

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS TRACKING NO. CS0010815

OAH No. 2023110826

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 3, 2024, in San Bernardino, California.

Claimant's mother and father represented claimant, who was not present.

Keri Neal, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 3, 2024.

ISSUE

Is IRC required to increase claimant's 2023-2024 Self-Determination Program (SDP) budget by \$8,320 so claimant can receive occupational therapy (OT) and physical therapy (PT) from WonderLab, when OT and PT services are already authorized to be provided by California Children's Services Medical Therapy Unit (CCS MTU), a generic resource?

SUMMARY

Claimant established by a preponderance of the evidence that his 2023-2024 SDP budget should be increased by \$8,320 so claimant can receive OT and PT sessions through WonderLab, because the OT and PT services he is authorized to receive through California Children's Services Medical Therapy Unit (CCS MTU), a generic resource, are not meeting his needs.

FACTUAL FINDINGS

The Self-Determination Program

1. The 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). The department began pilot programs in certain regional centers, including IRC, and oversaw statewide working groups from

various regional centers and consumer groups to develop policies and procedures to implement the program. 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 in 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).)

3. Each consumer in the program must develop an individual spending plan to use their available individual budget funds to purchase goods, services, and supports necessary to implement his or her 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 amount 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).) 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. (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).)

5. 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).)

Claimant's Background, SDP Budget and Spending Plan

6. Claimant is a 9-year-old boy that lives at home with his parents. Claimant qualifies for regional center services based on a diagnosis of mild intellectual disability. Claimant is also diagnosed with Spina Bifida, skeletal dysplasia/dwarfism, achondroplasia, hydrocephalus, benign Rolandic epilepsy, and sleep apnea. According to his most recent IPP dated December 15, 2023, claimant has no sensation from the lower thighs and down and cannot walk. Claimant can roll and scoot on the floor.

Claimant is able to grasp objects with his right hand but his left hand is weak due to a stroke caused by a surgical error in 2017. He can sit at tables and use a high chair. Claimant has a neurogenic bladder condition and has no control over his bladder or bowel. He uses diapers and has a catheter. Claimant performs some personal care activities but needs assistance. Claimant is verbal and is a friendly and social boy. Claimant enjoys community outings and the main IPP goal stated throughout the IPP by claimant's parents is that they would like claimant to gain independence to the best of his ability.

7. Claimant receives 283 hours of In Home Supportive Services (IHSS), and has health insurance through Medi-Cal/Inland Empire Health plan (IEHP). Claimant is authorized to receive OT and PT from generic resources. His IPP indicated claimant is authorized for OT once per week at 30 minutes per session and PT "quarterly" from CCS MTU, although it did not indicate for how long. The IPP also indicated claimant's parents told IRC that claimant's PT is "on hold" but did not state why. Claimant receives speech therapy through his school, where he is authorized for special education services under the categories of orthopedic impairment and other health impairment.

8. This is claimant's second year in the SDP. His current budget is \$55,155.36. The spending plan allocates funds for community living support, community integration support, technology services, and an independent facilitator. Claimant's parents would like an increase in claimant's SDP budget in the amount of \$8,320 so claimant can attend OT and PT, one session each per week, at WonderLab, a private facility. In an e-mail dated October 2, 2023, claimant's father explained why he believed claimant's needs would be better met by WonderLab:

During a meeting today with [claimant's] Motility/GI specialist, the doctor recommended we seek additional PT/OT support from IRC. [Claimant] currently has PT/OT through Redlands MTU (CCS) but they cannot provide the services needed for [claimant's] progress and development (examples: they do not have the specialized equipment, training or creativity to accommodate his multiple diagnoses) We have seen him plateau in many areas so we have decided to occasionally pay out of pocket for outside PT/OT services at WonderLab Redlands.

We were advised to request a PT/OT eval from IRC so that we can create new goals for [claimant] to continue to learn independence and life skills that cannot be achieved at the MTU clinic.

IRC's Notice of Proposed Action and Claimant's Appeal

9. On November 11, 2023, IRC issued a Notice of Action denying claimant's request to increase his SDP budget by \$8,320 so he could attend one session of OT and one session of PT per week at WonderLab. IRC wrote that OT and PT can be provided by the school district and/or private insurance, and if claimant's current OT and PT are not effective, claimant's parents can request a change in claimant's treatment plan "so that the services provided can be more effective."

10. On November 11, 2023, claimant filed an Appeal Request appealing IRC's denial of his request to increase his SDP budget by \$8,320 so he could attend one session of OT and one session of PT per week at WonderLab. This hearing followed.

Pertinent Documentary Evidence

11. In May 2023, claimant's school district completed a triennial occupational therapy assessment. At the beginning of the assessment, it indicates that the frame of reference for the assessment is the "Ecological Model of Student Performance." The report further states:

This model was chosen as best practice in the Guidelines for Occupational Therapy and Physical Therapy in California Public Schools, published by the Department of Education. The Ecological model considers the child's performance within the educational environment and the task demands of the curriculum. Thus, this assessment is not done from a medical model of looking for areas not fitting a normal standard. Instead, it is an educational model that looks to see if difficulties performing in his educational program are related to issues that may need the additional support of OT services. Educational occupational therapy is not intended to maximize skill level, but rather to develop as much as possible, the foundations necessary for the child to benefit from his/her IEP.

REASON FOR REFERRAL

Claimant was referred for a school-based Occupational Therapy assessment as part of his triennial review and to determine if he continues to require Occupational Therapy services to access his academic program.

The conclusion of the assessment was that claimant needed ongoing occupational therapy to address his fine motor and visual motor skills needed for writing.

12. Claimant received OT services from WonderLab from July 22, 2020, through, February 10, 2021, when there was a change in his insurance. At the end of that time, an OT Discharge Report was issued (dated February 22, 2021). That report indicated that claimant had made progress on goals but did not indicate whether he met all of his goals.

13. Claimant also received PT services from WonderLab. On February 23, 2023, WonderLab issued a PT Discharge Report. The report does not indicate when the sessions occurred or what dates they occurred. However, it indicates that claimant met some goals, but did not meet his mobility goals. Mainly, claimant struggled with upward mobility and safety awareness during floor mobility. He also only partially met the goals related to trunk control and postural strength.

14. In a prescription/referral for occupational and physical therapy from claimant's primary care physician dated August 7, 2023, claimant's doctor wrote:

Patient is currently receiving PT through CCS which is not very beneficial to him. Patient has done PT through WonderLab which actually has appropriate equipment to work with patient. Per parents CCS PT only has toys which are not helpful.

Due to achondroplasia and being wheelchair dependent, patient needs to work on his hypotonia of hip and core. He needs strengthening of his muscles to be able to move

himself on his wheelchair, as well as getting out of the chair by himself to go to bed, bathroom, etc.

Due to his brain surgery, he also has left hand/UE weakness.

Current PT does not help patient as much and I would like permission for him to go to WonderLab where they are equipped to help patients with [claimant's] needs.

15. Letters from claimant's insurance company indicated claimant's physical therapy request for services to be provided at WonderLab was denied because claimant can receive PT from CCS MTU.

16. According to documents that describe CCS MTU, the services provided (OT and PT) are administered as a partnership between county health departments, the California Department of Health and Human Services, and local educational institutions. CCS MTU provides "medically necessary" PT and OT as well as medical therapy conference services to children with eligible conditions.

17. No documents were provided regarding what types of services WonderLab provides or what type of licensed individuals are employed by WonderLab.

Claimant's Father's Testimony

18. Claimant's father's testimony is summarized as follows: Claimant's first brain surgery occurred when he was just one year old. He had another brain surgery in 2017 that caused a stroke. As a result, claimant has an extreme deficit on his left side. Claimant needs physical therapy and occupational therapy to address his mobility needs.

19. In 2017, the family had private insurance and claimant attended occupational therapy and physical therapy until 2019. There was a brief gap, and then claimant began PT at WonderLab in 2020. He later also started OT at WonderLab. In February 2021, IEHP informed claimant's parents that it would no longer fund WonderLab because claimant had a primary private insurer (it was funded in error). Around that same time, claimant began receiving PT and OT through CCS MTU. Throughout 2022, claimant's parents would pay out of pocket for claimant to attend WonderLab because CCS MTU is not beneficial to claimant.

20. Claimant has not received PT since approximately July 2023. Claimant's father indicated that claimant was supposed to be receiving PT once per week but CCS MTU changed that frequency unilaterally to only three times per quarter. Claimant's father did not agree with this change in frequency and "did not sign off" on it. Claimant's father said CCS MTU "just decided" it was non-negotiable and would not change it back to the once per week PT sessions claimant needs. So, claimant's parents obtained an authorization from claimant's doctor to seek OT and PT outside of CCS.

21. Claimant's parents like the way CCS provides for claimant's durable medical equipment so they want to keep CCS for that, however, they need a release from CCS so claimant can attend PT at WonderLab.

22. Claimant's parents are extremely concerned because claimant's left hand "still does not work." Claimant's OT at his school is only to address needs in the school setting and the PT through CCS does not have the specialized equipment and tools claimant needs to accommodate his multiple medical issues so the therapy can be effective.

23. Claimant's parents rebuilt their entire house to meet claimant's needs and are solely concerned with helping claimant become as independent as he can. Claimant is eager to be independent and perform his own self-care. It is not acceptable that claimant has been suffering since 2017 and is still in this position. Claimant deserves to be on track to live a life that approximates that which would be lived by a non-disabled person. For that reason, claimant's parents would like him to attend one session per week of OT and one session per week of PT (at a cost of \$80 each or \$8,320 a year) at WonderLab.

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.)

Relevant Law and Regulations

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) 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, 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.)

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.

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.

Statutes Applicable to IRC Funding Services and Supports

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).)

SELF-DETERMINATION PROGRAM

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. . .

10. Welfare and Institutions Code section 4685.8, subdivisions (m)(1)(A)(i) and (ii), provide as follows:

(m) (1) 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

11. All therapies are not created equal, though they may be called the same thing. CCS MTU provides OT and PT. WonderLab provides OT and PT. Claimant clearly needs both OT and PT, according to documentary evidence. Claimant struggles with mobility. He does not have functional use of his left hand, since at least 2017. Both the Wonderlab OT and PT discharge reports show claimant still has unmet needs. The PT

discharge report from February 2023 noted that while claimant met a few goals, several other goals having to do with independent function and mobility were either only either partially met or not met at all. Worse yet, CCS MTU unilaterally changed claimant's PT frequency to three times per quarter rather than weekly, something with which claimant's parents did not agree.

The OT assessment completed by claimant's school district in 2023 recommended ongoing OT for fine motor skills, but that therapy is only addressing claimant's OT needs in the school setting. The Ecological Model of Student Performance considers only the child's performance within the educational environment and is not intended to maximize skill level, but rather to develop as much as possible, the foundations necessary for the child to benefit from his/her IEP. Consequently, the OT claimant receives through the school district is not designed to address claimant's overall IPP needs or help him achieve the physical and occupational goals recited in his IPP. They are not designed to help claimant achieve maximum independence in his life.

Claimant's existing SDP budget does not contain any funding for OT and PT. The budget was properly developed pursuant to applicable law, especially given that claimant was authorized to receive OT and PT from generic resources. However, a change in claimant's needs, circumstances or resources, exists because claimant requires OT and PT and those needs are not being met by generic resources. Claimant's personal physician noted as much in the prescription referral for WonderLab, specifically stating that claimant's current OT and PT were not meeting claimant's needs and that WonderLab is equipped to help patients like claimant, who suffers from multiple medical conditions, achieve their goals.

It is therefore appropriate to increase claimant's spending plan in the amount of \$8,320 for the 2023-2024 SDP budget to accommodate one OT and one PT session per month at Wonderlab (at a cost of \$80 per session). CCS will continue to provide whatever services it currently provides to claimant (i.e. durable medical equipment). IRC shall work with CCS to obtain a release from OT and PT so that claimant may commence services with WonderLab. Allowing claimant to attend OT and PT sessions at WonderLab will help claimant achieve the planned outcomes in his IPP, achieve maximum independence, and ensure claimant's continued health and safety.

ORDER

Claimant's appeal of IRC's November 11, 2023, Notice of Action denying claimant's request to increase his 2023-2024 SDP budget by \$8,320 to attend one session of OT per week and one session of PT per week at WonderLab is granted. IRC shall increase claimant's 2023-2024 SDP budget by \$8,320 for that purpose. IRC shall also work with CCS to obtain a release or whatever documentation is needed so claimant can commence OT and PT services with WonderLab.

DATE: January 17, 2024

KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant,

OAH Case No. 2023110826

vs.

DECISION AND ORDER BY THE DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On January 17, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

For the reasons explained below, the attached Proposed Decision is amended. Instead, the Department holds as follows:

1. Inland Regional Center (IRC) shall grant claimant's request to increase claimant's 2023-2024 Self Determination Program (SDP) budget to cover the cost for claimant to attend one session of Occupational Therapy (OT) per week and one session of Physical Therapy (PT) services per week at WonderLab for one year (365 calendar days), beginning from the date of this Order. (See Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(i) and (ii)). IRC also shall work with California Children's Services (CCS) Medical Therapy Program (MTP) to obtain a release from CCS or whatever appropriate documentation is necessary so claimant can commence OT and PT services with WonderLab.

2. IRC shall fund, outside of claimant's SDP budget, an independent licensed Occupational Therapist and independent licensed Physical Therapist to perform evaluations of claimant's OT and PT goals and needs, including determining whether the medical equipment at WonderLab and the levels of OT and PT services at WonderLab are more medically appropriate to address claimant's unique physical and disability needs and goals compared to the medical equipment and OT and PT services claimant receives at CCS MTP. IRC shall provide the Department with a written report with this determination within 120 days of IRC receiving the completed evaluation from the licensed Occupational Therapist and licensed Physical Therapist regarding whether WonderLab or CCS MTP are better suited to provide OT and PT services for claimant. In this written report, IRC shall inform

the Department on whether WonderLab or CCS MTP provides OT and PT services that best meets the OT and PT needs and goals of claimant. If the licensed Occupational Therapist and licensed Physical Therapist evaluations determine that WonderLab better meets the OT and PT needs and goals of the claimant than CCS MTP, claimant is permitted to continue to use WonderLab beyond the 365 calendar days described in paragraph 1 of this order and IRC shall adjust the budget accordingly. If the licensed Occupational Therapist and licensed Physical Therapist evaluations determine that CCS MTP has the medical equipment and the OT and PT services to meet claimant's OT and PT goals and needs, claimant shall return to CCS MTP to receive OT and PT services at the end of the time period specified in paragraph one of this Order and IRC shall adjust the budget accordingly.

3. Claimant's SDP budget may fund services and supports that the federal Centers for Medicare and Medicaid Services (CMS) determines are eligible for federal financial participation (FFP). (See Welf. & Inst. Code, § 4685.8, subd. (c)(6).) OT and PT is a service that has been determined by CMS to be eligible for FFP. While CMS requires age limits for some services, including OT and PT, for the purposes of the State seeking FFP, eligibility for Medi-Cal, and therefore FFP, is not required for SDP participants (See Welf. & Inst. Code, § 4685.8, subd. (e).) Claimant is thus permitted to include OT and PT services in his SDP budget and claimant's SDP budget funds may be used to purchase OT and PT services. OT and PT services are necessary to implement claimant's IPP.

4. IRC shall assist claimant and his family or authorized representative to engage in any discussion, collaboration, or application/appeals process with CCS MTP to obtain medically necessary OT and PT services to meet the needs and goals of claimant. This includes communicating to CCS MTP about the needs and goals of claimant and whether CCS MTP can adjust the number of OT and PT sessions and/or provide appropriate medical equipment to meet the OT and PT needs and goals of claimant.

5. IRC shall connect claimant and/or any of claimant's representatives with the Office of Clients' Rights Advocacy for assistance regarding how to pursue medically appropriate OT and PT service funding consistent with his IPP and IEP through generic resources outside of the SDP budget, such as CCS, Medi-Cal, claimant's school district, or private health insurance. (See Welf. & Inst. Code, § 4659, subd. (d)(2).)

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 16, 2024

Original signed by

NANCY BARGMANN, Director