

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

In the Matter of:

CLAIMANT A

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0008894

OAH No. 2023080570

Consolidated with

In the Matter of:

CLAIMANT B

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0009457

OAH No. 2023090251

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this consolidated matter by videoconference on January 22, 2024.

Vivian David-Nicolas, Authorized Representative, represented both claimants, who were not present.

Stephanie Zermeño and Senait Teweldebrhan, Fair Hearings Representatives, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the consolidated matters were submitted for a consolidated proposed decision on January 22, 2024.

ISSUE

Is IRC required to either increase claimants' Self-Determination Program (SDP) budgets and/or utilize money already in the SDP budgets for each claimant for the purpose of paying for legal fees related to the creation of a Special Needs Trust (SNT) for each of the claimants?

SUMMARY

Both claimants failed to establish by a preponderance of the evidence that each of their SDP budgets should be increased or that money already allocated to their SDP budgets should be used for the purpose of paying for legal fees to create an SNT for

each claimant because an SNT is not a service IRC is authorized to provide under the Lanterman Developmental Disabilities Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.).

FACTUAL FINDINGS

The Self-Determination Program

1. In 2013, the Legislature passed Welfare and Institutions Code section 4685.8, which required the Department of Developmental Services (department) to implement a statewide self-determination program to provide participants and their families, within an individual budget, increased flexibility and choice, greater control over decisions, resources, and needed and desired services and supports to implement their Individualized Program Plan (IPP). After completion of that pilot program, the SDP became available to all regional center consumers who wished to use it effective July 1, 2021.

2. The individual SDP budget is calculated as specified by applicable law. The SDP budget must be the total amount of the most recently available 12 months' purchase of service expenditures for the consumer. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(i).) The regional center may adjust this amount if the IPP team determines that an adjustment is necessary due to the consumer's changed circumstances, needs, or identifies prior needs that were not addressed in the IPP. The team must document the specific reason for the adjustment in the IPP. The regional center must certify on the individual budget document that regional center expenses for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the SDP. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).) The SDP shall

only fund services and supports that the federal Centers for Medicare and Medicaid Services determine are eligible for federal financial participation. (Welf. & Inst. Code, § 4685.8, subd. (c)(6).)

3. Each consumer in the SDP must develop an individual spending plan to use their available individual budget funds to purchase goods, services, and supports necessary to implement their IPP. The spending plan must identify the cost of each good, service, and support that will be purchased with regional center funds. The total amount of the spending plan cannot exceed the total of the individual budget. A copy of the spending plan must be attached to the consumer's IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).)

4. Each item in the spending plan must be assigned to uniform budget categories developed by the department and distributed according to the anticipated expenditures in the IPP in a manner that ensures that the participant has the financial resources to implement the IPP throughout the year. (Welf. & Inst. Code, § 4685.8, subd. (m)(3).) The regional center must review the spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies. (Welf. & Inst. Code, § 4685.8, subd. (r)(6).)

5. Every consumer in the SDP must use a financial management service (FMS) to assist the consumer to manage and direct distribution of funds contained in the individual budget and ensure that the consumer has the financial resources to implement their IPP throughout the year. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).) The FMS assists with managing the budget, pays workers and ensures that all applicable employment laws are followed, helps make sure that workers have the required licenses, certificates, and training to provide the services that they're hired to do, and assists with criminal record background checks where required by law or

where the consumer requests one. The regional center must provide payment to the FMS provider for spending plan expenses through a not less than semi-monthly pay schedule. (*Id.* at subd. (r)(10).)

6. A consumer may elect to use the services of an independent facilitator to help the consumer make informed decisions about the budget and spending plan, locating, accessing, and coordinating the services and supports. (Welf. & Inst. Code, § 4685.8, subd. (c)(2).) The amount of the individual budget may not be increased to cover the cost of the independent facilitator or the FMS. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(iii).)

Claimants' Backgrounds, SDP Participation, and Request for Funding

7. Claimant A and Claimant B are siblings and live in the same family home with their parents and their two other siblings. Claimant A is a four-year-old boy with a qualifying diagnosis of autism spectrum disorder (ASD). Claimant B is a ten-year-old boy with a qualifying diagnosis of epilepsy. Both Claimant A and Claimant B participate in the SDP for their goods and services from IRC.

8. With regard to Claimant A, parents of Claimant A, as well as their independent facilitator, Ms. Vivian David-Nicolas, requested funding through his SDP on May 26, 2023, as documented in the IRC Self-Determination Person Centered Plan memorializing the meeting on that date, for legal fees associated with the creation of an SNT. The document shows that the parties discussed an action plan on that date and the parents requested funding from IRC through the SDP to "secure consultation and planning services from a special needs advisor to obtain consultation and development of a special needs trust, power of attorney, and/or conservatorship support" at a proposed cost of \$3,490.68. The desired outcome of this expense was

listed as: "I need to be sure about protecting my benefits and social security in a way that does not compromise benefits to plan for my daily living needs/skills. I would also like to protect myself in the unforeseen event my parents are no longer living as well as protect any benefits and public assistance I receive." Claimant A's request for funding for attorney fees related to the creation of an SNT was also documented in Claimant A's September 12, 2023, IPP Summary Sheet. That document notes that IRC will provide generic resources to Claimant A for that purpose.

9. With regard to Claimant B, parents of Claimant B, as well as their independent facilitator, Ms. David-Nicolas, requested funding through his SDP on May 15, 2023, as documented in the IRC Self-Determination Person Centered Plan documenting the meeting on that date, for legal fees associated with the creation of an SNT. The document shows that the parties discussed an action plan on that date and the parents requested funding from IRC through the SDP to "secure consultation and planning services from a special needs advisor to obtain consultation and development of a special needs trust, power of attorney, and/or conservatorship support" at a proposed cost of \$3,490.68. The desired outcome of this expense was listed as: "I need to be sure about protecting my benefits and social security in a way that does not compromise benefits to plan for my daily living needs/skills. I would also like to protect myself in the unforeseen event my parents are no longer living as well as protect any benefits and public assistance I receive." In Claimant B's proposed spending plan related to his SDP and dated August 22, 2023, an entry for goods and services under code 333 was listed for "legal services-special needs trust" for a cost of \$4,684.54.

Claimant B's request for funding for attorney fees related to the creation of an SNT was also documented in Claimant B's September 21, 2023, IPP Summary Sheet in

an addendum dated January 16, 2024. That document notes that Claimant B's mother requested the addition of the following to his IPP: "[Claimant B] and his parents will ensure his long term security and wellbeing by establishing a special needs trust that addresses his unique requirements, including medical expenses, education, quality of life enhancements, support services, assistive technology, while preserving eligibility for government benefits and providing a reliable source of financial support throughout his lifetime (especially in the event one or both parents are no longer living)."

IRC's Notices of Proposed Action for each Claimant, and Claimants' Appeals

10. On July 25, 2023, IRC sent a Notice of Action for Claimant A denying his request to increase his SDP budget for legal fees related to the creation of an SNT. The reason for the proposed action was provided as follows:

IRC has determined that the above-listed item does not warrant an adjustment to the SDP budget as unmet needs that would have been funded regardless of your participation in SDP (i.e., under traditional regional center served delivery). Personal legal expenses are not a specialized regional center service or support under the Lanterman Act. Legal services are the responsibility of the individual/family. There are many organizations that provide low or no cost legal services. . . .

11. On August 8, 2023, Claimant A appealed IRC's decision in the July 25, 2023, Notice of Action. The reason for appeal in that document is listed as follows:

Per the service definitions provided to me by IRC – SDP “[*sic*] Services include support with money management (personal finances, planning, budgeting and decision making). A special needs trust is essential to [Claimant A]’s financial security as well as his ability to maintain supports provided to him as a minor and adult. As an individual living with a significant permanent impairment and Disability [*sic*], it is vital that his finances are outlined in a finite manner should his guardians become ill, deceased or incapacitated. As a non verbal [*sic*] individual, a legal trust would ensure his accommodations with certainty.

12. On August 10, 2023, IRC sent a Notice of Action for Claimant B denying his request to increase his SDP budget for legal fees related to the creation of an SNT. The reason for the proposed action was provided as follows:

IRC has determined that the above-listed item does not warrant an adjustment to the SDP budget as unmet needs that would have been funded regardless of your participation in SDP (i.e., under traditional regional center served delivery). Personal legal expenses are not a specialized regional center service or support under the Lanterman Act. Legal services are the responsibility of the individual/family. There are many organizations that provide low or no cost legal services. . . .

13. On September 6, 2023, IRC sent a second Notice of Action for Claimant B denying his request to add the expense for legal fees related to the creation of an SNT to his SDP spending plan. The reason for the proposed action was provided as follows:

SDP funds can only be used to purchase services that are federally reimbursable. SNTs and legal fees are not included in the list of approved SDP services and are not federally reimbursable. Additionally, you do not require this funding to meet the goals described in your PCP/IPP. According to your Spending Plan, you have allocated \$27,156 for Personal Assistance Services. These services can help you manage your finances and increase your independence. Next, this service does not meet the definition of "Independent Facilitator" (IF) described in Service Code 340 and the law because an IF cannot provide any other service. A special needs attorney would be providing you with direct legal services. This item is also not considered a Participant-Directed Good because a [sic] SNT and legal fees would not decrease your need for other Medicaid services. If you need a [sic] SNT because you will be inheriting a large sum of money, you can use some of your inheritance funds to pay for your SNT and legal fees. If you are concerned about your inheritance affecting your benefits, you can discuss a payment plan with your special needs legal consultant, SNTs are the responsibility of the individual/family.

14. On August 8, 2023, Claimant A filed an appeal of IRC's Notice of Action related to Claimant A. On September 7, 2023, Claimant B filed an appeal of IRC's Notice of Action related to Claimant B.

15. On September 26, 2023, OAH granted claimants' motion to consolidate these matters for hearing based on the argument that claimants are siblings and the issues involve common questions of fact and law. At hearing, the parties agreed to consolidation of the decisions in these two matters.

IRC's Evidence

EVIDENCE RELATED TO CLAIMANT A

16. Amy Clark is a program manager at IRC for the Riverside preschool west unit, a position she has held for the past year. Prior to this position Ms. Clark worked at IRC as a program manager in other units. Prior to working as a program manager, Ms. Clark worked at IRC for 15 years as a consumer service coordinator (CSC). In her current role as program manager, she oversees and manages service coordinators for preschool services for children ages three to five years and ten months. Ms. Clark oversees service coordinators for Claimant A's services at IRC. Ms. Clark testified at the hearing and the following factual findings are based on her testimony and supporting documents received in evidence.

17. Ms. Clark was present at the June 26, 2023, meeting with Claimant A's parents and authorized representative to go over the SDP budget and services requested when Claimant A's request was made for funding for legal services to create an SNT. According to Ms. Clark, the parent's reasoning for the request was that they wanted to "protect any public benefits [Claimant A] had should the parents die." Ms. Clark noted that Claimant A's request was documented in his IPP dated August 2023.

As shown in the Self-Determination Person Centered Plan document for Claimant A dated June 26, 2023, which reflects the discussions in the June 26, 2023, meeting described above, Claimant A requested \$3,490.68 for the creation of the SNT and noted that generic resources were not available. Ms. Clark explained that the parents stated that generic resources for that service were not available. However, Ms. Clark does not agree with that statement. Ms. Clark stated that generic resources for the creation of an SNT are available through various sources, including Inland Counties Legal Services, Riverside Legal Aid, Disability Rights California, and the use of a CalABLE savings account to pay for such legal services. Ms. Clark also noted that just because Claimant A's request for funding to create an SNT is documented in his IPP and SDP budget document, IRC is not thereby obligated to fund that request. Additionally, the decision of whether to fund a request does not have to be made at the IPP meeting, because IRC has additional time to consider that request before a decision on funding is made.

18. Ms. Clark met with other members of IRC's SDP working group, who discussed the SDP budget for Claimant A. She explained that the working group looked at several factors when considering Claimant A's request for funding for the creation of the SNT, specifically if the request is cost effective, if it requests a specialized service or support, if there is parent responsibility for payment, if the request is part of the goals set out in Claimant A's IPP, and if it is possible for IRC to fund this request if it was a traditional service and not part of the SDP. After discussion, the SDP working group at IRC denied Claimant A's request. Ms. Clark wrote emails to Claimant A's authorized representative and parents informing them of the denial. Ms. Clark explained that Claimant A's request for funding for the creation of an SNT was denied because there are generic resources available, there is parental responsibility for this service as "it is not untypical for parents of a minor child to

coordinate a trust for their assets regardless of disability,” and that the Lanterman Act does not provide for attorney’s fees for these services because these services are not within the definition of “services and supports” under the statute and does not provide for the alleviation of a developmental disability or toward promoting independence, or any other stated purpose.

19. Ms. Clark also noted that participants in SDP are also required to abide by the same IRC policies when purchasing services with an SDP. If IRC would not fund the service under its traditional regional center services, it also would not be funded under the SDP. In this case the funding for the creation of an SNT would also not be funded under traditional regional center services and supports.

20. Ms. Clark also specifically addressed Claimant A’s argument that the funding for the creation of an SNT would be funded by IRC under the service code of 333, which is for participant-directed goods and services. Ms. Clark explained that code 333 does not apply here because the funding request for an SNT does not fit within the definition of “goods and services” as defined for that spending code or under the Lanterman Act. She also stated that the money in the SDP must only be used for the purposes of each claimant. By comparison, an SNT would benefit not just Claimant A and Claimant B, but also the entire family. Use of SDP funds to benefit individuals other than Claimant A and Claimant B is not allowed. An SNT is essentially full estate planning, which is solely the responsibility of the parents and not IRC.

EVIDENCE RELATED TO CLAIMANT B

21. Elizabeth Flores is employed by IRC as a program manager for the Riverside school age unit, a position she has held for the past year. Prior to this position she worked at IRC as a senior intake counselor, and prior to that worked as a

CSC in the transition unit of IRC. Her duties in her current position include supervision of CSCs and review IPPs and service plans and requests. Ms. Flores supervises Claimant B's CSC and reviewed Claimant B's IPP and related documents in this matter. Ms. Flores testified at the hearing and the following factual findings are based on her testimony and related documents received in evidence.

22. Ms. Flores testified that at a June 15, 2023, meeting of Claimant B's parents, authorized representative, and CSC to discuss planning for an SDP budget and review services and requested services, Claimant B made his request for funding for legal fees to create an SNT. Ms. Flores was not at that meeting, but reviewed the document dated June 15, 2023, titled IRC Self-Determination Person Centered Plan where those discussions were summarized. In that document, Claimant B requested \$3,490.68 for attorney's fees for the creation of an SNT. The document also stated that there are no generic resources available for the creation of an SNT. Ms. Flores testified that she disagreed that there were no generic resources available, but that the document reflected what the parents stated. Ms. Flores notes that Claimant B's proposed spending plan for his SDP, which was signed by Claimant B's parents on August 23, 2023, shows that a cost of \$4,731.39 is listed for the creation of an SNT for Claimant B. Ms. Flores also noted that Claimant B's request for funding for the creation of an SNT is documented in the January 16, 2024, addendum to his IPP. She explained that just because Claimant B's request is reflected in the IPP does not obligate IRC to provide funding for that request.

23. Ms. Flores explained that IRC's SDP working group denied Claimant B's request for funding for attorney's fees for the creation of an SNT, and Ms. Flores wrote the Notice of Action dated August 10, 2023, wherein Claimant B's request to increase the budget for his SDP for legal fees for the creation of an SNT was denied. Ms. Flores

also drafted a second Notice of Action dated September 6, 2023, wherein IRC denied Claimant B's request for the addition to his SDP spending plan for expenses related to the creation of an SNT. Ms. Flores explained that the first Notice of Action was with regard to Claimant B's request to increase his SDP budget and the second Notice of Action was with regard to use funds already in the SDP budget for the purpose of creating an SNT.

24. Ms. Flores explained that IRC denied Claimant B's requests because those requests related to payment of attorney fees for the creation of an SNT would not be funded under the traditional regional center service and supports. Additionally, SDP funds can only be used for purchase of services that are federally reimbursable, and legal fees for this purpose are not federally reimbursable. Furthermore, this funding request would not meet the goals and needs in Claimant B's IPP because they would not alleviate any developmental disability or otherwise fit into the definition of service and support under the Lanterman Act. She stated that the request also does not fit the definition of a "participant-directed good" because the SNT would not decrease Claimant B's need for other Medicaid services as required. Also, the creation of an SNT is the responsibility of the individual and family and falls under parental responsibility.

25. Ms. Flores also explained that generic resources are available for legal fees related to the creation of an SNT. She referenced the same generic resources set out above by Ms. Clark and also listed in an August 28, 2023, letter summarizing an informal meeting with Claimant B's parents with regard to the same request for Claimant A.

26. Ms. Flores also discussed the definition of "Participant-Directed Goods and Services" as set out in the "Self-Determination Program Service Definitions" as set by statute. She explained that IRC looks to whether a support will reduce dependency

on services or increase consumer independence, safety or increase inclusion in the community. However, an SNT would not fall into any of those categories of the definition, and while an SNT may protect those services, it would not alleviate the need for them.

27. Alejandra Rivera is employed by IRC as a Self-Determination Program Manager, a position she has held for the last nine months. Prior to this position, she worked at IRC as a Participant Choice Specialist, which included the duties of helping with enrollment into the SDP, planning meetings for SDP, and training about SDP. Her current duties as an SDP manager include reviewing and certifying SDP budgets and spending plans, providing community and staff training on SDP, and attending planning meetings with the advisory committee of SDP. Ms. Rivera testified at the hearing and the following factual findings are based on her testimony and related documents received in evidence. Ms. Rivera is familiar with Claimant A and Claimant B because they both participate in the SDP.

28. Ms. Rivera explained that the SDP is a program that is voluntary and provides participants with more freedom, flexibility, control and responsibility with regard to their services from IRC. Specifically, the participants decide what services they need to meet their IPP goals. The SDP has an individual budget associated with it that is approved by IRC and given to the participant to support the participant to meet the goals of their IPP. The individual budget amount is determined by IRC by using methodology set forth by statute. First, a baseline amount is determined from the total amount of the most recent purchase of service expenditures taken from a 12-month expenditure report. An adjustment to that budget may be made as necessary because of circumstances to justify an increase or decrease in the budget. The individual budget for the SDP program participants is reviewed and approved by the IPP team,

planning team, and Ms. Rivera signs off on each of those budgets. Once a budget is approved, it can only be adjusted if the IPP team determines that there is a change in circumstances or an unmet need. The spending plan is the plan that sets forth how the participant will utilize the certified budget amount of funds. The spending plan identifies the cost of each service or good and the total amount of the spending plan may not exceed the total amount of the budget. The individual budget must be approved before the spending plan can be completed. The funds can only be used for needed services and supports for the participants to meet their IPP goals.

29. Ms. Rivera explained that the individual budget may only be used to fund for services and supports that are eligible for federal reimbursement as set forth in Welfare and Institutions Code section 4685.8, subdivision (c)(6). She explained that this statute requires that SDP only fund services and supports that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation. She stated that the SDP has codes for reimbursement as set forth by the federal Centers for Medicare and Medicaid Services.

30. Ms. Rivera stated that both Claimant A and Claimant B sought reimbursement from the SDP from IRC for the legal fees to create an SNT under the federal Centers for Medicare and Medicaid Services code number 333, which is "participant-directed goods and services." Ms. Rivera testified that the legal fees for creation of an SNT does not fall under the definition of participant-directed goods and services and does not fall under code 333 or any other code from the federal Centers for Medicare and Medicaid Services. With regard to Claimant A's and Claimant B's argument in their appeal requests that the SNT falls under services and supports for money management, Ms. Rivera disagrees. She stated that services and supports for

money management means teaching the consumer to budget and manage money to live independently. These legal services do not fall under that category either.

31. Ms. Rivera also testified that a request for attorney fees to pay for the creation of an SNT would also not be funded under IRC's traditional model of funding for services and supports because the requests are not federally reimbursable as described above. Ms. Rivera explained that the SDP individual budget cannot be increased to pay for the creation of an SNT, and that moneys already in the SDP individual budget cannot be used to create an SNT because those funds are not federally reimbursable as described above. Also, Ms. Rivera noted that there are generic resources for legal services that can be used to create an SNT and the CSC for Claimant A and Claimant B provided that information.

32. Ms. Rivera testified that she has never heard of any regional center funding attorney fees for the creation of an SNT under code 333.

Claimants' Evidence

33. Claimant presented the testimony of two witnesses at the hearing, namely the testimony of the mother of both Claimant A and Claimant B, as well as the testimony of David Terk, the Executive Director of Serenitas Special Needs Planning. The following factual findings are based on their testimony and related documents received into evidence.

34. David Terk is an attorney and the Executive Director of Serenitas Special Needs Planning. He has been working to create SNTs for approximately eight and a half years. Mr. Terk explained that there are different types of SNTs for different circumstances, and SNTs are often used inappropriately and do not result in the proper outcome for parents of loved ones. He stated that often families simply go to

“traditional attorneys who don’t specialize in SNTs” to create an SNT and this often results in problems.

35. Mr. Terk testified that he has been funded by other regional centers to create SNTs under the service code of 333, as well as one other service code. Specifically, he stated that East Bay Regional Center, North Los Angeles County Regional Center, and San Diego Regional Center have paid for him to create SNTs under the service code of 333 for participant-directed goods and services.

36. Mr. Terk also explained that a CalABLE account is a wonderful tool for an individual to save funds and use those funds for special needs planning. However, a CalABLE account is not an SNT. CalABLE accounts can only accept money and not property. While there are tax advantages to using a CalABLE account, the CalABLE account is limited in its usefulness for disability expenses.

37. Mr. Terk testified on cross-examination that he has never seen a properly drafted SNT by an attorney who was not an SNT specialist. Mr. Terk stated that an SNT is a federal designation, and it is possible to have an SNT without being a regional center client. Typically, he is paid directly by families and not by regional centers.

38. Claimant A’s and Claimant B’s mother testified at the hearing. The mother stated that she has four children, who live at home with her and her husband, the children’s father. Claimant B is the eldest at age 10, Claimant A is next in age at age four, then she has a younger son aged three and one-half, who also suffers from autism spectrum disorder, and a one-year-old daughter. Having three special needs children plus an infant in the home is especially challenging. Claimant B has continuous seizure activity and a form of epilepsy that does not respond to medication. Claimant B is 10 years of age but functions at the age level of a six-year-

old child. His mother stated that Claimant B is "almost qualified as intellectually disabled and has an IQ of 73." Claimant A is severely impacted by autism spectrum disorder and requires constant supervision. Claimant A has sleep disorders, wakes up frequently, is prone to self-harm, and is minimally verbal with no functional communication. Claimant A is not able to answer yes or no questions, not able to feed himself, and has a limited diet. Claimant A is four years old, but his receptive language is at a level of a 12-month-old infant. The three and one-half-year-old son with autism is higher functioning than is Claimant A, but also requires supervision and "is rigid."

39. The mother testified that the children's father works as a registered nurse at the Veteran's Administration (VA) hospital in La Jolla, and, as a result, the children have private insurance because their father is a federal employee. Additionally, both Claimant A and Claimant B receive in-home support services (IHSS) with the mother as the payee, respite, academic supports, community living support, and participant-directed goods for items for day-to-day use. Additionally, Claimant B receives Applied Behavioral Analysis services.

40. The mother stated that if she and her husband died, then Claimant A and Claimant B would both be at risk for institutionalization without an SNT in place. She and her husband do not have the financial ability to pay for an SNT for either child. The mother testified that the purpose of an SNT for Claimant A and Claimant B would be to "protect them from predators," allow them to have access to Medicaid and Medicare and Social Security, as well as outline the trustees for the SNT and financial provisions for the trustees, which would include property. She argued that an SNT would "keep them safe, protected and healthy," and would "eliminate a lot of 'what ifs'."

41. The mother contacted several estate planning attorneys for a cost estimate for the creation of an SNT, and the cost varied depending on the type of SNT and what she wanted included. She received quotes for attorney's fees ranging from \$3,000 to \$7,000 per child.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether a regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

Applicable Statutes and Regulations

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for

persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

4. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of

each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulations, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies. Welfare and Institutions Code section 4646.4, subdivision (a)(4), required regional centers to consider 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.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. Regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental entities. (Welf. and Inst. Code, § 4659, subd. (a).) Regional centers are required to

consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.) Regional center funds cannot be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (Welf. & Inst. Code, § 4648, subd. (8).)

9. Welfare and Institutions Code section 4685.8, subdivision (a), provides:

The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. As of July 1, 2021, the program shall begin to be available on a voluntary basis to all regional center consumers who are eligible for the Self-Determination Program.

10. Welfare and Institutions Code section 4685.8, subdivision (c)(6), provides:

"Self-determination" means a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve

personally defined outcomes in community settings that promote inclusion. The Self-Determination Program shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation.

11. Welfare and Institutions Code section 4685.8, subdivision (e) provides:

A participant who is not Medi-Cal eligible may participate in the Self-Determination Program and receive self-determination services and supports if all other program eligibility requirements are met and the services and supports are otherwise eligible for federal financial participation.

12. Welfare and Institutions Code section 4685.8, subdivision (m)(1) provides:

Except as provided in paragraph (4), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A) (i) Except as specified in clause (ii), 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.

(ii) An adjustment may be made to the amount specified in clause (i) if both of the following 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.

Evaluation

13. Claimant A and Claimant B each failed to establish by a preponderance of the evidence that IRC is required to fund their request for attorney's fees to create an SNT. Claimant A's and Claimant B's request for funding for attorney's fees to create an SNT seeks services that is not federally reimbursable and not covered by the requirements of the Lanterman Act. As set out in Welfare and Institutions Code section 4685.8, subdivision (c)(6), the SDP can only fund services and supports that are eligible for federal financial participation by the federal Centers for Medicare and Medicaid

Services. The creation of an SNT is not such a service. The creation of an SNT is not advocacy services and is not directed specifically to individuals with developmental disabilities as is contemplated for services required to be provided by the Lanterman Act, as defined in Welfare and Institutions Code section 4512, subdivision (b). Instead, an SNT is simply an estate planning tool used by families for the benefit of themselves and all of their children; not just those with developmental disabilities. It is the responsibility of the claimants' parents, and not that of IRC, to pay for those legal estate planning services. IRC must consider those parental responsibilities as set forth in Welfare and Institutions Code section 4646.4, subdivision (a)(4).

14. Additionally, the mother's testimony that an SNT would protect Claimant A and Claimant B from losing their entitlements and benefits in the event of their parent's deaths is speculative, at best. Testimony from Mr. Terk that he has been paid under code 333 by other regional centers for the creation of SNTs was not supported by any other evidence, and Mr. Terk has an obvious financial motivation for Claimant A and Claimant B to prevail in this matter. Moreover, even assuming that were the case, each regional center in California functions as its own entity; in other words, a regional center is not required to fund a service just because another regional center funded that same service.

15. As set forth in Welfare and Institutions Code section 4646.4, IRC must adhere to federal and state law in providing services and supports to consumers, and also must utilize generic services and supports, if possible, as well as parental responsibility. The evidence provided by Claimant A and Claimant B failed to demonstrate by a preponderance of the evidence that IRC has any obligation under the Lanterman Act or any federal or state law to fund the payment of attorney fees for the creation of an SNT for either Claimant A or Claimant B.

ORDER

Claimant A's appeal of IRC's Notice of Action dated July 25, 2023, to deny his requests to increase the budget in his SDP and/or to add the expenses to the spending plans of his SDP for the purpose of payment of legal fees for the establishment of a Special Needs Trust, is denied.

Claimant B's appeal of IRC's Notice of Actions dated August 10, 2023, and September 6, 2023, to deny his requests to increase the budget in his SDP and/or to add the expenses to the spending plans of his SDP for the purpose of payment of legal fees for the establishment of a Special Needs Trust, is denied.

IRC is not responsible to fund legal fees for the establishment of a Special Needs Trust.

DATE: January 31, 2024

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023080570

Vs.

DECISION BY THE DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On January 31, 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 February 22, 2023

Original signed by

Nancy Bargmann, Director