

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

In the Matter of:

Claimant,

v.

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS No. CS0012013

OAH No. 2024010520

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 16, 2024, by videoconference.

Claimant's mother appeared representing claimant, who was not present.

Executive Director's designee James Elliott represented service agency San Andreas Regional Center (SARC).

The matter was submitted for decision on February 16, 2024.

ISSUE

Must SARC recommend to the Director of the Department of Developmental Services (DDS) that the Director authorize SARC to increase claimant's Self-Determination Program (SDP) budget, to include funding for services that claimant would use while living in Florida?

FACTUAL FINDINGS

1. Claimant was born in August 2005. SARC deemed claimant eligible for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) in early 2023, because claimant has substantially disabling autism spectrum disorder.

2. Claimant's permanent residence is with her mother in California. In fall 2023, however, claimant began attending college at the University of North Florida (UNF), in Jacksonville, Florida. She expects to finish her first year of college in early May 2024, and to spend about three months in California with her family before returning to Florida for her second year of college at UNF in early August 2024. Claimant also expects to visit her family in California during school holidays.

3. Claimant and her SARC service team have agreed that during 2024, claimant should receive 24 hours per month of Independent Living services, 40 hours per month of Personal Assistance services, and 90 hours of social and recreational services.

4. Claimant intends to receive her Lanterman Act services through the SDP. Because claimant expects to spend about four months in total living in California in

2024 (as summarized in Finding 2), she and her SARC service team have agreed on an SDP budget reflecting four months' worth of Independent Living services (96 hours), four months' worth of Personal Assistance services (160 hours), and 90 hours of social and recreational services.

5. Claimant seeks to increase her SDP budget, to allow funding for services during periods when she intends to be in Florida. SARC has declined to recommend this increase to the DDS Director. Claimant filed a timely appeal.

Claimant's Educational Program

6. Claimant attended a high school that offered one-on-one instruction. She graduated in spring 2023. Claimant did not follow a course program in high school that would have made her eligible for admission to a University of California or a California State University campus.

7. Claimant and her family considered numerous college options. They worked with a specialized college admissions counselor for neurodiverse adolescents, and claimant's mother estimates that they considered about 60 schools. They found no program in California that they believed would meet claimant's needs.

8. The evidence does not establish claimant's course program or intended major at UNF. Claimant's mother testified credibly, however, that the California Department of Rehabilitation is providing some funding for claimant's UNF education.

Claimant's Service Needs

9. Currently, claimant lives on the UNF campus in a dormitory. She walks to her classes and extra-curricular activities, and takes meals in the dormitory's dining

hall. She and her family believe that the on-campus dormitory environment adequately meets claimant's needs for assistance with activities of daily living.

10. Claimant and her family do not believe that claimant would be able to live independently in an off-campus apartment. Claimant does not drive and does not know how to use public transportation; she cannot shop or cook for herself; she does not monitor her mail or electronic communications reliably; and she does not know how to manage money or pay bills.

11. On-campus housing is not guaranteed for all years of a student's UNF education. Claimant seeks funding in her SDP budget for services that she would use to meet the needs summarized in Finding 10 if and when she no longer can live in an on-campus dormitory at UNF.

12. At UNF, claimant participates in a support program for students with autism spectrum disorder called THRIVE. No evidence establishes precisely what services THRIVE provides to claimant, or how those services resemble or differ from supportive services that would be available to claimant through SARC or through her school if she attended a college or university in California.

13. SARC service manager Diana Gutierrez testified regarding SARC's services for adolescent and young adult consumers. Gutierrez is familiar with several programs at California colleges and universities that provide specialized supports for students with disabilities, including autism spectrum disorder. Some SARC consumers participate in these programs. Other SARC consumers with autism spectrum disorder attend colleges (including community colleges) or universities that do not provide specialized support programs. These consumers often rely on SARC services such as

Independent Living and Personal Assistance services to manage activities of daily living that they would not be able to manage independently.

14. Claimant and her family did not seek advice from any SARC staff members about college options. Gutierrez testified that she is not familiar with the UNF THRIVE program's details, and does not know why claimant and her family chose this program for claimant over any educational or autism-support programs that might have been available to claimant in California. Claimant's mother also did not explain this choice, except to refer to the "extraordinarily extensive search" claimant and her parents had undertaken.

15. The evidence does not establish that SARC has any formal policy stating criteria for evaluating a consumer's request to receive Lanterman Act services while the consumer is not in California. Gutierrez testified that she believes (based primarily on the experience summarized in Finding 13) that college education, with supports appropriate to claimant's disability-related needs, is available to claimant in California. For this reason, Gutierrez does not believe that SARC should recommend to the DDS Director that the Director approve claimant's request for SARC to fund services to claimant while claimant is at school in Florida.

LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review SARC's service decisions. (Welf. & Inst. Code, § 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires SARC to deliver the services and supports she requests.

2. The Lanterman Act restricts SARC's authority to expend funds it receives from DDS to purchase services outside California. Specifically (with exceptions that do not apply to claimant), Welfare and Institutions Code section 4519 permits SARC to purchase such out-of-state services only with approval from the DDS Director. Moreover, section 4519 permits the DDS Director to approve such out-of-state service purchases only if "the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state." (Welf. & Inst. Code, § 4519, subd. (a).)

3. If a consumer asks a regional center to purchase out-of-state service, the regional center must evaluate the consumer's request with reference to "options to serve the consumer in California." (Welf. & Inst. Code, § 4519, subd. (a).) The regional center may ask the DDS Director to approve such an out-of-state service purchase only if the regional center has conducted a "comprehensive assessment" and supports its request with "details regarding all options considered and an explanation of why these options cannot meet the consumer's needs." (*Ibid.*) The DDS Director may authorize a regional center to purchase out-of-state service for six months, with extensions available only upon similar comprehensive re-assessment. (*Ibid.*)

4. As summarized in Findings 12 through 15, SARC declined claimant's request without conducting a "comprehensive assessment" as described in Welfare and Institutions Code section 4519. In light of the matters stated in Findings 8, 12, and 13, however, claimant has failed to demonstrate that any such assessment would be a reasonable use of SARC's resources. To the contrary, all matters summarized in Findings 6 through 15 show that an appropriately supported college education would be available to claimant within California. Claimant's choice to attend UNF does not

oblige SARC to request the DDS Director's permission to purchase support services for claimant while she lives in Florida.

ORDER

Claimant's appeal from SARC's refusal to recommend that the DDS Director authorize funding for Lanterman Act services to claimant during periods when claimant intends to be in Florida is denied.

DATE:

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024010520

Vs.

DECISION BY THE DIRECTOR

San Andreas Regional Center,

Respondent.

ORDER OF DECISION

On February 26, 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 27, 2024

Original signed by:

Nancy Bargmann, Director