

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

OAH No. 2023060193

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 18, 2023, by video conference.

Claimant represented herself.

Neil Kramer, Fair Hearing Manager, San Diego Regional Center (SDRC), represented SDRC.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on July 18, 2023.

ISSUES

Is claimant eligible to continue to receive services through the Self-Determination Program (SDP) without a vendored Financial Management Service (FMS)?

Can SDRC use funds from claimant's previously approved SDP to reimburse the costs of services and supports incurred after her FMS provider terminated its relationship with her?

FACTUAL FINDINGS

Preliminary Matter

1. At the start of the hearing, claimant asked that a protective order be issued and this decision not be uploaded to any public platform. That request was denied. Personal or identifying information regarding claimant is not included in this decision, and all decisions are required by law to be posted to the OAH website. (Welf. & Inst. Code, § 4712, subd. (f).)

Jurisdictional Matters

2. Claimant is a regional center consumer who until recently was a participant in the SDP. Claimant's FMS provider, Cambrian, terminated its relationship with claimant effective April 20, 2023, after notice to her. As discussed below, SDRC took efforts to help claimant find another FMS, and after some effort, this FMS became claimant's FMS on July 1, 2023.

3. Claimant is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq., based on her diagnosis of autism spectrum disorder. As stated in her August 16, 2022, Individual Program Plan (IPP), claimant is no longer safe outside her home and requires daily assistance to remain safely in her home. Claimant has difficulty with social interactions and experiences "severe and chronic breakdowns in any communication." Through the approved SDP, claimant is authorized to receive daily assistance.

4. On May 5, 2023, SDRC issued a Notice of Action (NOA) to terminate claimant's SDP and transition claimant to the traditional service delivery model. The NOA states that claimant can return to the SDP after obtaining a new FMS. In support of its decision, the NOA further states: "Cambrian (claimant's FMS) gave [claimant] a 30 day notice that ended 4/20/23. [Claimant] has not been able to obtain a new FMS."

5. On June 2, 2023, claimant submitted a fair hearing request,¹ as written in the original as follows:

SDRC compromised my safety and independent living status, (1) refused to assign a s.c. after 30 days for SDP Team (2) accused me of noncompliance without proof, resulting in FMS breakdown (3) refused case history review for Unmet Needs (4) avoids 'getting creative' to find

¹ Claimant filed her appeal using this form.

innovative solutions per WIC 4652 to protect me. engaging
in double jeopardy.

Concerning what claimant felt was needed to resolve her complaint she wrote:

Team approach with the business specialist, to meet with
the decision makers, due to delays and miscommunication.
RCSD [sic] to enforce the IPP outcomes of march [sic] 10th,
to ensure my safety in SDP, to facilitate breakdown in
communication, to provide an ADA/DEI policy in my IPP to
protect me from barriers due to my disability

6. Following a mediation, OAH issued an order dated June 22, 2022, adding an additional issue for hearing to be decided in the proposed decision concerning whether funds from claimant's previously approved SDP can be used "to pay or reimburse services or supports" incurred after Cambrian terminated its relationship with claimant.

7. The SDP is a voluntary alternative to the traditional way regional centers provide services and supports, and it is designed to offer consumers and their families more freedom and control in choosing their services and supports. (Welf. & Inst. Code, § 4685.8, subd. (a).) A participant in SDP must have an FMS to participate in the SDP, pursuant to Welfare and Institutions Code section 4685.8, subdivision (d)(3)(E).

An FMS assists the SDP participant to manage and direct the distribution of funds contained in the SDP individual budget and implement the IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(1).) This section further states that an SDP participant "*shall utilize* the services of a [FMS] of their own choosing and who is vendored by a regional center and who meets [certain qualifications]." (Welf. & Inst. Code, § 4685.8, subd.

(d)(3)(E) [emphasis added].) At the same time, if a regional center determines that a participant is no longer eligible to remain in an SDP, the regional center shall provide for the participant's transition from the SDP to other supports and services and ensure there is no gap in services and supports during the transition period. This transition includes the development of a new IPP. (Welf. & Inst. Code, § 4685.8, subd. (g).)

8. As noted above, claimant's FMS, Cambrian, ended its relationship with claimant effective April 20, 2023. Cambrian gave its reasons for terminating its relationship with claimant in a letter it sent to claimant dated March 23, 2023. Cambrian states in this letter that a "collapse" in its relationship with claimant was due to various factors, including claimant's unwillingness to cooperate with staff and her discourteous and disrespectful attitude towards staff.

9. SDRC was not involved in Cambrian's decision to terminate its relationship with claimant. Cambrian made that decision without SDRC's input. Amy Vance, SDRC program manager, who was involved in claimant's service coordination during the period at issue here, testified that SDRC acted as an intermediary between Cambrian and claimant, and SDRC did "everything to facilitate communication" between Cambrian and claimant but was not successful due to the breakdown in communication. Ms. Vance further testified she tried to convince Cambrian to remain as claimant's FMS until July 1, 2023, but Cambrian refused. Ms. Vance worked to find a new FMS for claimant, which she was able to do, and this vendored FMS started July 1,

2023. Thus, there is a gap between April 20, 2023, when Cambrian left as claimant's FMS and July 1, 2023, when the new FMS started.²

10. Ms. Vance said that SDRC recognizes claimant's communication challenges and needs, and claimant requires providers to help her. To ensure continued supports and services for claimant before Cambrian left, Ms. Vance offered claimant a transition plan that would have returned her to the traditional service model, but claimant refused to sign an amended IPP to do this, and she declined the transition plan. The transition plan Ms. Vance proposed included the use of multiple vendors through this traditional model. Instead of accepting this transition plan, claimant asked SDRC to issue a notice of action, which it did. Without an FMS in place during this gap from April 20, 2023, to July 1, 2023, and without claimant returning to the traditional service delivery model, SDRC had no way to fund supports and services. Had claimant agreed to return temporarily to the traditional service model, SDRC could have paid for the services during the gap period. Ms. Vance stated "unfortunately" claimant refused this option.

Claimant's Testimony and Argument

11. Claimant's testimony and argument are summarized as follows: She stated that the IPP is a legally binding contract that requires SDRC to fund the services and supports and ensure her safety. SDRC must "zealously" apply the SDP budget and SDRC violated labor laws because of the funding gap. Claimant asserted that SDRC had an ineffective team, accused SDRC of engaging in a "racket," and further accused

² A regional center is prohibited from reimbursing a vendor for services provided before vendorization. (Cal. Code. Reg., title 17, § 54326, subd. (d)(4)(B).)

SDRC of misleading the administrative law judge. She said SDRC's reasons why it can't pay invoices before July 1, 2023, are "irrelevant." She said SDRC was "gaslighting" her, retaliating against her, and SDRC doesn't want to work with her. SDRC, she added, hasn't considered her communication problems. She believes SDRC compromised her safety and ability to live independently, and SDRC has a strategy to break her and deny services by delay.

12. Claimant wants, as she put it, a "plug and play" traditional service delivery model that SDRC could arrange for her. Claimant identified Welfare and Institutions Code section 4652 as authorizing SDRC to "creatively" do this. She added that the traditional model was not offered to her in a way that did not constitute "double jeopardy." Claimant repeated that she needs a "plug and play traditional model with all her needs met" and such a model should have been implemented. Claimant added that she is flexible with her options and SDRC offered her none.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, SDRC bears the burden of proof to show that claimant was ineligible to continue to receive SDP after claimant's FMS Cambrian ended its relationship with her and it cannot pay invoices for the period during the April 20, 2023, and July 1, 2023, gap between FMS providers.

The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

Evaluation and Disposition

2. SDRC proved by a preponderance of the evidence that termination of claimant's participation in the SDP program effective April 20, 2023, was required by operation of law under Welfare and Institutions Code section 4685.8, subdivision (d)(3)(E), due to claimant's FMS ending its relationship with her and no other FMS being in place. The law required claimant to have an FMS in place as an SDP participant. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(E).) Once claimant was no longer an SDP participant, SDRC was obligated to provide a transition plan for claimant to ensure that supports and services remained in place, which would include a new IPP. (Welf. & Inst. Code, § 4685.8, subd. (g).) SDRC provided claimant with such a transition plan by offering to return her to the traditional service delivery model, and SDRC developed a new IPP to facilitate this. Claimant rejected this plan. SDRC, further, used its best efforts to obtain a new vendored FMS for claimant which became effective July 1, 2023. Without either an SDP or traditional model in place, SDRC had no way to fund supports and services during the "gap" period from April 20, 2023, when Cambrian ended its relationship with claimant and July 1, 2023, when the new FMS came on board. Any unmet needs or safety issues during this gap were due to the fact that claimant declined to return to the traditional model pending a new FMS.

3. Claimant's argument that Welfare and Institutions Code section 4652 authorized SDRC to develop, essentially, an alternative delivery model is rejected. Section 4652 provides:

A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the

region. If suitable care cannot be found within the region, services may be obtained outside of the region.

Section 4652 did not require SDRC to take an alternative course of action, a “plug and play” traditional service model, as claimant argued at the hearing she should have had. SDRC did its best to transition claimant to the traditional service model so that outstanding invoices for services could be approved and there would be no gap in services and supports. SDRC tried to do this because, through no fault of SDRC, claimant’s participation in the SDP program ended when her relationship with Cambrian ended. Claimant rejected SDRC’s plan, and instead wants this “plug and play” traditional service model. It is not clear what this means, as claimant rejected SDRC’s attempt to transition her to the traditional model. It appears that claimant wanted to continue with the SDP program despite not having an FMS, which is prohibited by law.

ORDER

Claimant's appeal is denied. Claimant was not eligible to receive services through the SDP without a vendored FMS. SDRC may not use funds from claimant’s previously approved SDP to reimburse the costs of services and supports incurred during the gap period after Cambrian terminated its relationship with claimant on April 20, 2023, and July 1, 2023, when claimant obtained a new FMS.

DATE: July 24, 2023

ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023060193

Vs.

DECISION BY THE DIRECTOR

San Diego Regional Center,

Respondent.

ORDER OF DECISION

On July 24, 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. 2023060193

Vs.

**RECONSIDERATION ORDER, DECISION
BY THE DIRECTOR**

San Diego Regional Center,

Respondent.

RECONSIDERATION ORDER

On August 17, 2023, the Department of Developmental Services (Department) received an application for reconsideration of a Final Decision in the matter referenced above, that was issued by the Director on August 10, 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 August 10, 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