

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency.

DDS Case No. CS0008872

OAH No. 2023080583

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 25 and 26, and October 16 through 18, 2023, by videoconference.

Eric L. Nelson, PhD (Dr. Nelson), and Lauren Zapien, LVN, non-attorney representatives, represented Claimant. The name of Claimant is omitted to protect her privacy.

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

Evidence was received, and the record was held open for submission of written closing arguments. The parties timely submitted closing arguments. The record was closed and the matter was submitted for decision on December 18, 2023.

ISSUE

The issue to be determined is whether Claimant's \$190,144 budget and spending plan must be approved.

FACTUAL FINDINGS

Background

1. Claimant is a 32-year-old woman eligible for regional center services based on an intellectual disability related to Down Syndrome. She has received services and support through ACRC since 1994. She resides in Placerville, California, with her mother and stepfather, approximately 72 and 76 years of age, respectively. The names of Claimant's family members are omitted to protect their privacy and confidentiality.

2. On May 19, 2023, Claimant submitted a request to ACRC to enroll in the Self-Determination Program (SDP). The SDP is a program through which a regional center client can establish an individual budget and individual program plan (IPP), giving the regional center client "increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement [her] IPP." (Welf. & Inst. Code, § 4685.8, subd. (a).)

3. On July 10, 2023, Claimant proposed a \$190,144 SDP budget that included existing expenditures and unmet needs. One existing expenditure was a community enrichment program through an organization known as InAlliance, six hours per week at \$55 per hour, with an annual cost of \$17,160. The list of unmet needs includes: (1) 447.5 hours per month of round-the-clock in-home caregiving at \$25 per hour, with a total annual cost of \$132,639; (2) business management services, with an annual cost of \$7,200; (3) legal representation to protect Claimant's rights and interests, with an annual cost of \$15,000; (4) workers' compensation insurance, with an annual cost of \$7,200; (5) non-attorney legal expenses, with an annual cost of \$3,000; (6) business consultations, with an annual cost of \$2,000; (7) tax consultations and preparation, with an annual cost of \$1,000; and (8) a business license, with an annual cost of \$145.

4. On July 19, 2023, ACRC issued a Notice of Action (NOA) denying Claimant's request for a \$190,144 SDP budget, and instead agreed to certify Claimant's SDP budget in the amount of \$122,047. ACRC's stated reasons for denying Claimant's full request are that Claimant "has no assessed need for 444 hours per month of care and supervision." Rather, Claimant requires 222 hours per month of care and supervision, in conjunction with other services, including 40 hours per month of in-home respite services, 54 hours per month of day program services, and 283 hours per month of In-Home Supportive Services (IHSS). ACRC also reasoned that Claimant has no assessed need for business management services, legal representation, workers compensation insurance, non-attorney legal expenses, business consultation, tax consultations and preparation, or a business license.

5. ACRC did not contend in the NOA or at hearing that there are any categorical prohibitions against funding any of the service items listed in Claimant's \$190,144 SDP budget.

6. On August 7, 2023, Claimant filed an appeal, and this matter proceeded to hearing. Claimant's prayer for relief, as articulated in her written closing argument, is for orders directing ACRC to (1) provide Claimant with an SDP Budget of \$190,144; (2) accept Claimant's spending plan; (3) provide Claimant with a co-employer Financial Management Services (FMS) company to make it unnecessary for Claimant to operate a business; and (4) any other appropriate relief.

Evidence Regarding Claimant's SDP Budget Request

7. Claimant requires round-the-clock caregiving. ACRC did not dispute this at hearing.

8. Claimant's mother credibly testified that Claimant has irregular sleep patterns. Sometimes she sleeps a full night; other times she will sleep for only short periods. It is necessary to supervise Claimant when she is awake because she can engage in potentially harmful activities such as burning things in the microwave oven, climbing furniture, and handling sharp items like scissors. For this reason, Claimant's mother sleeps most night in Claimant's room, and remains vigilant by sleeping lightly and intermittently. This is emotionally and physically exhausting for Claimant's mother. It has been increasingly burdensome for Claimant's mother during the past six months. Both Claimant and her mother want Claimant to continue residing with Claimant's mother and stepfather.

9. Claimant's mother credibly testified that ACRC staff did not ask her about Claimant's sleep and behavioral patterns. Specifically, they did not ask whether and

how often Claimant gets up at night, what she does when she gets up, whether she is destructive or engages in dangerous activities when she gets up, or whether it is safe for Claimant to be unsupervised.

10. Claimant's mother also credibly testified that she is highly frustrated and even angry with ACRC staff because they did not explain to her the range of options available to provide necessary care and supervision for Claimant. Specifically, ACRC representatives did not explain the meaning of "natural support" or options such as supportive living services, personal assistant, homemaker, or the SDP. When she specifically asked an ACRC representative whether there were options other than IHSS or institutional homes, she was told there were none. If she had known of options other than IHSS, she would have requested in-home supports and services when Claimant reached the age of 18. This would have allowed Claimant's mother the time to return to college, complete a bachelor's degree, and increase her opportunities for gainful employment.

11. ACRC staff contends they explained the range of caregiving options to Claimant's mother. This is not her perception of ACRC's communications with her.

12. Claimant stopped participating in the InAlliance enrichment program in September 2023. Claimant's mother testified that Claimant cannot attend the full six-hour day because she would start to "melt-down" after the first two hours. The director of the InAlliance program would not let Claimant attend for shorter periods because that would not be "financially feasible." As a consequence, Claimant's mother takes Claimant on outings, which is becoming increasingly burdensome for Claimant's mother as she ages.

13. During a June 30, 2023, IPP meeting, Dr. Nelson asked ACRC to provide an FMS company within 90 days to help provide for Claimant's needs. An FMS under the co-employer model would employ service providers to meet Claimant's needs. ACRC was not able to arrange a co-employer FMS. Because of the unavailability of a co-employer FMS, Dr. Nelson concluded the best and most prudent alternative is for Claimant's mother to establish a business to hire caregivers to meet Claimant's needs. Dr. Nelson's view is that this will best protect Claimant's mother from personal liability in the absence of a co-employer FMS. Claimant's mother agrees.

14. The business envisioned in Claimant's SDP budget proposal entails annual costs including: business management services (\$7,200), purchase of workers compensation insurance (\$7,200), business consultations (\$2,000), tax consultation and preparation (\$1,000), and a business license (\$145). These expenses would not be necessary under the FMS co-employer model.

15. Dr. Nelson also advised Claimant's mother, and she concurred, that Claimant's budget should include \$15,000 per year for legal services to protect Claimant's business and Lanterman Act rights, and \$3,000 per year for non-attorney legal expenses. In Dr. Nelson's observation and experience, regional center clients need funding for legal services to protect their rights under the Lanterman Act.

16. Dr. Nelson advertised job openings for persons to serve as caregivers for Claimant. He offered \$16.50 per hour and did not receive any responses. Dr. Nelson also conducted two small surveys of care providers located within 30 minutes of Placerville about the hourly pay rate necessary to interest them in a caregiver position for someone like Claimant who resides in Placerville. One survey was conducted in 2021 and included nine respondents. The other survey, conducted in 2023, included 14 respondents. The mean salary requirement of the 2023 respondents was \$26.32.

Among the respondents who would demand less than \$30 per hour, the mean was \$22.59. Dr. Nelson's view is that \$25 per hour would be sufficient to meet the mean wage requirement to hire round-the-clock caregivers for Claimant, and provide enough extra money for an employee to purchase health insurance through Covered California.

17. Kerrie Palmer is a service coordinator in the SDP unit at ACRC. She is familiar with the role of "independent facilitators" who serve as "vendors" to help ACRC clients transition to the SDP, and who can also help with administrative tasks in the operation of the individual client's SDP. She has seen SDP facilitators charge \$100 to \$500 per month, depending on the tasks they handle. These funds come out of the client's spending plan, and no extra funds would be added to pay for the SDP facilitator. To her knowledge, there is not a waiting list for SDP facilitators.

18. Dr. Nelson has not had any discussion with ACRC about the possibility of utilizing an SDP facilitator in the absence of an FMS co-employer, and as an alternative to operating a business on Claimant's behalf. In Dr. Nelson's view, ACRC does not manage the SDP process correctly, and they fail to comply with the law.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that ACRC must approve her \$190,144 SDP budget request. (Evid. Code, § 115.) Claimant has not met her burden.

Applicable Statutes and Regulations

2. Pursuant to the Lanterman Act, regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as “a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism.”

3. Through the Lanterman Act, the Legislature created a comprehensive scheme to provide “an array of services and supports . . . sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The purpose of the provisions of the Lanterman Act are: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750–4751; *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The Department of Developmental Services (Department) is the public agency in California responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) To comply with its statutory mandate, the Department contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best

suiting to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.) Each regional center is responsible for consumers within a geographic region of the state called a “catchment area.”

5. “Services and supports for persons with developmental disabilities” includes “specialized services and supports . . . directed toward the alleviation of a developmental disability, or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives” (Welf. & Inst. Code, § 4512, subd. (b).)

6. Welfare and Institutions Code section 4646 requires that the IPP and services and supports be centered on the individual and consider the needs and preferences of the individual and family. The services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources. Services and supports must be designed to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

7. Regional centers are not required to provide all the services a consumer may request but are required to “find innovative and economical methods of achieving the objectives” of the IPP. (Welf. & Inst. Code, § 4651.) Welfare and Institutions Code section 4648 requires regional centers to be fiscally responsible.

8. Welfare and Institutions Code section 4685.8 requires the Department to implement a statewide SDP. The SDP must be available in every regional center catchment area to provide participants and their families, within an individual budget,

increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP.

9. Self-determination is designed to give the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(G).)

10. The SDP requires a regional center, when developing the individual budget, to determine the services, supports, and goods necessary for each consumer based on the needs and preferences of the consumer, and when appropriate the consumer's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).)

11. "Self-determination" means "a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. . . . The Self-Determination Program shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (Welf. & Inst. Code, § 4685.8, subd. (c)(6).)

12. "Individual Budget" means the amount of regional center purchase of service funding available to the participant to purchase services and supports necessary to implement the IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(3).)

13. An adjustment to the individual budget can be made if the regional center determines that it is necessary due to a change in circumstances, needs, or

resources that would result in an increase or decrease in purchase of service expenditures or if the IPP team identifies a prior unmet need that was not addressed in the IPP. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).)

14. “Spending Plan” means the plan the participant develops to use their available individual budget funds to purchase goods, services, and supports necessary to implement their IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(7).) The spending plan must identify the cost of each good, service, and support that will be purchased with regional center funds. (*Ibid.*) The total amount of the spending plan cannot exceed the amount of the individual budget, and a copy of the spending plan must be attached to the consumer’s IPP. (*Ibid.*)

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

16. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

Analysis and Disposition

17. Claimant clearly established the need for round-the-clock care, with funding necessary to attract and retain qualified staff in Placerville, California. No findings or conclusions are made here regarding the statistical significance of Dr. Nelson’s survey of wage requirements. Claimant also established that the increasing burdens on Claimant’s mother must be considered. ACRC may not assume for purposes of funding that Claimant’s mother or stepfather will provide any natural supports. Nor may ACRC assume for purposes of funding that Claimant will not

require supervision during sleeping hours, due to her uneven sleep schedule and risks of harm when she awakens at night.

18. That being said, Claimant's SDP budget request of \$190,144 includes some expenses that no longer exist. Specifically, the costs allocated for community enrichment through InAlliance no longer apply since Claimant left the InAlliance program. Whether, and at what cost, Claimant may participate in another community enrichment program is presently undetermined.

19. Claimant's SDP budget request also includes expenses that might not be necessary to serve Claimant's needs. Specifically, neither Claimant's representatives nor ACRC have explored the possibility and relative expense of utilizing an SDP facilitator to serve all or some of the purposes that would be served by establishing a business for Claimant. Nor is it clear whether ACRC will be able to locate an FMS co-employer in early 2024. This would be Claimant's first choice and would eliminate the need to open a business or employ an SDP facilitator. This Legal Conclusion does not preclude funding for business operations if ACRC, working with Claimant, is not able to secure or facilitate services that will serve Claimant's needs in implementing Claimant's IPP under the SDP.

20. Claimant's SDP budget request includes funding for legal services to protect her business interests and rights under the Lanterman Act. As to Claimant's business interests, for the reasons stated above Claimant did not establish that it will be necessary to start a business. As to enforcing Claimant's rights under the Lanterman Act, the evidence did not establish that a line item for legal services in anticipation of litigation about unspecified matters that have not yet arisen is necessary to implement Claimant's IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(3).) This does not preclude

funding for legal services if they become necessary to implement the Claimant's IPP or protect her rights under the Lanterman Act.

21. Given the uncertainties outlined above, and based on the Factual Findings and Legal Conclusions as a whole, Claimant did not establish that the proposed SDP budget of \$190,144 is necessary to implement her IPP. Nor did ACRC establish that their proposed budget of \$122,047 is appropriate to meet Claimant's needs. Based on the evidence presented, it is not possible for this tribunal to impose a budget on the parties. Rather, it is necessary and appropriate for ACRC and Claimant's representatives to work together cooperatively and attentively to establish an SDP budget and spending plan, taking into account the Factual Findings and Legal Conclusions herein.

ORDER

Claimant's appeal is DENIED.

DATE: December 21, 2023

TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023080583

vs.

DECISION BY THE DIRECTOR

Alta California Regional Center,

Respondent.

ORDER OF DECISION

On December 21, 2023, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued the attached Proposed Decision in this matter. The Department of Developmental Services (DDS) takes the following action:

1. The Proposed Decision is adopted in full.

2. In addition, DDS clarifies in paragraph 19 of the Proposed Decision that Financial Management Services (FMS) and a Self-Determination Program (SDP) Independent Facilitator provide separate and distinct services for participants in SDP. Pursuant to Welfare and Institutions Code section 4685.8, subdivision (c)(1), a FMS helps SDP participants manage their individual budget and spending plan to implement their individual program plan (IPP). The FMS may pay for services, including paying employees, and assisting with hiring employees. The FMS may also make sure a participant has funds to purchase needed services and support. Pursuant to Welfare and Institutions Code section 4685.8, subdivision (c)(2), an Independent Facilitator may assist in making informed decisions regarding a participant's individual budget, locating, accessing and coordinating services and supports consistent with the consumer's IPP, identifying immediate and long-term needs and developing options to meet those needs, and leading, participating, and/or advocating on behalf of participants in the person-centered planning process and development of the IPP. A FMS is required for participants to enroll in SDP, while an Independent Facilitator is not required for a participant to enroll in SDP.

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 18, 2024

Original Signed by
Nancy Bargmann, Director