

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

In the Matter of:

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

DDS No. CS0011087

OAH No. 2023120722

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (Hearing Officer), heard this matter at San Gabriel Pomona Regional Center on January 23, 2024. This matter was consolidated, for hearing purposes only, with two cases, one pertaining to this claimant, OAH number 2023120723, and one pertaining to claimant's sister, OAH number 2023120581.

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 ALJ agreed. By written order dated January 25, 2024, the ALJ 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 his 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 9 marked for identification only); claimant's exhibits A and B.

Testimony: Monica Romero; claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 12-year-old boy, is eligible for SGPRC services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based

on his diagnosis of Mild Intellectual Disability. He lives at home with his mother and three siblings, including a sister who is also a client of SGPRC, with a diagnosis of Autism Spectrum Disorder.

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/service animal is not a critical means of ameliorating his 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 his health and safety. It is also documented that [claimant] does not handle animals safely. [Claimant]'s parent is encouraged to pursue psychological therapy and additional ABA to support his behavioral and emotional wellness. His parent has been provided with information for mental health referrals and support in the community to pursue via insurance funding. His managed health plan can be accessed to address the need for an available ABA resource. 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 [s/c] through the Self Determination Process.

Regional Centers are required to explore and utilize generic resources before considering funding to determine 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. [¶] . . . [¶]

The Lanterman Act defines the kinds of services and supports to be provided by the regional center. 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." The determination of claimant's services and supports is to "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. 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 consider funding. (WIC section 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. All jurisdictional requirements were met.

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

5. Claimant's most recent Individual Program Plan (IPP), dated October 23, 2023, notes that claimant, among other things,

participated in an ABA program which ended 4-19-23 due to lack of staff. [Claimant] made improvements in decreasing his elopement behaviors, transitioning from a preferred activity to a non-preferred activity with less resistance, taking turns and following 2 step directions. He no longer elopes as much but gets easily distracted and is impulsive. [Claimant] is reported to do the opposite of what he is instructed to do. [Claimant] cries when he is corrected

when doing his homework or playing games. He cries and screams when he is denied something. [Claimant] is reported to speak negatively to people and puts them down. [Claimant] plays rough with other children and when handling animals. [Claimant] is not aware of his own strength especially when he is excited. [Claimant] is very active and has difficulty sitting still. He can stay engaged on the iPad for approximately 30 minutes. Parent reports [claimant] requires a full-time one to one aide in class to re-direct him to complete a task.

(Ex. 4, p. A16.)

6. The IPP further notes that claimant "is impulsive and does not pay attention to his environment. He is not cautious in possible dangerous situations. [Claimant] runs off from home and when out in the community." (Ex. 4, p. A17.) The IPP continues:

Parent is transitioning [claimant]'s SGPRC case to the Self-Determination Program. 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 . . . training of a service animal to his spending plan. Appeals are in process.* Family chooses to start SDP and address

outcome of appeals at a later time. SDP transition will occur when the plan is approved and FMS confirms start date.

(Ex. 4, p. A21, italics added.) Claimant's ABA services were funded by Medi-Cal.

7. Claimant's IPP discusses various desired outcomes for claimant, including claimant not being impulsive and being more aware of his safety (outcome #4), interacting with his peers without speaking negatively, being rough, or displaying poor sportsmanship (#8), and not running off from home or when out in the community (#9). (Ex. 4, pp. A31-A33.)

8. Claimant's IPP recommends that claimant be re-evaluated for Autism Spectrum Disorder.

Service Animal Funding

9. 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.

10. 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 his sister. In the questionnaire, claimant's mother wrote she hoped the dog would help claimant with tantrums, safety awareness, and redirection. (Ex. 5, p. A37.)

11. 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.

12. Ms. Romero conceded that claimant's IPP shows claimant has sensory processing needs and behavioral issues. Ms. Romero testified that she cannot attribute claimant's behavioral issues to his sensory needs because she is not a diagnostician.

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

14. Claimant gets up early for school. When he comes home from school, nobody can talk to him; he goes into his bedroom and his bed. He has no interaction with the family. He has no friends. The family has to have a caregiver stay at home with claimant when they leave for family activities. Claimant's mother hopes a service animal will help claimant regulate his emotions, prevent his frequent meltdowns, and keep him from eloping in the community. Claimant plays with the family dog, Bailey, when outside and elopes less frequently. Bailey has helped claimant regulate his

energy; claimant's mother believes Bailey helps through the mechanism of sensory pressure. Bailey has reduced claimant's meltdowns to five minutes' duration instead of hours; "it's a miracle," she testified. The family and claimant invited some of claimant's classmates to their home to meet Bailey, which was a big step for claimant.

15. 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 he is entitled to use SDP funding for the purchase and training of a service dog to address needs identified in his 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 his 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. 2023120722

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. 2023120722

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