

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

In the Matter of:

CLAIMANT

and

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

DDS No. CS0012350

OAH No. 2024020342 (Primary)

and

DDS No. CS0017843

OAH No. 2024060423 (Secondary)

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter from October 14 to October 18, 2024, by videoconference.

Meghan Mendes, Associate Director of Client Services, represented Frank D. Lanterman Regional Center (FDLRC).

Claimant's mother (Mother) represented claimant. Names are omitted and family titles are used throughout this Proposed Decision to protect the privacy of claimant and his family.

Warren Kim and Jina Lee, interpreters, provided language assistance in Korean throughout the hearing.

Oral and documentary evidence was received. The record remained open for the submission of FDLRC's closing brief by November 1, 2024; claimant's closing brief by November 15, 2024; and FDLRCS's reply brief by December 2, 2024. Parties timely filed their briefs. The ALJ marked claimant's closing brief for identification as Exhibit C18 and FDLRC's closing brief and reply brief for identification as Exhibits 52 and 53, respectively.

ISSUES

1. Was FDLRC required to increase claimant's Self-Determination Program (SDP) Individual Budget for the budget year from September 1, 2023, to August 31, 2024, (Year 2) by converting 80 hours of Independent Living Skills (ILS) to 80 hours of Adaptative Skills Training (AST) per month?

2. Did the FDLRC have the legal authority to require claimant's Financial Management Services (FMS) agency to switch claimant's FMS model from the Bill Payer Model to the Sole Employer Model during Year 2?

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3. Did FDLRC properly terminate funding for Family Tree, claimant's family's non-profit company, to provide services to claimant?

4. Was FDLRC required to continue funding Family Tree during claimant's appeal process?

EVIDENCE

Documentary: Exhibits 1 through 51; C5-C11.

Testimonial: Sara Choi, FDLRC Consumer Services Coordinator (CSC), Meghan Mendes, FDLRC Associate Director of Client Services (AD), and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 37-year-old conserved male who is eligible for regional center services based on diagnoses of moderate intellectual disability, seizure disorder, and psychosis. Mother is claimant's conservator. Claimant lives at home with his father and Mother.

2. On December 6, 2023, FDLRC sent a Notice of Action (NOA) (NOA #1) to claimant, notifying him that it was denying his SDP funding request to convert 80 hours per month of ILS to AST services. (Ex. 1.) On February 5, 2024, claimant filed a fair hearing request (FHR) (FHR #1) appealing NOA #1. This first appeal was assigned OAH Case Number 2024020342 (Primary Case).

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3. On May 3, 2024, FDLRC sent an NOA (NOA #2) to claimant, notifying him that it was terminating funding authorization for his family's nonprofit organization, Family Tree, to provide him with Community Living Supports services, within 30 days. (Ex. 34.) On June 3, 2024, claimant filed an FHR (FHR #2). In FHR #2, claimant did not oppose the termination of funding for Family Tree but expressed frustration with his FMS Agency because it would not accept him under the Sole Employer Model. (Ex. 37.) On June 10, and June 12, 2024 FDLRC's counsel, in two separate emails, reminded claimant's independent facilitator who is also an attorney, Melissa Amster, that claimant did not oppose the FDLRC's decision to terminate Family Tree and if he wanted to receive aid paid pending, he must submit a new FHR "clearly disagreeing with this decision." (Ex. 49, p. A596.) On June 20, 2024, claimant filed an updated FHR (FHR #3) stating he was appealing FDLRC's termination of funding for Family Tree. This second appeal was assigned OAH Case Number 2024060423 (Secondary Case).

4. On July 3, 2024, at the request of FDLRC and without any objection from claimant, OAH consolidated the Primary Case and the Secondary Case.

5. All jurisdictional requirements have been met.

Background

6. Claimant transitioned from the traditional model of receiving services through vendored service providers to the SDP model of service delivery on September 1, 2022. SDP is a voluntary, alternative way to receive service and supports in which claimant has the freedom to develop his own budget and spending plan, and to arrange for his own service providers. (Ex. 42.)

7. Before claimant entered the SDP in 2022, he received 80 hours of ILS services and 182 hours of AST services per month under the traditional service delivery

model. ILS services focus on teaching consumers the skills they need to live independently, such as personal care and daily tasks, budgeting, grocery shopping, cooking, and meal planning. AST services focus on teaching consumers functional skills, such as tying shoes, toileting, and using public transportation. An AST provider usually has some clinical experience and expertise in working with individuals with developmental disabilities, although not always.

8. When claimant initially entered the SDP in 2022, he developed a Person-Centered Plan (PCP). The PCP identified claimant's short-term and long-term goals and the services needed to achieve those goals. In the PCP, claimant described himself as "sweet," "kind," "gentle," and "curious." (Ex. 5, p. A35.) He is also able to ask simple questions in person and by phone, provide self-identifying information, purchase items and goods, and take medications without reminders. (*Ibid.*) Claimant's hopes and dreams include opening a coffee shop, living independently with a roommate, assisting his pastors and teachers at his church ministry, exercising regularly, camping with his family, and socializing with his peers. (*Id.* at p. A39.) Regarding his challenges, claimant wrote in the PCP:

I am on prescribed medications to manage my seizures and disruptive behaviors. When seizures occur, I have experienced tiredness and loss of appetite. I have difficulty with unexpected schedules and activities. Due to a lack of communication skills, I have challenges in engaging in social and reciprocal conversation with others. When access to my preferred activities and objects is denied, I tend to exhibit disruptive and aggressive behaviors toward my

mother. I have required constant supervision at home and in the community.

(*Id.* at p. A44.)

9. The period from September 1, 2022, to August 31, 2023, was claimant's first year in SDP (Year 1). These consolidated matters, however, concern only issues that arose during claimant's Year 2 in SDP, which spanned from September 1, 2023, to August 31, 2024.

10. In August 2023, claimant, Mother, and FDLRC representatives met to discuss claimant's Year 2 plans in the SDP. The parties agreed that there would no changes to claimant's PCP for Year 2 and began developing his Year 2 Individual Budget. For claimant's Year 2 Individual Budget, FDLRC had agreed to following services: 80 hours of ILS per month, 244 hours of AST, 16 hours of community integration training, and 139 hours of in-home respite services. Additionally, FDLRC agreed to a one-time evaluation by behavioralist. (Ex. 9) The services that FDLRC agreed to in Year 2 were the same as those claimant received in Year 1 of the SDP, with the exception of some modifications in social recreational and behavioral services. Claimant's Year 2 Individual Budget totaled \$295,941.90. (*Ibid.*) Mother signed the Year 2 Individual Budget on August 21, 2023. (*Id.* at p. A243.)

11. On the same date, August 21, 2023, Mother also signed claimant's Year 2 Spending Plan. In his Year 2 Spending Plan, claimant elected to convert all services approved by FDLRC, including the 80 hours of ILS and 244 hours of AST per month, to Community Living Supports (service code 320), with Family Tree as the provider for these services. (Ex. 10.) Community Living Supports is defined under the SDP Service Definitions as "services that facilitate independence and promote community

integration for participants, regardless of the community living arrangement. Services include support and assistance with socialization, personal skill development, community participation, recreation and leisure, and home and personal care, among others. . . .” (Ex. 47, p. A511.)

12. Thus, claimant’s Year 2 Spending Plan only shows two items: (1) \$5,302.50 to be paid to Ms. Amster, his independent facilitator, and (2) \$290,585.12 to be paid to Family Tree for community living supports services. (*Id.*, p. A249.) Family Tree is a non-profit organization set up by claimant’s brother (Brother) on July 19, 2023. (Ex. 26.) Family Tree’s certificate of incorporation, dated August 3, 2023, indicates Brother is Family Tree’s Chief Executive Officer (CEO), Chief Financial Officer (CFO), and Secretary. (Ex. 28.)

13. Claimant’s Year 2 Spending Plan also shows he selected the Sole Employer Model as his FMS provider model. (Ex. 10, p. A427.) There are three models of FMS providers: (1) Bill Payer, where the FMS pays business entities and the participant has no responsibilities as an employer; (2) Co-Employer, where participant shares some of the employer roles and responsibilities with an FMS (e.g. participant schedules the worker, supervises the work, and approves timesheets); and (3) Sole Employer, where the participant is the direct employer of those providing services and pays for liability insurance and worker’s compensation insurance. For all three models of the FMS providers, the FMS helps SDP participants manage their individual budget and spending plans, pays for services, including paying employees of the service providers, and makes sure the participant has funds to purchase services and supports for the budget year. The FMS also ensures compliance with all laws and regulations and where required, all employees have the appropriate licenses and background checks.

14. After Mother signed claimant's Year 2 Individual Budget and Spending Plan in August 2023, she disagreed with his support services. In September 2023 and November 2023, FDLRC met with Mother, Ms. Amster, and a Korean language interpreter to discuss the claimant's disagreements. Claimant's FMS agency, GT Independence, also switched his FMS Model from Sole-Employer to Bill Payer. (Ex. 11.)

15. It should be noted that no Individual Program Plan (IPP) was submitted into evidence in this case, as Mother has not signed an IPP since 2021.

Issue #1: Conversion of ILS Hours to AST Hours

Claimant's Initial Request

16. In September 2023, Mother, on behalf of claimant, requested FDLRC to adjust his Year 2 Individual Budget by converting his funding for 80 hours of ILS to 80 hours of AST per month. (Ex. 41, p. A 388.) This adjustment increased claimant's Individual Budget by approximately \$26,472 per year because AST is paid a higher rate of \$68.68 per hour, compared to the ILS rate of \$41.10 per hour.

17. On September 26, 2023, Mother provided claimant's medical records from his psychiatrist and neurologist to FDLRC to substantiate her request for the conversion of ILS to AST. (Ex. 41, p. A389.) In the documentation provided by Mother, neither physician indicated any medication changes for claimant or any need for nursing care. After a consultation with the FDLRC clinical director, AD Mendes wrote in her consumer ID notes (contemporaneous notes that record case activity):

Based on a review of the record, physicians are not recommending nursing care relative to [claimant's] seizures, no medication changes indicated for seizure control. Clinical

recommendation is IHSS [In-Home Supportive Services] support and DSP [Direct Support Professional] support remains appropriate to meet [claimant's] needs. Recommend development of seizure protocol for emergency response and lab draw to determine if medication levels are in range.

(Ibid.)

FIRST FUNCTIONAL BEHAVIORAL ASSESSMENT (FBA)

18. On the same date, September 26, 2023, Dr. Jean Johnson, FDLRC's Board Certified Behavioral Analyst (BCBA), performed a clinical consultation by reviewing an FBA from Virtual ABA (FBA #1). Dr. Johnson wrote in her ID note:

Reviewed [FBA #1] prepared by Virtual ABA and not dated, report is signed by parents on 8/27/23. Per report, client engages in problematic behaviors including elopement (2x/wk.), aggression (1-2x/mo.), verbal aggression (5x/wk.), non-compliance (10% of opportunities), property destruction (1x/wk.). Stated frequencies appear to be by report, and not via objective data. Relationship to frequency, severity, and trends of behaviors currently under natural conditions is not established. Data collection procedures to measure improvements due to intervention are not clear. Program goals address functional communication, adaptive skills developments, and behavior

reduction strategies to be implemented by caregivers/staff.
Per [FBA #1], setting of intervention is not clear.

It is not clear how services are to be delivered, and by whom, [FBA #1] does not specify which services (any/all) are to be delivered virtually, and how that is to be accomplished. [FBA #1] recommends direct intervention 25 hrs./wk ., however it is not clear who is to provide the direct intervention, to whom, and the minimal staff qualifications of the direct interventionist. Provision of supervision by a BCBA, and in what intensities is not clear. FDLRC minimum standards for ABA [Applied Behavioral Analysis] services require on-site supervision by BCBA level supervisor for the BCBA recommended intensity of 10-20% of direct intervention hours. [FBA #1] is not signed (by BCBA preparing the report). Person completing report is asked to sign report, and include BACB [*sic*] certification number.

Recommend Regional Center request report revision clarifying above questions. Recommend behavior planning meeting to clarify role of current program services in conjunction with current caregivers/staff to support client goals.

(Ex. 41, pp. A289-390.)

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FDLRC'S DENIAL OF CLAIMANT'S REQUEST

19. Between October 4, and October 10, 2023, Mother exchanged several proposals of claimant's weekly schedule with FDLRC in which claimant's request for AST hours varied from 463 hours per month to 244 hours per month. (Exs. 13-15.)

20. On November 27, 2023, during an IPP meeting, Mother again renewed her request to convert claimant's 80 hours per month of ILS to AST. On December 6, 2023, FDLRC issued NOA #1 denying this request. (Ex. 1.) The NOA #1 identified the following reasons for the denial:

During [the November 27, 2023 IPP] meeting, FDLRC informed you that in order for an SDP budget amount to be changed the participant's needs, circumstances, or resources must have changed or an unmet need must be identified. [Claimant] was receiving ILS services in the traditional system before entering SDP, and you have not identified a change in [claimant's] needs, circumstances, or resources. You did not provide sufficient information as to why ILS services were not effective in meeting [claimant's] needs. Furthermore, [claimant] was already receiving AST services in the traditional system and you have not identified an unmet need that would be addressed by additional AST service hours. As such, FDLRC did not approve your request to convert funding for 80 hours per month of ILS hours to AST hours.

(Id., p. A2.)

THE SECOND FBA

21. After FDLRC denied claimant's request, FDLRC continued to review new documentation provided by Mother to support her request for the conversion of ILS to AST hours. Specifically, on December 14, 2023, FDLRC's Behavioral Planning Team, which included Dr. Johnson, AD Mendes, Mandy Moradi, Psy.D. (Clinical Specialist), Lisa Pirruccello, BCBA (Autism Coordinator), and Leslie Richard, M.D. (Medical Consultant), reviewed an updated FBA from Virtual ABA (FBA #2). (Ex. 18, p. A273.) FBA #2 recommended only ABA services, not AST, as medically necessary to address claimant's adaptive skills across domains (communication, adaptive skills training, and behavior reduction) and across settings (home, community, and via telehealth). (*Ibid.*) Thus, the Behavioral Planning Team concluded:

1. Recommend initiation of ABA program services, 25 hrs./wk. adaptive behavior treatment by protocol- (BT/RBT direct services), 5.5 hrs./wk. adaptive behavior treatment with protocol modification (overseeing BCBA), and 2.5 hrs./wk. family adaptive behavior guidance (caregiver training) for a period of 6 mos.
2. Service are recommended in substitution for and not in addition to current AST services received.
3. Progress due to intervention will be based upon data collected on target goals in the natural environment by the direct interventionist, reported to Regional Center for purpose of monitoring progress due to services at least every 6 mos.

(Ibid.)

22. On March 5, 2024, FDLRC authorized a budget amendment increasing claimant's budget to \$373,743.53, to reflect the substitution of behavioral level services for AST services. (Ex. 22.) On March 11, 2024, Mother proposed a spending plan (March Proposed Spending Plan) for \$373,743.53, under which Family Tree would provide all services, excluding independent facilitator services. (Ex. 23.) The submission of this March Proposed Spending Plan aroused FDLRC's suspicions because it proposed Family Tree as the provider of Behavioral Intervention Services (service code 364), which could only be provided by licensed ABA professionals. FDLRC eventually conducted an investigation of Family Tree, ultimately resulting in the termination of Family Tree as claimant's service provider. These events are discussed below, as they relate to Issues #2, #3, and #4 of this matter. (See Factual Findings 29 to 60.)

THE THIRD FBA

23. With respect to claimant's request for conversion of ILS hours to AST hours (Issue #1), claimant submitted a third FBA (FBA #3), conducted by Applied Behavioral Alternatives, Inc., at the end of June 2024. (Ex. C9.) In this FBA #3, Marshal Gau, M.S., BCBA wrote:

Based on direct observations results, clinical interview, [claimant] demonstrates substantial deficiencies in the major adaptive skills domains. Having such a lack of adaptive skills directly effects his quality of life, his maladaptive behaviors are often maintained by a lack of adaptive skills as well. His medical conditions, lack of safety, lack of health and self-help skills are a cause for him to

have consistent supervision/assistance/training. It is my recommendation that [claimant] receive 35 hours of direct ABA therapy intervention as medically necessary, per week (example schedule being 5 hrs. a day-7x a week preferably by at least 2 staff) or 140 hrs. per month from a behavior therapist/Registered behavior therapist in order to bridge the gap between [claimant] and his same-aged peers and better access the goals of his personal centered plan. It is also recommended that the caregivers/support team continue to work on these skills with [claimant] outside of direct ABA therapy hours.

(Ex. C9, p. B57.)

24. On July 22, 2024, FDLRC's Behavioral Planning Team reviewed FBA #3 and recommended the following:

1. Recommend initiation of comprehensive Direct ABA Therapy (BT/RBT), 35 hrs./wk. plus Behavior Intervention Supervision (BCBA/BCaBA) 20 hrs./mo., and Caregiver/Support Team Training 12 hrs./mo. for a period of 3 mos. Service provider is asked to complete assessment report with baseline data on problematic behaviors and adaptive skills collected via direct observation and using principles consistent with behavioral measurement as defined in the field of applied behavior analysis. ABA services are recommended as the priority intervention to address concerns regarding behaviors and adaptive skills

developments, and are not considered clinically interchangeable with other services being sought or provided.

2. Comprehensive ABA services are recommended in substitution for and not in addition to adaptive skills training services currently received.

3. Progress due to ABA intervention(s) will be measured based upon data collected on target goals in the natural environment by the direct interventionist, reported to Regional Center for purpose of monitoring progress due to services at least every 6 mos.

4. Recommend referral to CSS [Community Support Services] to provide family support in the event of a behavioral crisis or concern.

(Ex. 19, p. A276.)

CLAIMANT'S EVIDENCE RE CONVERSION OF ILS TO AST

25. Despite the recommendations of FBA #3 and FDLRC's Behavioral Planning Team, claimant did not agreed to the substitution of ABA services for AST services. Instead, he requests the conversion of his 80 hours of ILS to AST.

26. In support of this request, Mother testified at the hearing that claimant needs assistance in daily self-care tasks, safety awareness, and behavior regulation. Mother stated claimant has the self-care abilities of a five-year-old, and he still has difficulty buttoning his shirts. Claimant also has no concept of time and cannot tell the

difference between day and night. Claimant is unable to cross a street by himself because he is not aware of traffic signals and does not know when to stop or when to go. Claimant also engages in injurious behavior by kicking Mother in the neck and hitting her on her belly. Mother maintained claimant suffers seizure attacks once or twice a month. She also submitted a note dated April 4, 2024, from claimant's neurologist, Daniel Chang, M.D., which read, in relevant part:

Still with breakthrough seizures associated with sleep deprivation: about 1-2 seizures a month. He watches TV all night affecting sleep. He needs constant direction and assistance for routine daily activities including [showering], shaving, choosing clothing. Needs behavior therapy. He also needs supervision for safety. Taking Keppra 500 mg BID and Depakote (per Psychiatry).

(Ex. C11, p. B82.)

27. According to Mother, AST can provide claimant with the direction and assistance for routine daily activities listed by Dr. Chang in his note. Additionally, AST can help claimant with seizure management and social and recreational services and support. Mother hopes to take claimant out more to the community and to travel more with him. Mother believes AST is the appropriate service tailored to claimant's needs. Mother stated she is 63 years old, and she wishes to help claimant, while she is still capable, to acquire skills to be independent and to fulfill his dreams of running a coffee shop.

28. During cross-examination, Mother admitted claimant has not undergone any AST assessment and no AST assessment has been submitted to FDLRC for

consideration. Although Mother claimed Family Tree staff members are trained in AST, she was unable to describe the type of AST training the staff members purportedly received.

Issues #2, #3, and #4: Termination of Family Tree

FDLRC INVESTIGATION OF FAMILY TREE

29. As discussed above, claimant's submission of the March Proposed Spending Plan (ex. 23.), under which Family Tree would provide Behavioral Intervention Services under service code 364, alarmed FDLRC because only licensed professionals can provide those services.

30. The submission of the March Proposed Spending Plan also alarmed claimant's FMS agency, GT Independence. On March 21, 2024, Selvin Arevalo from GT Independence wrote an email to FDLRC raising questions about the specific services Family Tree would be providing under service code 364 and whether such services would comply with Home and Community-Based Services (HCBS) waiver. (Ex. 24.) By statute, any services provided under the SDP must comply with the HCBS waiver. (Welf. & Inst. Code, § 4685.7, subds. (a) & (b)(4).) Mr. Arevalo also questioned whether Family Tree was directly providing social recreational services, such as horseback riding, golf, and music lessons, to claimant. (Ex. 24.) He wrote, "Services should be paid directly to the vendor that is providing the services and not have a third party paying for the services. We as the FMS are the ones who should be paying for the services." (*Ibid.*)

31. On March 22, 2024, Srbui Ovsepyan, FDLRC's Associate Director of Family and Client Services, emailed Mother requesting Family Tree's business license, address, and contact information. (Ex. 25, pp. A294-295.) AD Ovsepyan also asked for the names and the BCBA or clinician licenses of Family Tree staff members who intended

to provide behavioral level services to claimant. (*Ibid.*) Additionally, AD Ovsepyan asked for confirmation of whether Family Tree is providing horseback riding, golf and music lessons to claimant. (*Ibid.*) AD Ovsepyan indicated that a site visit may be necessary to ensure that Family Tree meets HCBS requirements. (*Ibid.*)

32. On March 25, 2024, Mother replied to AD Ovsepyan by email. Mother did not provide the names or the licenses of the Family Tree staff members who would be providing behavioral level services to claimant. However, in her email, Mother described Family Tree as follows:

Family Trees works as a vendor managing various recreational activities for efficiency and convenience. This vendor hires other service providers so multiple activities can be done through one company. Resources and time can be utilized efficiently, ensuring consistent quality and service. This provides convenience for customers and enables the company to meet diverse demands. This simplifies management and operations, resulting in a personalized overall experience. Family Trees has already met FMS qualifications.

(Ex. 25, p. A293.)

33. Mother's response further alarmed FDLRC because Mother's description of Family Tree as a vendor hiring and managing other vendors suggests Family Tree was not providing Community Living Supports (service code 320), as it was required to do under the Year 2 Spending Plan. Instead, it was duplicating the services of the FMS because claimant's FMS, GT Independence, was responsible for paying service

providers directly. GT Independence should not have been, as was in this case, paying Family Tree as a third party to pay other service providers.

AUDIT OF FAMILY TREE'S BILLING

34. Due to its concerns, FDLRC initiated its own independent investigation of Family Tree. During this investigation, FDLRC learned that Brother is Family Tree's CEO, CFO, and Secretary, which prompted FDLRC to conduct an audit of Family Tree's billing. Through this audit, FDLRC found several irregularities in Family Tree's billing.

35. Specifically, Family Tree billed for 527 hours of Community Living Supports (service code 320) for each month of September and October 2023. (Ex. 29, pp. A301-302.) For November 2023, December 2023, and January 2024, Family Tree billed 497, 500, and 500 hours of Community Living Supports, respectively. (*Id.* at pp. 303-310.) However, in addition to regional center services, claimant also receives 283 hours per month of In-Home Supportive Services (IHSS) to be provided by Mother from 11:00 p.m. to 8:00 a.m., seven days a week. Therefore, when combined with his IHSS hours, claimant received 810 hours per month of services in September and October 2023; 780 hours per month of services in November 2023, and 783 hours per month of services in December 2023 and January 2024. There are only 744 hours in a month. Consequently, FDLRC concluded claimant received at least 30 hours of duplicative services per month from September 2023 to January 2024 because only one-on-one services were authorized for claimant.

36. Moreover, timesheets submitted for claimant's father (Father), a Family Tree employee, show that for September 2023 and October 2023, he worked every day of the month from 5:30 p.m. until 2:30 a.m. or 3:30 a.m. to provide claimant Community Living Supports. (Ex. 31, pp. A322-A323.) For November and December

2023 and January 2024, Father again worked every day of the month from 5:30 p.m. until either 1:30 a.m. or 2:30 a.m. to provide claimant Community Living Supports. (*Id.*, p. A324-A326.) Assuming Father's timesheets are accurate, Father worked eight to 10 hours day, every day of the month without any days off from September 2023 to January 2024. However, Family Tree's invoices show Father was not paid any overtime. (Ex. 29.) Claimant also received duplicative services because Mother was paid by IHSS to work from 11:00 p.m. until 8:00 a.m. and Father was also paid by SDP funds to provide similar services from 11:00 p.m. until either 1:30 a.m., 2:30 a.m., or 3:30 a.m.

37. Timesheets submitted for Jennifer Yoon, another Family Tree employee, show that she worked from 5:30 p.m. to 5:30 a.m. every day in March 2024 to provide claimant Community Living Supports. (Ex. 30, p.A321.) Assuming that Ms. Yoon's March 2024 timesheet is accurate, she worked 12 hours a day, 31 days that month without any days off. However, Family Tree's invoice shows Ms. Yoon was not paid any overtime. (Ex. 29.) Claimant also received duplicative services because Mother was paid by IHSS to work from 11:00 p.m. until 8:00 a.m. and Ms. Yoon was also paid by SDP funds to provide similar services from 11:00 p.m. until 5:30 a.m.

38. Furthermore, FDLRC compared Family Tree employees' timesheets with the invoices Family Tree submitted to GT Independence for claimant and discovered that the hours listed on the employees' timesheets do not match the billing invoices. For example, Ms. Yoon's timesheets reflected 120 hours of services in February 2024, while Father's time sheets reflected an additional 142 hours of services, for a total of 262 hours of services. (Ex. 30, p. A327; Ex. 31, p. A327.) However, Family Tree billed 250 hours of services to GT Independence in February 2024. (Ex. 29, p. A310.)

39. Additionally, claimant billed for Community Living Supports hours in excess of the hours authorized under his Year 2 Spending Plan. Specifically, claimant's

Year 2 Spending Plan authorized 489 hours per month of Community Living Supports. (Ex. 11.) However, Family Tree billed for 497 to 527 hours per month of Community Living Supports from September 2023 to March 2024 and 600 hours of Community Living Supports in April 2024. (Ex. 29.)

40. Based on these discrepancies, FDLRC determined that Family Tree was engaged in fraudulent billing practices. On May 3, 2024, FDLRC issued NOA #2 terminating Family Tree as a service provider. NOA #2 read in relevant part:

In summary, the Frank D. Lanterman Regional Center (FDLRC) will be terminating your son's authorization to receive Community Living Supports from Family Tree in the Self-Determination Program (SDP) because FDLRC cannot confirm that Family Tree is complying with the Home and Community-Based Services (HCBS) requirements and California labor laws, it appears that Family Tree is providing duplicative services to [claimant], and FDLRC discovered that Family Tree has been engaging in fraudulent billing practices. For these reasons, FDLRC can no longer allow Family Tree to provide [claimant's] Community Living Supports and will be terminating these services thirty (30) days after you receive this letter.

As a reminder, FDLRC is not removing funds from [claimant's] SDP Individual Budget. FDLRC is simply disagreeing with Family Tree providing [claimant's] SDP services. To prevent a disruption of [claimant's] services, FDLRC is recommending that you switch your SDP FMS

Model to either the Co-Employer Model or the Sole-Employer Model. This will allow your employees to be hired by [claimant's] FMS agency who will ensure that all necessary laws are adhered to relative to their employment.

(Ex. 34, p. A341.)

41. As NOA #2 noted, although FDLRC was terminating Family Tree as a provider of claimant's SDP services, FDLRC gave claimant several options to ensure continuation of services. AD Mendes testified at the hearing that FDLRC suggested claimant could stay in the Bill Payer Model with GT Independence, but current employees providing SDP services must be registered as vendored entities, or claimant could also identify new, vendored service providers. Alternatively, claimant may also exit SDP and return to the traditional model of service delivery. Or, as FDLRC suggested in NOA #2, claimant could ask GT Independence to switch to the Sole Employer or Co-Employer Model, under which claimant and GT Independence together would hire employees and ensure compliance with all laws.

42. On May 6, 2024, Mother submitted a Spending Plan (May Proposed Spending Plan) under which she agreed to terminate Family Tree as a service provider and to switch her FMS Model from Bill Payer to Sole Employer. FDLRC agreed to this May Proposed Spending Plan, and both FDLRC and claimant believed that GT Independence would agree to the plan as well. However, GT Independence refused to accept the May Proposed Spending Plan because it would not switch claimant from the Bill Payer Model to the Sole Employer Model.

43. On May 17, 2024, FDLRC issued a Korean translation of NOA #2 and served it on claimant by email. (Ex. 36.)

44. On June 3, 2024, Mother filed FHR #2 on claimant's behalf. In this FHR #2, claimant did not object to the termination of Family Tree as a service provider but to GT Independence's refusal to accept the May Proposed Spending Plan. FHR #2 stated, in relevant part:

I don't understand what the issues is. If the problem was family trees which is a done deal now, why is [claimant] not being approved to work with GT? I remade the spending plan three times and send it to the regional center, whatever they requested I fixed it. But now they said GT is not accepting your case after all. Not only am I not involved with Family Trees now but it seems like I can't be working with GT too. Since the regional center has blocked all my options I had, [claimant] does not have a SDP program to continue with.

(Ex. 37, p. A364.)

45. On June 5, 2024, GT Independence notified claimant by letter that it will discontinue its FMS services at the end of Year 2. (Ex. 38, p. A368.) This letter stated, in relevant part:

GT Independence will discontinue services when your budget year ends on 8/31/2024. We will continue to support you with your current SDP bill payer model until your budget end date as noted. This notice is being sent pursuant to our Fiscal Intermediary Agreement which states

that GT Independence may end the agreement with prior written notice.

(Ex. 38, p. A368.)

46. After this notice of termination from GT Independence, FDLRC continued to work with claimant to ensure continuity of services. FDLRC gave claimant the option of: (1) staying with GT Independence under the Bill Payer Model but either current employees must be registered as vendored entities or new service providers must be identified; (2) finding a new FMS agency willing to implement the Sole Employer or Co-Employer Model; or (3) exiting SDP and return to traditional service delivery model.

47. Between June 5, 2024, and July 15, 2024, FDLRC, Mother, and Ms. Amster, claimant's independent facilitator, exchanged several emails in an effort to resolve the problem. (Ex. C10.)

48. On June 10, 2024, FDLRC's attorney informed Ms. Amster by email that FHR #2 did not address the termination of Family Tree's services. This email also stated, in relevant part:

According to her Appeal Request, dated 6/3/2024, it appears that Mother accepted FDLRC's decision to terminate Family Tree's services, updated her Spending Plan to reflect her agreement, and she is no longer associated with Family Tree. Since GTI [GT Independence] and FDLRC have clarified the FMS questions, it also appears that [Mother] can withdraw her Appeal Request regarding the FMS issue.

If Mother disagrees with FDLRC's termination of Family Tree's services and wants to appeal/receive aid paid pending, she needs to submit an Appeal Request clearly disagreeing with this decision before FDLRC's proposed decision takes place. Please let me know if you have any questions or require additional information.

(Ex. 49, p. A596.)

49. In an email dated June 12, 2024, FDLRC's attorney again reminded claimant that NOA #2 did not address the issue of the termination of Family Tree and that he would not be entitled to aid paid pending if he did not submit an updated appeal request. FDLRC's attorney wrote, in relevant part:

Note: [Mother's] June 3, 2024 appeal request was regarding FMS issues and implied that she was in agreement with FDLRC's Family Tree NOA. Will you or [Mother] be submitting an appeal request re: the Family Tree NOA? If she does not submit her appeal request before FDLRC's proposed action takes place, she will not be entitled to aid paid pending.

(Ex. 49, p. A 595.)

50. On June 18, 2024, 30 days after its issuance of the Korean translation of NOA #2, FDLRC terminated Family Tree as claimant's SDP service provider. Claimant did not choose any of the three options for continuation of services offered by FDLRC, and thus, his services through the SDP were also terminated.

51. On June 20, 2024, Father sent an email (FHR #3) to OAH to supplement FHR #2. (Ex. 40.) He wrote:

I would like to supplement and/or my appeal filed on June 1st, 2024. I want to appeal FDLRC NOA which terminated Family Tree funding authorization that is providing [claimant's] Community Living Supports in the Self-Determination Program and FDLRC intends to terminate Family Tree's. This might have not been completely clear in my original appeal.

(*Ibid.*)

52. On June 27, 2024, FDLRC's attorney informed claimant by email that FHR #3 was not submitted within 30 days of May 17, 2024, when claimant received the Korean translation of NOA #2. (Ex. C10, p. B75.) Therefore, claimant was not entitled to aid paid pending, and the authorization for Family Tree was terminated effective June 18, 2024. (*Ibid.*)

53. Even after the termination of Family Tree, FDLRC was responsive to claimant's needs and did its utmost to ensure continuity of services. Specifically, on July 15, 2024, Mother wrote an email to FDLRC expressing her concerns about the termination of Family Tree and its impact on claimant's wellbeing. On the same day, AD Mendes responded to Mother and gave her options to ensure no interruption in services for claimant. (Ex. 41, p. A413.) Those options included finding a new FMS willing to implement the Sole Employer or Co-Employer Model or exiting SDP and return to traditional service delivery model. (*Ibid.*) Alternatively, AD Mendes suggested claimant could continue with GT Independence under the Bill Payer Model but use

vendored service providers. (*Ibid.*) AD Mendes provided Mother contact information for 12 vendored service providers who could provide immediate services to claimant either under the Bill Payer Model with GT Independence or under the traditional regional center service delivery system. (*Ibid.*) Mother, however, rejected these recommendations.

54. On August 12, 2024, claimant changed his FMS agency from GT Independence to Fact FMS.

CLAIMANT’S EVIDENCE RE TERMINATION OF FAMILY TREE

55. At the hearing, Mother denied that Family Tree engaged in any fraudulent billing practices. Mother claimed that Ms. Yoon was a salaried worker who was exempt from any overtime, although she provided no documentation to support this claim. Mother did admit that Father was paid on an hourly basis but was not paid any overtime. Mother further claimed she had difficulty hiring workers given claimant’s age and Korean background. According to Mother, she was “desperate” to find workers, and all workers agreed to work every day of the month, eight to 12 hours a day in their employment contracts with Family Tree. However, Mother gave no explanation why Family Tree staff members were providing Community Living Supports to claimant that duplicated Mother’s IHSS hours.

56. Mother also testified that it was a “misunderstanding” for FDLRC to assume that Family Tree was also providing social recreational services to claimant because “other providers” were providing such services to claimant, but she never explained who these “other providers” were. Mother further claimed that Family Tree is not duplicating FMS services. However, she gave no explanation of why she described

Family Tree in her March 25, 2024 email as a “vendor hires other service providers so multiple activities can be done through one company.” (Ex. 25, p. A293.)

57. Mother asserted she tried to cooperate with FDLRC and did everything it asked her to do. Mother claimed that FDLRC’s requirement for her to switch from the Bill Payer Model to the Sole Employer or Co-Employer Model was “an abuse of power.” However, she also expressed confusion about why FDLRC could not force GT Independence to accept her under the Sole Employer or Co-Employer Model. Mother claimed she did not understand NOA #2, but she also asserted when she filed FHR #2 on June 1, 2024, she was appealing the termination of Family Tree as a service provider. Mother believes it is not fair for claimant not to receive aid paid pending.

58. Mother alleged the termination of Family Tree on June 18, 2024, detrimentally impacted claimant, placing him “in danger and in pain.” However, she presented no evidence to support this allegation and gave no explanation why she did not choose any of the options FDLRC offered her for immediate resumption of services to claimant. Mother further testified the termination of Family Tree on June 18, 2024, resulted in \$37,000 of unused funds in claimant’s Year 2 Individual Budget, and it was not fair this money would go unused.

59. During cross-examination, Mother was asked several questions about Family Tree, but her responses were evasive, inconsistent, and therefore not credible. For example, Mother denied working for Family Tree, but stated she was “involved” in Family Tree. Although Mother initially stated she interviews and hires Family Tree employees, she later denied having any authority to hire and fire Family Tree employees. When asked how Ms. Yoon was hired as claimant’s worker, Mother testified she could not remember how Ms. Yoon was hired, whether it was after she advertised for workers through newspaper or Ms. Yoon was introduced to her through

her church. Regardless, Mother denied that Ms. Yoon lives with Brother or claimant's family.

60. When asked who is in charge of payroll at Family Tree, Mother equivocated by asserting she does not know who is in charge of payroll at Family Tree. However, she also admitted Brother, who is her son, was "involved" in payroll at Family Tree, although Mother claimed she did not know if "he was running the whole thing or not." When asked whether Family Tree employees were paid by salary contracts or paid on an hourly basis, Mother claimed she does not know much about the employment contract between Family Tree and its employees, even though earlier, she had asserted that all Family Tree employees agreed to work without any days off per their employment contract with Family Tree. Mother conceded that no one at Family Tree had any business management experience and no one has any educational background or experience in human resources. Mother asserted that Family Tree did not violate any laws, but she also claimed she does not know much about Family Tree or its operations.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (Evid. Code, §§ 115, 500.) Thus, claimant bears the burden of proving, by a preponderance of the evidence, that FDLRC is required to increase his Year 2 Individual Budget by converting 80 hours of ILS to AST. (Evid. Code, § 115.) Issue #2, whether FDLRC had the legal authority to require GT Independence to switch claimant to the Sole

Employer Model during Year 2, concerns a purely legal question with no facts in dispute. Thus, this issue requires no determination regarding the burden and standard of proof. As to Issues #3 and #4, the burden is on FDLRC to establish by a preponderance of the evidence there was good cause to terminate Family Tree as a service provider and that claimant is not entitled to aid paid pending.

Statutory Framework

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (All further references are to the Welfare and Institutions Code, unless otherwise designated.) As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community."

3. Section 4685.8 governs regional center consumers participating in the SDP. The purpose of the SDP is to provide consumers (also referred to as participants) and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPPs. (*Id.*, subd. (a).)

4. "Self-determination" is defined as "a voluntary delivery system consisting of a 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. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. . .” (§ 4685.8, subd. (c)(6).)

5. When developing the individual budget used for the SDP, the IPP team determines the services, supports, and goods necessary for each participant, based on the needs and preferences of the participant, and when appropriate the participant's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in section 4648, subdivision (a)(6)(D). (§ 4685.8, subd. (b)(2)(H)(i).)

Issue #1: Conversion of ILS to AST Hours

6. Claimant requests the conversion of 80 per month of ILS hour to AST hours based on Mother's assertion that AST is a higher level of service appropriate for claimant's needs. However, she cited little evidence to support this assertion. Although Mother submitted the April 4, 2024 note from claimant's neurologist, Dr. Chang, the note does not indicate any changes in claimant's condition that warrants 80 hours AST in addition to the 244 hours per month of AST he currently receives. Significantly, Mother admitted no AST assessment was performed. Without such an assessment, there is no evidence about the extent of claimant's deficits in adoptive skills, and how many hours of AST are required to meet those deficits.

7. The evidence in this case does demonstrate, however, claimant requires behavioral level services which Mother has consistently refused. FDLRC, on the other hand, consistently considered claimant's needs and appropriately authorized behavioral level services in substitution for AST hours. FDLRC reviewed medical notes from claimant's

physicians, and its Behavioral Planning Team reviewed all three FBA's conducted in 2023 and 2024. Notably, none of the FBA's recommended an increase in claimant's AST hours. While FBA #1 was deficient in several respects which required it to be updated, FBA #2 and FBA #3 recommended ABA services, which must be delivered by licensed professionals. FDLRC's Behavioral Planning Team properly followed the recommendations of FBA #2 and FBA #3 in authorizing ABA services for claimant.

8. Because there is little evidence showing claimant requires additional AST hours, his request to convert 80 hours of ILS to AST hours must be denied.

Issue #2: FDLRC's Legal Authority to Require GT Independence to Accept Claimant Under the Sole Employer Model

9. In her FHR #2, claimant expressed frustration with GT Independence's refusal to accept him under the Sole Employer Model after Family Tree was terminated as a service provider. At the hearing, claimant also asked for a clarification of whether FDLRC had the legal authority to require GT Independence to accept him under the Sole Employer Model. Nevertheless, this issue is moot because Fact FMS became claimant's FMS agency at the end of Year 2.

10. Generally, a case is moot when the court's ruling will not affect the parties' substantive rights; i.e., when any ruling would have no practical effect and cannot provide any effective relief. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 454.) The California Supreme Court explained: "It is settled that 'the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" (*Paul v. Milk Depots, Inc.*

(1964) 62 Cal. 2d 129, 132.) In this matter, a ruling either way, whether FDLRC had the legal authority to require GT Independence to accept claimant under the Sole Employer Model or not, cannot provide relief because GT Independence is no longer claimant's FMS agency.

11. Additionally, in the administrative law context, it is questionable whether the ALJ acting as a hearing officer in this matter has the legal authority to provide any declaratory relief, as claimant requests here. The ALJ acting as a hearing officer, when sitting alone and writing a proposed decision in which the Department of Developmental Services has final decision-making authority, is acting only in her capacity as a deputy of the agency and has no ultimate adjudicative authority. (See Gov. Code, § 11517, subd. (c); *Frost v. State Personnel Bd.* (1961) 190 Cal.App.2d 1, 3.) Under such circumstances, only the agency has the authority to provide declaratory relief. (See Gov. Code, § 11465.10.) Therefore, given Issue #2 is moot, the ALJ acting as a hearing officer has no authority to provide any advisory opinions or declaratory relief.

Issue #3: Termination of Family Tree

12. Claimant contends FDLRC's termination of Family Tree was improper because Family Tree did not engage in fraudulent billing and complied with applicable laws and regulations. The evidence does not support this contention. The numerous discrepancies in Family Tree's billing, including billing for duplicative services, mismatch of hours between the employees' timesheets and the billing invoices, billing for hours in excess of those approved under the Year 2 Spending Plan, suggest it was fraudulent.

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13. Even assuming its billing to be accurate, Family Tree violated the provisions of the Lanterman Act and California Labor Code. To begin with, Family Tree violated the Lanterman Act by billing for services available through generic resources. Section 4685.8, subdivision (d)(3)(B), states, in relevant part: "The participant shall utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available." Additionally, subdivision (r)(6) of the same statute requires each regional center, when implementing SDP, to "[r]eview the spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies." In this instance, Family Tree billed for Community Living Support hours using SDP funds at the same time that claimant received IHSS, a generic resource. Specifically, based on Ms. Yoon's timesheets, Family Tree duplicated IHSS services from 11:00 p.m. until 5:30 a.m. in March 2024. Based on Father's timesheets, Family Tree duplicated IHSS services from 11:00 p.m. until either 1:30 a.m., 2:30 a.m., or 3:30 a.m., from September 2023 to January 2024.

14. Family Tree also violated California employment laws because its workers worked in excess eight hours a day, 40 hours per week, without overtime pay. Under California Labor Code, section 510, subdivision (a), eight hours of labor constitutes a day's work, and any work in excess of 40 hours in any workweek must be paid overtime pay. Here, Mother admitted Father works on an hourly basis at Family Tree. According to Father's timesheets, he worked eight to 10 hours day, every day of the month without any days off from September 2023 to January 2024, but he was not paid any overtime. Although Mother claimed Ms. Yoon worked as a salaried employee, she provided no documentation to support this claim. Ms. Yoon also worked 12 hours a day, 31 days in March 2024 without any days off and without any overtime pay.

15. Regional centers are required to render services in accordance with applicable provisions of state laws and regulations. (§ 4629, subd. (b).) Because Family Tree either engaged in fraudulent billing or violations of the Lanterman Act and California labor laws, its termination as a service provider was proper.

Issue #4 Aid Paid Pending

16. Under section 4715, subdivision (a), if an appeal request is postmarked or received by the regional center no later than 30 days after receipt of the NOA, services that are being provided pursuant to a consumer's IPP shall be continued during the appeals process. Claimant contends he is entitled to this benefit, also called aid paid pending, because he filed FHR #2 on June 1, 2024, within 30 days of FDLRC's issuance of the Korean version of NOA #2 on May 17, 2024.

17. However, NOA #2 notified claimant Family Tree's funding authorization would be terminated unless he filed an appeal within 30 days of receiving the NOA. Claimant agreed to the termination of Family Tree's funding by submitting the May Proposed Spending Plan under which Family Tree was no longer the service provider. Only after GT Independence refused to accept the May Proposed Spending Plan did claimant file FHR #2. In FHR #2, claimant did not appeal the termination of Family Tree but appealed GT Independence's refusal to accept him under the Sole Employer Model. Additionally, FDLRC reminded claimant on two separate occasions, on June 10 and June 12, 2024, that NOA #2 was deficient because it did not specifically appeal the termination of Family Tree and if he disagreed with the termination, he must file an updated appeal. Thus, claimant had sufficient time to file an updated appeal before June 18, 2024, when Family Tree was terminated as a service provider. Nevertheless, claimant did not file NOA #3 until June 20, 2024, after the 30-day deadline for aid paid

pending. Under these circumstances, claimant is not entitled to aid paid pending for failure to file a timely appeal.

ORDER

1. Claimant's appeal is denied. FDLRC was not required to increase claimant's Self-Determination Program Year 2 Individual Budget by converting 80 hours of Independent Living Skills to Adoptive Skills Training.

2. The issue of whether FDLRC had the legal authority to require GT Independence to switch claimant's FMS model from the Bill Payer Model to the Sole Employer Model during Year 2 is moot, and no opinion is rendered on this issue.

3. Claimant's appeal is denied. FDLRC properly terminate funding for Family Tree during Year 2.

4. Claimant's appeal is denied. FDLRC was not required to continue funding Family Tree pending the appeal process.

DATE:

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024020342 & 2024060423

Vs.

DECISION BY THE DIRECTOR

Frank D. Lanterman Regional Center,

Respondent.

ORDER OF DECISION

On December 11, 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 December 30, 2024,

Original signed by:

Pete Cervinka, Director

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

In the Matter of:

Claimant

OAH Case No. 2024020342 & 2024060423

Vs.

**ORDER DENYING CLAIMANT'S
APPLICATION FOR RECONSIDERATION**

Frank D. Lanterman Regional Center

Respondent.

RECONSIDERATION ORDER

On January 25, 2025, the Department of Developmental Services (Department) received from claimant an application for reconsideration of a Final Decision in the matter referenced above, that was issued by the Director on December 30, 2024.

The application for reconsideration is denied. Claimant's reconsideration application was not timely filed with the Department. Welfare and Institutions Code section (WIC) 4713, subdivision (b), states that "within 15 days of the date of the final hearing decision, a party may apply to the hearing office or to the director responsible for issuing the final decision for a correction of a mistake of fact or law, or a clerical error in the decision or in the decision of the hearing officer not to recuse themselves following a request pursuant to subdivision (g) of Section 4712." The Director signed the Order of Decision (Final Hearing Decision) on December 30, 2024. The Department served the Order of Decision to claimant on January 9, 2025, in which claimant received the Order of Decision on January 10, 2025. Claimant submitted his reconsideration application on January 29, 2025 to DDS, which is 30 days from the date of the Order of decision (December 30th), 20 days from when Order Decision was served to claimant (January 9), and 19 days from when claimant received the Order of Decision (January 10). In addition, claimant's reconsideration application incorrectly states that the Order of Decision was on January 15, 2025, when it was December 30, 2024, that the Order of Decision was signed.

However, even if had been timely submitted and was considered on the merits, the petition still would be denied. After examination of the arguments made in the petition for reconsideration, OAH's proposed decision, and the administrative record, the proposed decision was correctly decided, and the Director properly adopted it as his final Decision. Claimant failed to demonstrate a factual, legal, or clerical error pursuant to Welfare and Institutions Code section 4713, subdivision (b), that would warrant a reconsideration application to be granted.

There are no changes to the Final Decision, and it remains effective as of December 30, 2024. All parties are bound by the Final Decision.

Each party has the right to appeal the December 30, 2024, Final Decision to a court of competent jurisdiction within 180 days of receiving said Decision.

IT IS SO ORDERED on this day February 11, 2025.

Original signed by:

Pete Cervinka, Director