

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

In the Matter of:

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

DDS No. CS0011090

OAH No. 2023120581

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (Hearing Officer) with the Office of Administrative Hearings, heard this matter at San Gabriel Pomona Regional Center on January 23, 2024. This matter was consolidated, for hearing purposes only, with two cases pertaining to claimant's brother, OAH numbers 2023120722 and 2023120723.

Rosa Fernandez, Appeals and Resolution Specialist, appeared and represented San Gabriel Pomona Regional Center (SGPRC).

Claimants' mother appeared and represented claimant.

At the conclusion of the hearing, claimant's mother asked to be allowed to file, after the hearing concluded, a letter from a witness who was not able to appear. The Hearing Officer agreed. By written order dated January 25, 2024, the Hearing Officer provided that claimant could file a witness letter by January 29, 2024, and that SGPRC could file any objection or response by February 2, 2024. Claimant timely filed a witness letter, which was marked for identification as exhibit B. SGPRC filed no objection or response. Exhibit B was admitted into evidence.

The record was closed and the matter submitted on February 2, 2024.

ISSUE

May claimant use funds from her Self-Determination Program (SDP) budget to pay for a service provider to obtain and train an autism support animal for claimant?

EVIDENCE

Documents: SGPRC's exhibits 1-5 (exhibit 6 marked for identification only); claimant's exhibits A and B.

Testimony: Monica Romero; claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 10-year-old girl, is eligible for SGPRC services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based

on her diagnosis of Autism Spectrum Disorder (ASD). She has also been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and a feeding/eating disorder. She lives at home with her mother and three siblings, including a brother who is also a client of SGPRC, with a diagnosis of Intellectual Disability.

2. On September 29, 2023, claimant's mother asked SGPRC to agree she could use funds from claimant's SDP budget to fund the purchase and training of a support dog.

3. In a Notice of Action dated October 2, 2023, SGPRC denied claimant's request. SGPRC wrote:

The request to fund for a service animal to be trained for [claimant] is denied. The training and use of an emotional support animal is not a critical means of ameliorating [claimant]'s disability. Although a recommendation was given to pursue obtaining a service animal, there is no medical documentation on file that supports a specific health need that would require a specific "service" performed by a service animal to ensure [claimant]'s health and safety. [Claimant]'s parent is encouraged to pursue psychological therapy for [claimant] to address her mental wellness. [Claimant]'s parent has been provided with information for mental health referrals and support in the community to pursue via insurance funding. Community Navigator Program and Parent Mentor are available to parent if they would like additional support in accessing resources. Parent was also referred to Parent's Place Family

Resource Center to get additional help with accessing technology needed to support her through the Self Determination Process. Regional Center's [sic] are required to use the most cost-effective means to provide services and support. If the family continues to wish to pursue an emotional support animal for [claimant], it is recommended that they work with their Independent Facilitator to research available resources in the community to find the most cost-effective option. [¶] . . . [¶]

Providing animal training for a family pet is not within the kinds of services and supports to be provided by a regional center as defined in section 4512, subdivision (b), as it is not a specialized service "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." In addition, even if the training could be considered a covered service, all generic resources are required to be explored before the regional center can provide funding. (§ 4646.4, subd. (a).)

(Ex. 1, pp. A2-A3.)

4. On December 1, 2023, claimant's mother filed an appeal request to contest SGPRC's denial.

Claimant's 2023 IPP, SDP Budget, and Spending Plan

5. Claimant's most recent Individual Program Plan (IPP), dated October 13, 2023, notes that claimant, among other things,

engages in behavioral outbursts. She hits her brothers and other children and throws herself down on her knees. [Claimant] gets upset easily and tantrums for long periods of time and it can take a few hours to get [her] to calm down. [Claimant] usually plays by herself or on her terms. [Claimant] does not make consistent eye contact when interacting with others and is too rough. She has limited awareness of personal space and will grab items away from another person without asking. [Claimant] has a difficult time making and maintaining friendships. [Claimant] is very active and impulsive. She is not aware of danger, has poor safety judgement and safety awareness. Family tried the school's afterschool programs but due to her need for adult support/supervision, it was not successful. [Claimant]'s family have made attempts to encourage her to make friends in the park, public settings and on outings but [claimant] has specific interests that her peers often don't share. . . .

(Ex. 4, pp. A14-A17.)

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6. The IPP further notes:

[Claimant] is no longer participating in an ABA program due to lack of staff and [claimant]'s lack of interest in participation. She was tired of ABA services. . . . It is reported that [claimant] requires constant supervision due to her tantrum behaviors and lack of awareness of danger. [Claimant] runs off when out in the community. She hits other children and is very active and impulsive. . . . [Claimant] participates in a gymnastic program in the community 1x a week. Parent informed she is being evicted from her residence Family was provided resources from housing to renter rights regarding evictions. Family is in the process of transitioning to Self Determination Program (SDP). Family has developed a Person Centered Plan and attended a budget meeting. Family is currently working with Vilma Stella Ramirez, Person-centered Planner & Facilitator at Girasol Hive LLC . . . and Sandra Menendez, Field Service Representative with GT Independence *[Claimant] was denied adding funding of a service animal to her spending plan. Appeal is in process.* Family chooses to start SDP and address outcome of appeal at a later time. SDP transition will occur when the plan is approved and FMS is ready to start.

(Ex. 4, p. A22, italics added.) Before claimant discontinued them, her ABA services were funded by Medi-Cal and provided through Acuity Behaviors Solutions. (*Id.* at p. A39.)

7. Claimant's IPP discusses various desired outcomes for claimant, including claimant becoming aware of danger (outcome #3), not running away (#4), playing with other children (#10), stopping her tantruming (#11), and refraining from "hitting everybody and anybody when upset" (#12). (Ex. 4, pp. A35-A39.)

Service Animal Funding

8. Monica Romero, SGPRC's Manager of Family Services, testified that at the meeting to establish an SDP budget, a Person-Centered Plan (PCP) was presented. The parties examined the existing IPP and identified claimant's unmet needs. Ms. Romero recalls discussing adaptive skills training and feeding therapy as unmet needs and added funds to the SDP budget for those purposes. Claimant's mother signed the budget. Ms. Romero does not recall any mention of a service dog at the budget meeting, and funding for a service dog does not appear in the signed budget. Claimant's mother and her independent facilitator subsequently developed and submitted a spending plan, which referred to funding for a service dog.

9. Ms. Romero testified SGPRC attempted to obtain additional information about the request for a service dog. Claimant's mother provided a prescription for a service dog and a questionnaire from Paws for Ability, a provider that proposed to acquire and train a dog for claimant and her brother. In the questionnaire, claimant's mother wrote she hoped the dog would help claimant with tantrums, safety awareness, and redirection. (Ex. 5, p. A43.)

10. Based on what she learned at a DDS presentation, Ms. Romero believes that a service dog must provide a service such as directional guidance, sensing a medical need, help with turning things on and off, and pressure and sensory support. An emotional support animal, by contrast, provides comfort and ease for a person but

need not provide a specific service. SGPRC concluded the dog's main function would be to provide emotional support. According to Ms. Romero, SGPRC typically refers consumers to outside generic agencies for emotional support animals and for service animals.

11. Ms. Romero conceded that claimant's IPP shows claimant has sensory processing needs and has an ongoing goal to stay safe and not run away. At the last IPP, claimant's mother reported no progress on outcomes related to those goals.

12. Claimant's mother testified that claimant made no progress on outcomes related to danger awareness, wandering, playing with others, tantrums, or hitting. (See Factual Finding 7, *ante*.)

13. According to claimant's mother, claimant has suffered multiple injuries in the past year due to sensory seeking, including a fractured wrist and ankle. She wanders away and is unaware of anything around her; for instance, she bumps into parked cars. Her wandering is "at another level." Claimant's mother hopes a service animal will bring claimant back to the family if she wanders away and would protect her from oncoming traffic. Claimant wanders off less than she used to on family outings to the park, because she tends to follow the family dog, Bailey; Bailey is not a trained service animal. Claimant is too rough to play with other children; claimant's mother believes she will play more appropriately and not hit others because she will need less sensory input if she has a service dog.

14. ABA services benefitted claimant greatly, but she tired of it after many years. Claimant's mother would explore starting ABA services again eventually, but for now she wants to take a break and look for alternatives. Claimant's mother seeks a nontraditional way to help claimant be safe and socialize. Claimant's mother has

researched alternative sources of funding, including health insurance and fundraising programs, but cannot find the necessary financial support. That is why claimant is seeking funding through her SDP budget.

LEGAL CONCLUSIONS

Applicable Authority

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code unless otherwise stated.) A fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant timely appealed SGPRC's decision to deny funding approval for a service animal for claimant. Jurisdiction was established. (Factual Findings 1-4.)

2. The person seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. In this case, claimant bears the burden of proving by a preponderance of the evidence that she is entitled to use SDP funding for the purchase and training of a service dog to address needs identified in her IPP. (See Evid. Code, § 500.)

Self-Determination Program

4. The SDP is a model of service delivery provided under section 4685.8. A regional center consumer who has been deemed eligible for, and has voluntarily agreed to participate in, the SDP is referred to as a "participant." (§ 4685.8, subd. (c)(5).) "A participant may choose to participate in, and may choose to leave, the Self-Determination Program at any time." (§ 4685.8, subd. (d).)

5. "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." (§ 4685.8, subd. (c)(6).)

6. The SDP "shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (§ 4685.8, subd. (c)(6).) A participant "shall utilize the services and supports available within the [SDP] only when generic services and supports are not available." (§ 4685.8, subd. (d)(3)(B).)

Discussion

7. The preponderance of the evidence established that SGPRC properly denied the request of claimant's family to use SDP funding to purchase and train a dog to help claimant achieve her IPP outcomes. No evidence was presented that dog training is a service that is eligible for federal financial participation. No evidence was presented that dog training for claimant's outcomes is included in the definition of services available in the SDP. Claimant's mother is, understandably, seeking innovative solutions to address claimant's needs, but SGPRC cannot allocate funds for a form of therapy that lacks any authoritative basis in the evidence presented at hearing or any

basis in the Lanterman Act or the SDP budget. According to the IPP, funding is available to address claimant's behaviors through behavioral intervention services, such as ABA therapy.

ORDER

Claimant's appeal is denied. SGPRC properly denied claimant's request for the purchase and training of a service dog to address claimant's behaviors.

DATE:

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023120581

Vs.

DECISION BY THE DIRECTOR

San Gabriel/Pomona Regional Center

Respondent.

ORDER OF DECISION

On February 12, 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 March 8, 2024.

Original signed by:

Nancy Bargmann, Director

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023120581

Vs.

**RECONSIDERATION ORDER,
DECISION BY THE DIRECTOR**

San Gabriel/Pomona Regional Center,

Respondent.

RECONSIDERATION ORDER

On March 29, 2024, the Department of Developmental Services (Department) received an application for reconsideration of a Final Decision in the matter referenced above, that was issued by the Director on March 8, 2024.

The application for reconsideration is denied. A review of the Final Decision and record does not support a finding of factual, legal or clerical error that would change the Final Decision. The Final Decision remains effective as of March 8, 2024. All parties are bound by this Reconsideration Order and Final Decision.

Each party has the right to appeal the Final Decision to a court of competent jurisdiction within 180 days of receiving the Final Decision.

IT IS SO ORDERED on this day April 11, 2024.

Original signed by:

Nancy Bargmann, Director