

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

In the Matter of:

CLAIMANT

v.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

DDS No. CS0012512

OAH No. 2024020400

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on March 8, 2024, by videoconference.

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

Fair Hearing Specialist Mary Dugan represented service agency Regional Center of the East Bay (RCEB).

The matter was submitted for decision on March 8, 2024.

ISSUE

Must RCEB increase funding in claimant's Self-Determination Plan (SDP) budget for claimant's social and recreational activities?

FACTUAL FINDINGS

1. Claimant is 10 years old and lives with his parents and elder sibling. He is eligible for, and receives, services from RCEB under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.).

2. Claimant's parents manage claimant's services through the SDP.

3. For 2024, the SDP budget on which claimant's parents and RCEB have agreed includes funding for:

- Specialized child care (1,035 hours per year, or approximately 20 hours per week);
- Out-of-home respite care (252 hours per year, or approximately 5 hours per week);
- In-home respite care (40 hours per month, or approximately 10 hours per week); and
- Social and recreational activities (8 hours per month, or approximately 2 hours per week).

4. Claimant's parents believe that claimant's SDP budget provides insufficient funding for claimant's social and recreational needs. They asked RCEB to

increase this component of the budget, but RCEB declined. Claimant's parents filed a timely appeal.

Activities and Schedule Claimant's Parents Propose

5. Claimant's SDP budget is adequate to fund two hours per week of athletic training at a gymnasium-style program for neurodiverse people called Puzzle Pieces. In addition to this program, however, claimant's parents also would like claimant's SDP budget to include funding that would enable him to participate in ice skating, skateboarding, swimming, yoga, horseback riding, martial arts, music, and baking lessons.

6. Claimant has participated in many of these activities in the past and continues to participate in some of them. His parents pay for some of claimant's social and recreational activities from his SDP spending plan, but fund others without assistance from RCEB. In addition, financial constraints have forced claimant's parents to forego some activities for claimant that he has enjoyed in the past and that his parents believe have benefited him.

7. Claimant enjoys physical activity, especially outdoors. His parents have observed that such activities contribute more to claimant's self-confidence and communication skills than do his school activities, and for this reason they would like to keep him on a busy, varied program.

8. Because of his disability, claimant cannot participate in the activities described in Finding 5 in the same manner (or at the same cost) as many non-disabled peers. Instead, several of the service providers claimant's parents would like to use offer one-on-one lessons, which are more expensive than group classes. The evidence does not establish these providers' professional credentials relating to instruction or

behavioral support for developmentally disabled children, although several of these providers describe their activities credibly as helping specifically to improve participants' motor or communication skills.

9. In addition to the services RCEB funds for claimant through his SDP budget, he receives services from other sources. According to his December 2023 Individual Program Plan (IPP), claimant attends school; he receives speech therapy and occupational therapy; and he receives 256.8 In-Home Supportive Services (IHSS) hours per month. Claimant is eligible as well for applied behavioral analysis therapy through his parents' health insurance provider, but is not currently receiving this therapy because of staffing shortages.

10. Claimant's IPP describes this "rough" weekly schedule for claimant's extra-curricular activities, assuming that his parents are able to arrange a full schedule of social and recreational activities for him:

- Monday: speech therapy (30 minutes), occupational therapy (45 minutes);
- Tuesday: swimming, athletic training at Puzzle Pieces;
- Wednesday: martial arts;
- Thursday: speech therapy;
- Friday: ice skating;
- Saturday: music;
- Sunday: yoga, baking.

RCEB's Basis for Denying Additional Social and Recreational Funding

11. RCEB's Board of Directors has adopted a policy to guide RCEB staff members' analysis regarding use of Lanterman Act funds for social and recreational activities. This policy recognizes that some RCEB consumers cannot use widely available community social or recreational activities effectively because of their developmental disabilities, and need more specialized services to engage in leisure opportunities comparable to their non-disabled peers. RCEB will fund such social and recreational activities only if "these activities cannot be accessed in any other way."

12. RCEB and claimant's parents contemplate adding funding to claimant's SDP budget for intensive behavioral support services. RCEB and claimant's parents have identified a vendor for these services, but the vendor has not yet completed an assessment of claimant's service needs from which to propose a service plan, schedule, and budget.

13. RCEB Children's Services Coordinator Joy MacIntyre and Federal Programs Supervisor Jenifer Castañeda believe that the intensive behavioral services described in Finding 12 will be more appropriate and effective to meet claimant's needs than will additional social and recreational activities that are not provided by persons trained in behavioral support for developmentally disabled children and that do not focus on claimant's specific personal needs. Castañeda also noted that intensive behavioral services may help claimant become able to participate effectively in less-structured social and recreational activities, in groups with diverse peers rather than one-on-one, and to generalize his adaptive behavior across contexts rather than focusing him on discrete physical skills.

14. In addition, both MacIntyre and Castañeda expressed concern over the number and amount of different social and recreational activities in which claimant's parents would like him to participate. The schedule summarized in Finding 10 is unusually busy for a 10-year-old child, and would become even more so with the addition of intensive behavior support services when they become available.

LEGAL CONCLUSIONS

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

2. The evidence summarized above in Findings 3 through 14 does not demonstrate that claimant needs more than two hours per week of disability-specific social and recreational activity. Particularly given RCEB's intention to fund intensive behavioral support services and training for claimant (as summarized in Findings 12 and 13), the Lanterman Act does not oblige RCEB also to increase its financial support for claimant's social and recreational activity.

ORDER

The appeal by claimant from RCEB's refusal to increase funding in claimant's SDP budget for social and recreational activities 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. 2024020400

Vs.

DECISION BY THE DIRECTOR

Regional Center of East Bay (RCEB)

Respondent.

ORDER OF DECISION

On March 12, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the Decision or appeal the Decision to a court of competent jurisdiction within 180 days of receiving the final Decision.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day March 22, 2024.

Original signed by:

Nancy Bargmann, Director