

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

In the Matter of:

CLAIMANT

vs.

FAR NORTHERN REGIONAL CENTER, Service Agency

DDS Case No. CS0010050

OAH No. 2023100420

PROPOSED DECISION

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, was the hearing officer for this matter heard by videoconference on November 20, 2023, from Sacramento, California.

Claimant represented himself. Claimant's name is omitted to maintain confidentiality.

Debora Carmona-Mitchell, Legal Services Specialist, represented Far Northern Regional Center (FNRC or Service Agency).

Evidence was received, the record closed, and the matter submitted for decision on November 20, 2023.

ISSUE

Should FNRC add the purchase of an Astro robot to claimant's Self-Determination Program (SDP) budget funding?

FACTUAL FINDINGS

Background

1. Claimant is a 41-year-old man who receives regional center services. He lives in an apartment with his wife. Claimant's wife has a physical disability and cannot move her upper body.

2. Claimant began receiving SDP services and supports two years ago. The SDP is a program through which a consumer can establish an individual budget and Individualized Program Plan (IPP), giving the consumer "increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement [his] IPP." (Welf. & Inst. Code, § 4685.8, subd. (a).) Under the SDP, consumers "shall only purchase services and supports necessary to implement their IPP" and must comply with SDP terms and conditions. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).)

Claimant's Request for the Astro Robot

3. Claimant requested to add an Astro robot to his SDP budget. The Astro robot is a \$1,500 home monitoring device made by Amazon. It has a camera with facial recognition and wheels to move around the home. The Astro robot also has a small

platform that can carry an item from room to room. It can serve as a smart home hub, connecting various wireless smart home devices on a wireless network.

NOTICE OF ACTION AND APPEAL REQUEST

4. FNRC issued a Notice of Action (NOA) dated September 25, 2023, stating the reasons for denying claimant's request. The NOA states, in relevant part, as follows:

Currently in your home, you have cameras which are linked already and you also have lifeline supports, as a result, the robot dog is a recreational device/hobby that provides no therapeutic [sic] and/or physical benefit. FNRC is precluded from funding recreational devices or hobby supplies in the Self-Determination Program.

5. On October 6, 2023, claimant appealed the NOA. He wrote that his reason for the appeal was:

I disagree with the decision that far northern regional center made regarding the Astro robot which helps with contacting emergency services when cell phone is down. In fnrc decision they stated we don't need this devices [sic] due to the fact that we have the life alert AND cameras which neither are working and haven't been working in about SIX MONTHS OR MORE and we have made many calls to fnrc regarding them to be fixed or replaced and they haven't done so. we feel that with the Astro robot it would be more beneficial. If declined this then FNRC needs to send someone in to fix or replace the cameras and life

alert machine as we need to have them up and running for safety measures and emergencies.

THE INFORMAL MEETING

6. On October 13, 2023, claimant met with Larry Withers, Associate Director of Client Services at FNRC's Chico office, for an informal meeting via videoconference. Mr. Withers testified at the hearing about the informal meeting and his research into the Astro robot.

7. At the informal meeting, claimant explained the Astro robot would serve as a centralized "hub" for his indoor cameras and security system. It could also provide home monitoring services, moving from room to room and notifying him if it detected unfamiliar faces. He argued the Astro robot was necessary because his Ring security system was not working after the subscription lapsed. He also hoped the Astro robot could contact emergency services if his cellular phone connection failed.

8. Mr. Withers agreed with claimant that his video camera system needed to function, and he requires a way to contact emergency services. At hearing, he clarified claimant was approved for a smart home hub as part of his IPP. FNRC will replace his current smart home hub if it is broken. Here, however, the cameras are not working because the subscription was not paid. This issue can be addressed by placing claimant's subscription on a recurring payment plan through his financial management service (FMS). Mr. Withers testified that FNRC would reach out to claimant and assist him with setting up recurring payments within the next two to four weeks.

9. Mr. Withers also explained why FNRC denied claimant's request to add funding to his SDP budget for the Astro robot. Sales of the Astro robot are limited and by invitation only. The Astro robot costs approximately \$1,500 and requires a

subscription. Comparable smart home hubs that lack wheels, like the Amazon Echo, cost approximately \$100. Additionally, though the Astro robot can move from room to room, it can only carry small items, like a soda can. It cannot grab items. Based on this information, FNRC concluded that the Astro robot would be a novel entertainment item and not a cost-effective use of public funds. Thus, FNRC upheld the NOA, finding that the Astro robot did not meet the requirements for the SDP.

Claimant's Testimony

10. Claimant seeks an Astro robot to provide greater security in his home. His wife receives services from caretakers within their home. Claimant recalled they had bad experiences with some staff. He said that she has been abused by caretakers and has been a victim of theft. Having an Astro robot would allow him to see when his wife is unwell and call emergency services when his cellular phone service is not working.

11. Claimant and his wife have three Ring security cameras inside their apartment. They previously had a Ring doorbell camera on their exterior door, but a caretaker broke it. The three interior cameras stopped working about six months ago. When claimant called customer service, he learned the cameras stopped working because his subscription had not been paid. He tried calling his FNRC service coordinator and his FMS, but each claimed he needed to speak with the other. The cameras still are not working.

12. Claimant believes it would be faster to purchase the Astro robot than to fix his existing subscription. He does not have an invitation to purchase the Astro robot yet but thinks it could effectively replace the three indoor cameras. He also explained that he and his wife recently replaced their Android cellular phones with the

newest model iPhone. He believes that fixing their existing subscription would be more stressful than replacing the camera system because they would need assistance installing applications on their new phones and remembering their usernames and passwords. Technology is a major stressor for them.

13. Claimant strongly disagreed with FNRC's position that he does not need the Astro robot. He thinks that the refusal to authorize the purchase of an Astro robot means that FNRC only cares about money and not safety.

Analysis

14. One of the limitations under the SDP is that consumers can only purchase services and supports necessary to implement their IPP. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).) In providing services and supports, regional centers must assess the "cost effectiveness of each option." (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).) This consideration generally requires the regional center to select the "least costly" comparable service or support. (Welf. & Inst. Code, § 4648, subd. (a)(6)(D).)

15. Claimant cares deeply about his wife and her safety. He believes that an Astro robot would provide them with a higher level of security given their past negative experiences with in-home caretakers. Yet even assuming claimant could get an invitation to purchase the Astro robot, it would not solve the current problem: the expired subscription. Indeed, the Astro robot also requires a subscription and will likely involve setting up applications and passwords. While it is disappointing FNRC has not yet assisted claimant with resolving the subscription issue, FNRC has committed to doing so within the next four weeks. Claimant's indoor cameras will be back online shortly.

16. There is no substantial evidence that the Astro robot will assist claimant better than the least costly smart home hub. Moreover, reducing the number of indoor cameras from three stationary cameras to one roving robot camera may decrease the apartment's safety and security. Claimant did not demonstrate that purchasing the Astro robot is necessary to implement claimant's IPP. FNRC appropriately denied claimant's request.

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 FNRC must add funds to his SDP budget to cover the cost of an Astro robot. (Evid. Code, § 115.)

The Lanterman Act

2. Under the Lanterman Act, the state of California accepts responsibility for persons with developmental disabilities. Regional centers facilitate funding and services for eligible persons. A development disability is "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." (Welf. & Inst. Code, § 4512, subd. (a)(1).) The term includes "intellectual disability, cerebral palsy, epilepsy, and autism." (*Ibid.*)

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 Lanterman Act is: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and (2) to enable developmentally disabled persons to lead more independent and productive lives. (Welf. & Inst. Code, §§ 4501, 4750; *Tri-Counties Association for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137.)

4. “Services and supports for persons with developmental disabilities” includes “specialized 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 an independent, productive, and normal life.” (Welf. & Inst. Code, § 4512, subd. (b).)

5. 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.) 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 suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

6. The IPP's services and supports center on the individual and consider the needs and preferences of the individual and family. (Welf. & Inst. Code, § 4646, subd. (a).) The services must be effective in meeting the IPP goals, reflect the consumer's preferences and choices, and be a cost-effective use of public resources. (*Ibid.*) Services and supports should assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

Implementation of Statewide Self-Determination Program

7. Welfare and Institutions Code section 4685.8 requires the Department to implement a statewide SDP. Self-determination is designed to give the consumer greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).)

8. 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, 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).)

9. An "Individual Budget" is "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." (Welf. & Inst. Code, § 4685.8, subd. (c)(3).) The individual budget is "determined using a fair, equitable, and transparent methodology." (*Ibid.*)

10. Welfare and Institutions Code section 4685.8, subdivision (c)(6), defines "Self-determination" as:

[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 (c)(7), defines a "Spending Plan" as:

[T]he plan the participant develops to use their available individual budget funds to purchase goods, services, and supports necessary to implement their individual program plan (IPP). The spending plan shall 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 amount of the individual budget. A copy of the spending plan shall be attached to the participant's IPP.

12. SDP participants "shall 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).) They "shall only purchase

services and supports necessary to implement their IPP and shall comply with any and all other terms and conditions for participation in the [SDP] described in this section.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).)

Conclusion

13. Based on the Factual Findings and Legal Conclusions as a whole, claimant did not establish that FNRC should add the purchase of an Astro robot to his SDP budget.

ORDER

Claimant’s appeal is DENIED.

DATE: November 21, 2023

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023100420

Vs.

DECISION BY THE DIRECTOR

Far Northern
Regional Center,

Respondent.

ORDER OF DECISION

On November 22, 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 in full.

In addition, DDS holds that claimant is not permitted to purchase the Astro Robot Dog with his Self-Determination Program (SDP) funds in his SDP spending plan or budget. Claimant failed to demonstrate that the use of his SDP funds in his spending plan or budget to purchase the Astro Robot Dog is necessary to achieve his IPP goals pursuant to Welfare and Institutions Code Section 4685.8, subdivisions (b)(2)(H)(i) and (c)(7).

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 December 19, 2023

Original Signed by

Nancy Bargmann, Director