

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

**In the Matter of:**

**Claimant,**

**vs.**

**SAN GABRIEL/POMONA REGINAL CENTER,**

**Service Agency.**

**DDS No. CS0011086**

**OAH No. 2023120723**

**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 2023120722, 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 game truck rental for claimant?

## **EVIDENCE**

Documents: SGPRC's exhibits 6-9 (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 rental of a game truck from a party rental company that rents trucks with video games for events.

3. In a Notice of Action dated November 6, 2023, SGPRC denied claimant's request. SGPRC wrote:

The request to fund for "game trucks" for Richard as part of his spending plan is denied. Game Trucks is a party rental company that rents out trucks with video games for events. Rental of a game truck through this business, in itself, does not provide a socialization opportunity for children. It is not seen as a means of ameliorating Richard's primary symptoms related to his disability. Other resources are available in the community to support Richard's interest in video games, while also providing a social outlet and structure for development among peers on a regular basis. Resources such as that may be considered for Richard's social enrichment instead of a party rental truck. Resources such as Special Olympics Gaming for Inclusion and Game U have been provided to Richard's family for consideration.

The Lanterman Act defines the kinds of services and supports to be provided by the regional center. "Services

and supports for persons with developmental disabilities' means 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 independent, productive, and normal lives." (5 4512, subd. (b).) 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.

. . . WIC section 4685.6(i) [requires] IPP teams, 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, and the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in subparagraph (D) of paragraph (6) of subdivision (a) of Section 4648. 5."

SG/PRC's policy funding decisions regarding social recreation/camp and non-medical therapies are guided through person-centered choice and decision making within the IPP process. SG/PRC will fund services and supports that ensure optimal participation within integrated community settings.

To be considered for SG/PRC funding, these person-centered activities should include opportunities and experiences that will improve self-reliance, increase adaptive behaviors, and improve the ability to establish social relationships. These are primary social and recreational benefits.

(Ex. 6, pp. A43-A44.)

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 Game*

*Trucks Rental . . . 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.

## **Game Trucks Rental 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 claimant's difficulty getting out of his bedroom, out of his home, and socializing and making friends. Claimant's mother signed the budget. Funding for a game truck rental does not appear in the signed budget. The PCP mentioned claimant enjoying videogames, and at the budget meeting the parties discussed claimant possibly visiting a gaming center where he could play videogames with other children. Claimant's mother and her independent facilitator subsequently developed and submitted a spending plan, which referred to funding for a rental game truck to come

to claimant's home and to which he could invite friends. Ms. Romero testified SGPRC attempted to obtain additional information about the request for a rental game truck.

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

11. 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 game truck rental at their home will encourage claimant to invite classmates and socialize. She hopes it will lead to claimant eventually being willing to go to a gaming center. To claimant's mother's surprise and delight, claimant has volunteered to send invitations to three or four classmates.

12. 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 improperly denied the request of claimant's family to use SDP funding to rent a game truck to help claimant achieve his IPP outcomes. Evidence was presented that a game truck rental is a means of ameliorating claimant's primary symptoms related to his disability. Such services are contemplated by section 4512. A rental game truck may leverage claimant's interest in videogames in a social setting, providing claimant an opportunity to improve the ability to establish social relationships in a recreational community setting, providing a social outlet and structure for development among peers on a regular basis. Claimant has shown interest in participating. Generic services and sources of funding have been unavailable and ineffectual at enabling claimant to leave his room and socialize in his community. Funding on an interim basis, as a step toward having claimant travel to a gaming center, is warranted under the facts of this case.

## **ORDER**

Claimant's appeal is granted. SGPRC shall approve the use of SDP funds to rent a game truck to visit claimant's home. The frequency of the visits, and the duration of the spending, shall be determined in the IPP process.

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. 2023120723

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