

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

DDS No. CS0012041

OAH No. 2024010927

PROPOSED DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings (OAH) State of California, heard this matter by videoconference on March 5, 2024, from Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin M. Black, Legal Services Manager for ACRC.

Eric L. Nelson, Ph.D., and Lauren Zapien served as claimant's non-attorney representatives. Claimant was not present.

Evidence was received on March 5, 2024. The record remained open to allow the filing of closing briefs. On March 15, 2024, the closing briefs were received, the record closed, and the matter submitted for decision.

ISSUE

Should ACRC be ordered to accept claimant's proposed Individual Program Plan (IPP) and Self-Determination Program (SDP) budget?

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Claimant is a 37-year-old un-conserved man of Native American descent, found eligible in June 2023 for ACRC services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.), based on his diagnosis of mild intellectual disability. Claimant has substantial disabilities in the areas of self-care, receptive and expressive language, learning, self-direction, capacity for independent living, and economic self-sufficiency.

2. On August 9, 2023, claimant had his first IPP meeting. The planning team members present at the IPP were claimant, Wendi McCray, Lead ACRC Service Coordinator, Jeff Dominguez, ACRC Service Coordinator, Deanna Stilwell, a clinical social worker with Department of Corrections and Rehabilitation (CDCR) and Rhea Swisher, an employee from Progress House. At the time of the meeting, claimant was residing at Progress House in Placerville, California, a transitional housing drug and alcohol program. Claimant was placed at Progress House after his release from CDCR

incarceration. His parole is scheduled to end on June 2, 2024, and he will no longer have funding to stay at Progress House.

3. As part of claimant's IPP goals, ACRC agreed to fund independent living skills and "identify a suitable permanent housing option for him in either El Dorado, Placer, or Nevada Counties, as these are the counties to which his parole can be most easily transferred." The parties agreed to review claimant's IPP quarterly.

EVENTS FROM NOVEMBER 27, 2023, THROUGH JANUARY 22, 2024

4. On or about November 27, 2023, claimant retained Mr. Nelson to represent him at no cost in matters before ACRC. The same day, Mr. Nelson sent Sharon Wiggins, a Client Services Manager in the Placerville ACRC office, an email with an attached copy of the retainer agreement. Mr. Nelson asked Ms. Wiggins for the name of claimant's service coordinator and to review claimant's ACRC file. Mr. Nelson testified at hearing.

5. On or about December 13, 2023, Mr. Nelson had a telephone call with Ms. Wiggins. They discussed claimant's interest in participating in the SDP. Ms. Wiggins informed Mr. Nelson that Mr. Dominguez was claimant's service coordinator. After the telephone call, Mr. Nelson sent Ms. Wiggins an email the same day requesting that they set up a "pre-IPP meeting as soon as possible" to discuss claimant's needs and finalize an SDP budget.

6. On or about December 18, 2023, Ms. Wiggins proposed several days in early January 2024, to Mr. Nelson that claimant's IPP planning team meeting could occur, including January 4, 2024. Mr. Nelson agreed to the January 4, 2024 date by email on December 19, 2023. Mr. Nelson stated that he would "host" the January 4,

2024 meeting on Zoom. He provided a "Proposed SDP Budget." Mr. Nelson also stated that Ms. Zapien would also be representing claimant at the meeting.

7. On December 28, 2023, Mr. Nelson sent Melissa Schuessler, a manager for the ACRC SDP, an email with an agenda, Zoom link, draft SDP IPP agreement, SDP spending plan, a supporting declaration, and copies of email communications.

8. On January 3, 2024, Faye Tait, Associate Director of Client Service for ACRC, sent Mr. Nelson an email stating that she needed to reschedule the IPP meeting. Ms. Tait testified at hearing that she supervised Ms. Schuessler. Ms. Tait became involved in claimant's matter, because ACRC has a long history of disputes with Mr. Nelson on other claimant matters. As a result, it was better to have someone with "decision making" authority involved in the IPP and SDP process. Ms. Tait requested to reschedule the IPP meeting because she needed additional time to review claimant's August 9, 2023 IPP and the documentation Mr. Nelson provided to Ms. Schuessler.

The same day, Mr. Nelson sent Ms. Tait an email explaining that pursuant to Welfare and Institutions Code section 4646, subdivision (b), claimant had a right to an IPP meeting within 30 days of his request for a meeting. Mr. Nelson explained that claimant's request was made on December 13, 2023, so an IPP meeting needed to occur on or before January 12, 2024. Mr. Nelson asked for "three proposed" dates. Mr. Nelson stated that the meeting needed to occur on "Zoom since the attendees are not all in the Placerville area." Mr. Nelson also stated that he had the right to record the meeting.

9. On Friday, January 5, 2024, Mr. Nelson sent Ms. Tait another email requesting proposed dates for the rescheduled IPP meeting. Ms. Tait responded the

same day stating that she was still identifying dates for the rescheduled IPP meeting, and she would have those dates to Mr. Nelson, by Monday, January 8, 2024.

10. On Monday, January 8, 2024, Ms. Tait sent Mr. Nelson an email stating that the IPP planning team and ACRC legal counsel were available to meet on January 9 or 11, 2024. Ms. Tait informed Mr. Nelson that the IPP meeting would be “scheduled and hosted by ACRC using Microsoft Teams.” Mr. Nelson responded the same day by email agreeing to hold the IPP meeting on January 11, 2024. Mr. Nelson stated he would not use Microsoft Teams and that he would host the meeting on Zoom. Mr. Nelson also stated the claimant could invite “anyone he wishes,” but he objected to ACRC counsel attending.

11. At hearing, Mr. Nelson explained that he would not agree to use Microsoft Teams because he would not be able to control the meeting. He also did not trust ACRC to record the meeting, which he could do using Zoom. Mr. Nelson also intended to broadcast the IPP meeting so that seven members of the Lanterman Act Watching Project (LAWP) could observe. Mr. Nelson created the LAWP to provide oversight of ACRC on consumer matters he was working on. None of the seven members of the LAWP were members of claimant’s family or part of claimant’s IPP planning team. Only one, Ms. Zapien, served in any type of representative capacity for claimant.

12. On January 10, 2024, Ms. Tait informed Mr. Nelson by email that ACRC would not agree to the IPP meeting being broadcast by Zoom. Ms. Tait explained that ACRC could “accommodate a virtual video meeting via the platform Microsoft Teams. An alternative would be for the participants of the meeting to call in to the teams meeting using the provided phone numbers.”

13. By email dated January 11, 2024, Mr. Nelson again informed Ms. Tait that an IPP meeting would be held that date on Zoom. Mr. Nelson stated that the “committee” would discuss his proposed agenda and vote on his proposed IPP, whether ACRC was present or not.

The same day, Ms. Tait sent Mr. Nelson an email stating that he was previously told that ACRC would not agree to use Zoom for the IPP meeting. This was due to privacy concerns regarding claimant’s confidential health information and Mr. Nelson’s intent to broadcast the Zoom to individuals who were not claimant’s family or part of the IPP planning team. Ms. Tait told Mr. Nelson that ACRC “provided options that allow all parties to confidentially attend an IPP meeting today at noon.” Ms. Tait added that she was “disappointed” that Mr. Nelson was choosing on behalf of claimant to “put barriers in place to moving forward” to getting claimant’s needs met. Ms. Tait also stated that ACRC was “very open to rescheduling” the IPP meeting, which could take place in person or via Microsoft Teams. She noted that both of those options would be without any “broadcasting” through Zoom.

Ms. Tait also told Mr. Nelson that pursuant to Welfare and Institutions Code section 4646, subdivision (d), the IPP is required to be prepared jointly by claimant’s planning team, which included ACRC employees. Ms. Tait explained that an IPP meeting held without ACRC participation is “null and void and does not constitute an IPP.”

14. Mr. Nelson held the IPP meeting on January 11, 2024. Claimant, Mr. Nelson, Rhea Swisher a “Tribal appointed stand-in” for claimant, Melanie Uribe, a community health representative with the Maidu Native American tribe, Ms. Stilwell, and Ms. Zapien, were present. There were no ACRC employees present. The individuals

present voted to approve a proposed IPP and SDP budget Mr. Nelson prepared on claimant's behalf.

15. On January 15, 2024, Mr. Nelson sent Lori Banales, Director of ACRC, a copy of the minutes for the January 11, 2024 meeting, the IPP he prepared and SDP budget. Mr. Nelson informed Ms. Banales that the members of claimant's "IPP committee" approved an SDP budget of \$160,756, which he expected ACRC to fund by February 1, 2024.

16. On January 19, 2024, Alan J. Zuckerman, an attorney for ACRC, sent Mr. Nelson a letter explaining that the meeting he held on January 11, 2024 without the participation of ACRC, "has no legal effect and is not binding on ACRC." Mr. Zuckerman explained in part, that pursuant to Welfare and Institutions Code section 4512, subdivision (j), the IPP team must include at least one ACRC representative. Mr. Nelson does not have the authority to unilaterally formulate the IPP and SDP budget. Mr. Zuckerman recommended Mr. Nelson schedule an IPP meeting with ACRC at his earliest convenience.

17. On or about January 22, 2024, claimant filed a request for hearing. Claimant requested the IPP and SDP budget approved by his committee on January 11, 2024, be approved and to order ACRC to fund the SDP budget "without delay."

EVENTS FROM JANUARY 22 THROUGH FEBRUARY 27, 2024

18. Between January 22 and February 25, 2024, Mr. Nelson and ACRC continued to work towards an agreement to conduct an IPP meeting with members of ACRC present. On February 27, 2024, the IPP meeting took place at Progress House. ACRC advised Mr. Nelson prior to that meeting that it would not permit him to

broadcast the IPP meeting through Zoom, and that any remote participants would need to use ACRC's Microsoft Teams platform.

19. Claimant, Mr. Nelson, Ms. Swisher, Ms. Stilwell, Ms. Uribe, Keith Simmons, an executive with Progress House, Ms. Tait, and her supervisor Jennifer Bloom, participated in the IPP meeting. Mr. Nelson presented a proposed SDP budget. Ms. Tait informed Mr. Nelson that ACRC would have a response to the proposed SDP budget by March 6, 2024.

Claimant's Additional Evidence and Position

20. Mr. Nelson testified at hearing regarding claimant's medical conditions and daily needs. Ms. Stilwell and Ms. Uribe explained various financial and medical benefits available to claimant. Ms. Stilwell explained that after claimant is released from parole, his housing funding for Progress House will end.

21. Claimant contends that ACRC failed to "fulfill their duty to participate in a planning team meeting on or before Jan 12, 2024." As a result, the IPP and SDP budget approved by claimant's "committee" on January 11, 2024, should be approved. Claimant concedes that there is no law or authority that supports his position that if ACRC does not timely participate in an IPP meeting, an IPP and SDP budget can be approved and enforced without ACRC's approval or participation.

ACRC's Position

22. ACRC contends in part that claimant's request to order ACRC to participate in an IPP meeting is moot. The IPP meeting occurred with claimant's IPP planning team on February 27, 2024. ACRC has reviewed claimant's proposed IPP and

SDP budget prepared by Mr. Nelson and will be providing ACRC's proposed SDP budget to Mr. Nelson no later than March 6, 2024.

23. Additionally, ACRC argues that there is no law stating that if ACRC does not participate in an IPP meeting within 30 days of the request, claimant may hold his own IPP and unilaterally approve service and support requests. ACRC also contends that the Department of Developmental Services (Department) lacks the jurisdiction to approve claimant's proposed IPP and SDP budget. Specifically, Welfare and Institutions Code section 4646, subdivision (d), requires the IPP to be prepared jointly by the planning team. The planning team must include at least one representative from ACRC. The January 11, 2024 meeting did not include an ACRC representative. The proposed IPP and SDP budget was not prepared by claimant's planning team and cannot be enforced.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, section 4500 et seq.) Under the Lanterman Act, regional centers fund services and supports for persons with developmental disabilities.

2. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code sections 4700–4716.) C. The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant has the burden of proving, by a preponderance of the evidence, that ACRC is required to approve his proposed IPP and SDP budget. (Evid. Code, § 115.)

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.) 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.) Each regional center is responsible for consumers within a geographic region of the state called a "catchment area."

4. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities," in relevant part, as follows:

...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 an independent, productive, and normal life. 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....

5. Welfare and Institutions Code section 4512, subdivision (j) provides that the:

“Planning team” means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision (a) of Section 4541...

6. Welfare and Institutions Code section 4646 provides in relevant part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs

and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

[¶]...[¶]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, if appropriate, the

parents, legal guardian, conservator, or authorized representative at the program plan meeting.

[¶]...[¶]

(h) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative or if agreed to by the planning team. The list of the agreed-upon services and supports described in subdivision (g) and signed by the authorized representative of the regional center shall be provided, in writing or electronically, at the conclusion of the subsequent program plan meeting, and shall be provided in the preferred language of the consumer, or of the consumer's parent, legal guardian, conservator, or authorized representative. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative.

7. Welfare and Institutions Code section 4646.5, subdivision (b) provides:

For all active cases, individual program plans shall be reviewed and modified by the planning team, through the

process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, if appropriate, the consumer's parents, legal guardian, authorized representative, or conservator requests an individual program plan review, the individual program plan shall be reviewed within 30 days after the request is submitted, or no later than 7 days after the request is submitted if necessary for the consumer's health and safety or to maintain the consumer in their home.

8. Welfare and Institutions Code section 4685.8 requires the Department to implement a statewide SDP. The SDP must 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. The SDP is designed to give the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).)

9. The SDP requires the "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...." (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).)

10. Additionally, the "IPP team shall utilize the person-centered planning process to develop the IPP for a participant. The IPP shall detail the goals and

objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the participant to achieve the outcomes set forth in the participant's IPP and ensures their health and safety. The completed individual budget shall be attached to the IPP." (Welf. & Inst. Code, § 4685.8, subd. (j).)

11. When all the evidence is considered, claimant's request that ACRC be ordered to accept his proposed IPP and SDP budget must be denied. First, the issue regarding ACRC's failure to participate in an IPP meeting is moot. The IPP meeting occurred on February 27, 2024. Although there was an unfortunate delay in holding the meeting, the cause was ACRC's legitimate concern regarding protecting claimant's privacy. Additionally, there is no legal authority which provides that if ACRC does not participate in an IPP meeting within 30 days of the request, claimant may hold his own IPP and unilaterally approve service and support requests.

Additionally, the Lanterman Act requires an IPP to be prepared jointly by claimant's planning team, which must include at least one ACRC representative. The January 11, 2024 meeting and proposed IPP and SDP budget did not meet this requirement. The Lanterman Act provides that if claimant's planning team is unable to come to an agreement about services and supports at the IPP meeting, then additional meetings are required. Thereafter, if claimant does not consent to ACRC's IPP decision, ACRC will provide him notice and he can file an appeal. This process has not yet occurred. As a result, claimant's appeal is premature and must be dismissed.

ORDER

Claimant's appeal requesting ACRC be ordered to accept his proposed IPP and SDP budget is DENIED.

DATE: March 20, 2024

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024010927

Vs.

DECISION BY THE DIRECTOR

Alta California Regional Center

Respondent.

ORDER OF DECISION

On March 20, 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 _____ April 4, 2024 _____.

_____(Original signed by)_____
Nancy Bargmann, Director