety. Mother testified that, at the time of the request, she thought the only services claimant could receive were services presented by the service coordinator. Mother claimed that at the last IPP meeting on March 9, 2023, she was asked if claimant had an ABA program. Mother claimed she was informed at that IPP meeting that claimant needed an ABA program to correct his behaviors, and a functional behavior assessment by a BCBA was needed to get ABA services. Mother contends she was not informed that ABA services were available for claimant. Mother contends claimant missed opportunities to improve his behavior because he did not receive those services earlier. Mother contends that, although claimant needed ABA services and a functional behavior assessment from March 2022 to March 2023, she was not informed about functional behavior assessments or ABA services and she did not know ABA services existed.

63. Mother contends claimant has "changed circumstances" that justify an increase in his Year 1 Budget for additional services. Mother testified that even though



claimant needs 24-hour care, he has not been receiving that service. When claimant is not provided required services, Mother and claimant's father have to take care of him. Mother contends she and claimant's father are not sufficiently healthy to take care of claimant's needs. She points out they do not have professional training to address claimant's behavioral issues. In addition, Mother claimed she was informed ABA therapy is most effective if received at an early age, when the person is aged two, three, or four. Mother contends claimant has not been receiving ABA therapies and behavioral interventions. Mother contends that, as claimant gets older, his behaviors are worsening and increasing in intensity, and he is also getting physically stronger to the point that Mother is unable to handle him. Mother contends that, even though she mentioned claimant's behavioral issues at IPP meetings every year, Mother feels claimant's needs were ignored or omitted, and the IPP team was "purposely prejudiced" against claimant.

64. In May 2023, Mother made allegations that Service Agency repeatedly provided her with misinformation; claimant's service coordinator failed to respond to her requests for information about services; Service Agency failed to recommend behavior intervention services 10 years ago when claimant was hospitalized for suicidal and aggressive behaviors; and Service Agency acted in a discriminatory manner towards claimant. (Exh. 20.) Service Agency properly investigated and addressed Mother's allegations as a complaint pursuant to Welfare and Institutions Code section 4731. Service Agency notified Mother of the findings in a letter dated June 12, 2023. (Exh. 18.)

65. At hearing, Mother contended Service Agency had not followed the law in claimant's case. Mother claimed Service Agency engaged in legal misconduct by

failing to timely provide her with IPP meeting reports within 45 days of the meetings, and by altering or modifying documents.

66. Mother testified she requested claimant's file from Service Agency after she filed the appeal request. Mother contends some of the documents she received from Service Agency do not match the documents Service Agency presented as exhibits in this hearing. For example, Mother compared claimant's version of the October 2022 annual review IPP (Exhibit C14) with Service Agency's Exhibit 9. She noted that her Exhibit C14 indicated 168 hours of IHSS protective supervision, while Service Agency's Exhibit 9 indicated there were no protective supervision hours, and the Purchase of Services information in Service Agency's Exhibit 9 included more information than in her Exhibit C14. (Exh. 9, p. A131; Exh. C14, p. B134.)

67. Mother's contention that Service Agency illegally altered or modified documents was not convincing. The October 2022 IPP was an annual review IPP used internally by Service Agency and typically not provided to families unless requested. The differences between Exhibits 9 and C14 noted by Mother are minor and not material to the issue in this appeal. On cross-examination, Mother admitted none of the document discrepancies she discussed during her testimony had any bearing on whether Service Agency was required by law to grant her request to increase claimant's Year 1 Budget to fund additional adaptive skills training and behavioral personal assistance services.

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## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. The Lanterman Act, Welfare and Institutions Code section 4500 et seq., governs this case. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.)

2. When an individual seeks government benefits or services, the burden of proof is on the individual. (*Lindsay v. San Diego 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.)

3. In this case, claimant bears the burden of proving by a preponderance of the evidence he is entitled to the requested increase in his SDP budget to fund an additional 62 hours per month of adaptive skills training and 139 hours per month of behavioral personal assistance. (Evid. Code, § 500.)

### **Traditional Service Delivery**

4. A regional center is required to secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be based on 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. The Lanterman Act contemplates that the provision of services shall be a mutual effort by and between regional centers and the consumer and their family. The foundation of this mutual effort is the development of a consumer's IPP. As explained in section 4646, subdivision (d):

Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

6. Thus, the Lanterman Act contemplates cooperation between the parties and the sharing of information in determining services and supports for a consumer and their family. The preferences of the consumer and their family are an important factor, but not the only factor, to be considered in the IPP process.

7. Section 4646.5, subdivision (a)(1), provides that the planning process for an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities."

Subdivision (a)(1) further provides: "Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible."

8. A regional center may purchase services or supports for a consumer from an individual or agency pursuant to vendorization or a contract. (§ 4648, subd. (a)(3).) "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).)

9. When purchasing services and supports for a consumer, a regional center shall ensure conformance with its purchase of services policies, utilization of generic services and supports when appropriate, utilization of other sources of funding as contained in section 4659, and consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs. (§ 4646.4, subd. (a).)

10. Under section 4659, regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, such as school districts, and private entities, to the extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

11. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

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## **Self-Determination Program (SDP)**

12. The SDP is an alternative model of service delivery provided under section 4685.8. A regional center consumer who has been deemed eligible for, and has voluntarily agreed to participate in, the SDP is referred to as a "participant." (§ 4685.8, subd. (c)(5).) "A participant may choose to participate in, and may choose to leave, the Self-Determination Program at any time." (§ 4685.8, subd. (d).)

13. "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." (§ 4685.8, subd. (c)(6).) The SDP "shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (§ 4685.8, subd. (c)(6).)

14. A participant must comply with the requirements of section 4685.8, subdivision (d)(3). Among other things, the participant shall use the services and supports available within the SDP only when generic services and supports are not available; the participant shall only purchase services and supports necessary to implement their IPP and shall comply with all terms and conditions for participation in the SDP; and the participant shall manage SDP services and supports within the participant's individual budget. (§ 4685.8, subd. (d)(3)(B), (C), (D).)

15. The IPP team shall use the person-centered planning process to develop an IPP for the SDP participant. (§ 4685.8, subd. (j).) "The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the participant to achieve the outcomes set forth in the

participant's IPP and ensures their health and safety. The completed individual budget shall be attached to the IPP." (§ 4685.8, subd. (j).) "The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan." (§ 4685.8, subd. (k).)

16. The IPP team shall determine the initial and any revised individual budget for the participant using the methodology specified in section 4685.8, subdivision (m). "'Individual budget' means the amount of regional center purchase of service funding available to the participant for the purchase of services and supports necessary to implement the IPP." (§ 4685.8, subd. (c)(3).) For a participant who is a current consumer of the regional center, their individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant. (§ 4685.8, subd. (m)(1)(A)(i).)

17. Pursuant to section 4685.8, subdivision (m)(1)(A)(ii), an adjustment may be made to the individual budget if both of the following requirements, designated herein as Requirement I and Requirement II, occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to 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 prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures. When adjusting the budget, the IPP team shall document the specific reason for the adjustment in the IPP.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the Self-Determination Program.

## **Analysis**

18. Service Agency acted properly when, in April 2023, it denied Mother's request to increase claimant's Year 1 Budget to fund additional hours of adaptive skills training and behavioral personal assistance services.

19. The preponderance of the evidence did not establish claimant's compliance with both Requirement I and Requirement II under section 4685.8, subdivision (m)(1)(A)(ii), to qualify for an adjustment to his SDP Year 1 Budget.

(A) The preponderance of the evidence did not establish an adjustment to claimant's Year 1 Budget was necessary due to a change in his circumstances, needs, or resources. Service Agency did not have sufficient information to confirm claimant's circumstances or behavior support needs had changed since he started in the SDP on September 1, 2022. (Factual Findings 31-49.)

(B) The preponderance of the evidence did not establish Service Agency could certify that funding for the requested adaptive skills training and behavioral personal assistance services would have occurred regardless of claimant's participation in the SDP. Service Agency would not have authorized funding for additional adaptive skills training or behavioral personal assistance services in the traditional regional center system without an accompanying ABA program or functional behavior assessment (FBA), and documentation from qualified professionals showing that



claimant required a higher level of care. In April 2023, claimant was not receiving ABA or any other behavior support services and Mother declined a functional behavior assessment. (Factual Findings 31-49.)

20. Mother's request for reimbursement for the cost of claimant's services in July and August 2023 provided by Ms. Yoon and claimant's brother must be denied. The Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the appeal process. The statutes detailing the IPP process indicate retroactive reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Further, the costs for which Mother seeks reimbursement resulted from Mother's overspending SDP funds by allowing Ms. Yoon and claimant's brother to provide and bill for unauthorized services. As such, Service Agency is not required to reimburse Mother for those costs.

21. Mother's allegations that Service Agency did not provide timely notice of its actions, did not respond to her requests for information, provided her with misinformation, or treated claimant in a discriminatory manner, were properly investigated and addressed by Service Agency as a consumer complaint pursuant to Welfare and Institutions Code section 4731. Those allegations are not within the jurisdiction of this fair hearing.

22. The overwhelming weight of the evidence established Service Agency has made every effort to work with Mother to resolve her appeal request and to ensure claimant's needs are met. Going forward, Mother is encouraged to develop a productive working relationship with Service Agency. Service Agency is encouraged to continue working productively with Mother.

23. Based on the foregoing, Service Agency was not required, in April 2023, to increase claimant's Year 1 Budget to fund the cost of additional adaptive skills training and behavioral personal assistance services requested by Mother. (Factual Findings 1-60.)

## **ORDER**

Claimant's appeal is denied. Service Agency was not required in April 2023 to increase claimant's Self-Determination Program Year 1 Individual Budget to include funding for an additional 62 hours per month of adaptive skills training and an additional 139 hours per month of behavioral personal assistance services.

DATE:

ERLINDA SHRENGER

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023040906

Vs.

**DECISION BY THE DIRECTOR**

Frank D. Lanterman  
Regional Center,

Respondent.

ORDER OF DECISION

On January 3, 2024, 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 January 31, 2024.

*Original signed by*

Nancy Bargmann, Director