

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

**In the Matter of the Fair Hearing Request of

CLAIMANT**

vs.

**TRI-COUNTIES REGIONAL CENTER,

SERVICE AGENCY.**

DDS No. CS0013186

OAH No. 2024030388

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 16, and 17, 2024, by videoconference. During the May 17, 2024 proceeding, the parties agreed to make themselves available on May 24, 2024 for further proceedings, in case the ALJ wished to clarify any issues that arose during the drafting of this Proposed Decision. (Claimant executed a time waiver.) On May 23, 2024, the ALJ had OAH staff notify the parties that there would be no further proceedings.

A second case, OAH No. 2024030674 DDS No. CS13566, involving respite care had been consolidated for hearing with this matter, but the appeal in that case was withdrawn on May 13, 2024, prior to the first day of hearing.

Claimant was represented by his Mother, that title being used to protect confidentiality. Tri-Counties Regional Center (TCRC or Service Agency) was represented by Brenda Hurtado, Services and Supports Transition Team Manager for TCRC.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on May 23, 2024.

ISSUE PRESENTED

Should the Service Agency be required to allow Claimant to reallocate monies in his Self Determination Plan budget to purchase some or all of the following items, sometimes hereafter identified, in whole or in part, as "the requested items": a treadmill; a stationary exercise bike; a weight/dumbbell set; a crash pad mat; a balance board; an iPad with accessory pencil and keyboard; an iMac desktop computer; home security cameras; a subscription to You Tube Premium; and, a subscription to Spotify Kids Membership.

EVIDENCE RELIED ON

In reaching this decision, the ALJ considered or relied on Service Agency's exhibits 1 through 83; Claimant's exhibits A through M; testimony of Mother, Emma Solano, Carrie Sexauer, Sabrina Smith, Veronica Rodriguez-Torres, and Anne Little,

M.D. It should be noted that the ALJ has designated Service Agency's position statement as Exhibit 83, for identification only.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant is a 10-year-old boy who receives services from TCRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act or the Act), California Welfare and Institutions Code, section 4500 et seq. (Further statutory references are to the Welfare and Institutions Code unless otherwise noted.) He is eligible for services because he has autism, an eligible condition under the Act. (Ex. 4b, p. A45; Ex. 15.) Claimant recently began participation in the Self Determination Program (SDP).

2. On February 22, 2024, Service Agency wrote Claimant's parents, confirming a prior communication that it would not approve funding for the requested items (Denial Letter). (Ex. 1.) TCRC also issued a Notice of Action on that date. Claimant filed a timely appeal, on March 4, 2024. (These latter two documents were not offered in evidence; the ALJ takes notice of them in the OAH file.)

3. This proceeding ensued, all jurisdictional requirements having been met.

Claimant's Background

4. Claimant lives in Ventura County with his parents, two younger sisters, and several dogs. Father works full time, and Mother stays at home, looking after the children. Claimant receives 224 hours of In Home Supportive Services (IHSS) with Mother being his IHSS worker. According to Mother, when they were younger, all

three children received services and supports from the Service Agency through the Early Start Program. One of Claimant's sisters currently receives services under the Lanterman Act. (Ex. 4.)

5. According to Claimant's March 4, 2024 Individual Program Plan (IPP), Exhibit 4, Claimant can perform personal hygiene tasks, and he can dress himself, sometimes needing prompts to select appropriate clothing. The IPP document and Mother's testimony indicate he is in the fourth grade and that he is a good student. He is in the general education program and participates in the Gifted and Talented Education (GATE) program. He receives some accommodations from his school through a Section 504 plan (504 plan), such as being seated in the front of the classroom or taking sensory/movement breaks as needed. The March 2024, 504 plan indicates Claimant does show some weaknesses, despite average to above-average scores on psycho-educational assessments. He demonstrates weakness in the area of verbal skills, planning, and sensory needs. He is described in the 504 plan as having a lack of attention to safety and awareness of his surroundings in some settings. (Ex. C, p. Z28.)

6. Claimant tends to "zone out," as Mother describes the behavior; his Person-Centered Plan states Claimant looks or stares at his surroundings when he "zones out," and the behavior is linked to his becoming disinterested in an activity. (Ex. 3, p. A15.) At one time it was thought this behavior might be a seizure disorder, but testing determined it is not. Claimant needs supervision to ensure his safety, as he may dart out into a street, or simply not pay attention to his surroundings; he lacks safety awareness. Claimant's parents obtained a handicapped parking placard from the DMV so that Claimant can avoid walking longer distances in parking lots, thus minimizing his exposure to harm. (See Ex. C, p. Z26.)

7. In July 2023 Claimant underwent an assessment for possible Floortime therapy, which was performed by the Center for Developmental Play and Learning (CDPL). The assessment report recommended individual sessions, 1.25 hours each, three times per week, and group sessions of 1.25 hours per week. (Ex.16, p. A124.) The assessment report indicates Claimant has strengths that could be augmented with Floortime therapy. For example, the report noted Claimant demonstrated the ability to transition from activity to activity during the session. (*Id.*, p. A115.) He also demonstrated problem solving skills when playing with toys. Claimant demonstrated a capacity for purposeful two-way communication and simple reciprocal back-and-forth communication using verbal and non-verbal language. (*Id.*, p. A119.)

Individual Program Plans

8. A November 1, 2022, IPP was received in evidence. (Ex. 4b.) It shows the list of agreed-upon services and supports to be 30 hours of respite per month and 200 miles of mileage per month, the provider being CISS. (*Id.*, p. A 50.) A goal was set for Claimant to participate in social-recreational activities through Conejo Parks and Recreation District (CPRD). The November 2022 IPP noted Claimant had been receiving Applied Behavior Analysis (ABA) until about one month before the IPP meeting, and the IPP indicates the family had not been able to secure a respite worker that would meet the needs of Claimant and his family. The IPP document states "SC [service coordinator] provided Self-Determination information and Orientation link to register. Family will notify SC if they decide to move forward with SDP." (*Id.*, p. A46.)

9. The November 2022 IPP was amended on January 23, 2024, to specify that TCRC would fund several after school classes through CPRD, as social recreational activities. (Ex. 4c.)

10. As noted in Factual Finding 5, an IPP was developed on March 4, 2024. (Ex. 4.) It references Claimant's entry into SDP, and that Claimant's parents had requested additional goods and services "which were not all approved as generic resources can be utilized for the identified needs." (*Id.*, p. A30.) The IPP document stated that a Floortime assessment had been performed, and that the family was looking for someone to provide personal assistance.

11. It was agreed that Service Agency would fund the Financial Management Service provider (FMS) chosen by parents to assist in administering the SDP program, in the amount of \$600 per month. A number of community integration supports were authorized, including afterschool and weekend activities, and the purchase of a GPS device to help track Claimant's location, was agreed upon.

12. Mother wrote that she was signing the IPP only with partial consent, referencing Claimant's unmet needs and the pendency of this appeal. Mother also noted that a further IPP meeting would be requested to discuss and add various needs and goals not set forth in the IPP document, including respite care. (Ex. 4, p. A35.) Mother noted a four-page attachment to the IPP which set out her position on Claimant's unmet needs. That attachment is found at Exhibit E and is discussed below.

13. An amendment to the March 2024 IPP was made on May 7, 2024. It states the family had started Year 1 in the Self Determination Program and that the family had found an Independent Facilitator, Ms. Ramirez. It was agreed that Self Determination would fund her services in the amount of \$4,800 per year. (Ex. 4a.)

The SDP Budget

14. On March 7, 2024, the parties signed off on an SDP Budget in the amount of \$50,786.40. It does not budget for any of the requested items, but does

fund for items such as respite services, adaptive skills training, individual and group Floortime therapy, and several social recreation services such as swim lessons, soccer, or cooking classes. The budget also provides for a personal assistant. (Ex. 5.)

15. On March 12, 2024, a Spending Plan was created. It allocated \$16,069.88 to purchase various programs for community integration support. (Ex. 6.)

16. The parties agreed at hearing that the budget, if reallocated, would be sufficient to purchase the requested items.

Claimant's Case for Funding the Requested Items

17. The attachment to the March 2024 IPP set forth justifications for funding some, but not all of the requested items. It identifies the stationary bike, weights and dumbbells, specialized treadmill, crash pad mat, and balance board as critical sensory and safety equipment/home gym equipment. Mother asserted that immediate and consistent access to specific sensory and physical exercise equipment was crucial because it supports sensory regulation needs, focus, physical fitness, and energy levels in the safety of Claimant's home. Further, Mother asserted using such equipment promoted body regulation, focus, and better sleep patterns; it was argued that use of the exercise gear would reduce the likelihood of zoning out, elopement, and repetitive movements. (Ex. E, p. Z66.)

18. In the attachment to the 2024 IPP, Mother asserted that an iPad and iMac desktop computer were "essential for supporting [Claimant's] communication and social interaction skills, crucial for overcoming challenges in making personal connections and engaging in reciprocal communication." (Ex. E, p. Z67.) She stated the computers would facilitate engagement therapeutic and social activities tailored to Claimant's interests and would improve his ability to connect with peers.

19. Home security cameras were described as necessary for maintaining Claimant's safety, "particularly given his elopement risks and zoning out episodes." (Ex. E, p. Z67.) There are some cameras in place, but Mother indicated they have shortcomings and they should be upgraded.

20. Mother sought adaptive learning technologies, including an iPad and desktop computer, to access resources and to facilitate virtual peer interaction, communication, and social skills development. It was asserted that Claimant needs tailored content and social interaction programs accessible from home so he can maintain social connections and to support his communication and social skills. According to Mother, utilizing technology aligned with Claimant's interests and is therefore a motivational tool. (Ex. E, p. Z68.)

21. By a letter dated February 29, 2024, Robert Nudelman, M.D., recommended that the Service Agency provide several of the requested items to Claimant. Dr. Nudelman has been Claimant's pediatrician since the boy was born, and he states Claimant has a diagnosis of autism and sensory processing disorder. Claimant acknowledges the latter condition is not, itself, an eligible condition. (Ex. M, p. Z270.) In his letter, Dr. Nudelman states:

Diagnosed with autism and sensory processing disorder, these conditions profoundly impact [Claimant's] sensory integration, overall well-being, happiness, and health. Instant access to exercise equipment and sensory items would significantly benefit [Claimant], aiding in his sensory input and addressing sudden urges that can occur unexpectedly.

Equipment such as a safe and sturdy treadmill, an interactive exercise bike, dumbbells, a crash mat, and a balance board are not merely recreational but serve as essential therapeutic tools for [Claimant's] condition. These items facilitate specific, tailored interventions crucial for managing his sensory dysregulation, enhancing his focus, and overall happiness and quality of life. The home setting offers a secure, controlled environment for [Claimant], providing immediate access to these tools for timely intervention, which is essential given his history of eloping and "zoning out." Considering these factors, I strongly recommend the approval of the requested sensory and exercise equipment for [Claimant]. They are vital to his ongoing therapy, directly addressing his therapeutic needs, keeping [Claimant] active, maintaining his BMI within a recommended range, and ensuring his safety.

(Ex. B, p. Z5.)

22. On March 2, 2025, Dr. Nudelman issued a prescription which stated, in part: "Please provide treadmill, interactive exercise bike, weights, crash mat, balance board." (Ex. B, p. Z6.)

23. At the time Dr. Nudelman wrote the recommendation letter and prescription, he had not seen Claimant in approximately nine months. This finding is based on the March 4, 2024 IPP, which states Claimant had last seen Dr. Nudelman on June 1, 2023. (Ex. F, p. Z88.) (See also Ex. 41, p. A157 [ID Note of December 19, 2023, referencing June 1, 2023, as last visit to pediatrician].)

24. Mother testified that at one time there was a treadmill and a stationary bike in the home, and that Claimant would use them to his benefit. However, both devices broke down. She asserted that Claimant tends to zone out more now that he doesn't have the two devices. She seeks a commercial grade treadmill because she asserts it is safer; the cost is \$10,000. She would have Claimant and his sister share the device.

25. Mother prepared a Spending Plan that addressed the requested items, and for each she had a note written that was offered to support the proposed expenditure. The explanations will not be set out verbatim here, but in each instance Mother tried to tie the use of the requested item to Claimant's disability and to his habilitation. For example, she supported the exercise bike with the assertion that "[a]n exercise bike offers [Claimant] a structured and consistent form of exercise that supports his sensory regulation needs. It provides a safe, repetitive activity that helps with focus and can be a calming outlet for excess energy. Cycling is also beneficial for [Claimant's] motor skills development can improve joint mobility. The variety in exercise routines available with an exercise bike will support [Claimant's] goal to adapt to changes and avoid being stuck in the same routine, a common challenge for individuals with autism. (Ex. 80, p. A217.)

26. Mother described the requested desktop computer, in part, as a "vital educational resource for [Claimant], . . . the live chat feature . . . is particularly beneficial, allowing [Claimant] to participate in back-and-forth dialogues with peers, an area highlighted in his IPP as needing support due to his autism. . . ." (Ex. 80, p. A217.) She justified the iPad, in part, by saying it was also a vital tool for Claimant "who has a pronounced personal preference for and motivation to engage with electronic devices." (*Id.*)

27. The balance board was described as a multifunctional tool designed to support [Claimant's] sensory integration therapy. It aids in developing core strength and balance, which are crucial for overall motor skill development." (Ex. 80, p. A218.)

28. Claimant provided four articles about exercise as a potential intervention for those who suffer from autism; they are found at Exhibit G. One article noted that in a small study, there was improved executive function in the group of autistic people that learned to ride a bicycle, but not in those autistic persons who rode stationary bikes. (Ex. G, p. Z136.) Another article stated that regular exercise "may be able to" reduce frequency of negative behaviors, increase motor function, and improve socialization. (Id., p. Z134.) The article, which was published by "TreadmillTalk.com," went on to state "physical activity should not serve as a replacement for traditional behavioral therapies that are used to help children and teens with autism." (Id., p. Z135.) None of the four articles appear to be peer-reviewed, none provide solid support for Claimant's position.

29. Claimant argued that much of the services offered by TCRC are not practical. The family's experience with ABA therapy was not positive and thus was ended. Some of the problems with it involved trying to manage the therapeutic sessions in the home where the presence of Claimant's siblings was a distraction, but at another point in the hearing, Mother referred to problems with staff changes and supervisors creating too much traffic in the house. As to Floortime, the company that did the assessment was not comfortable with working in the presence of cameras, and their facility is in Santa Barbara, not a good location when Claimant lives in the vicinity of Thousand Oaks, over 50 miles away. Another Floortime provider had not been identified as of the hearing, and Mother asserts in Claimant's brief that therapy in the home is not feasible at this time given some family issues. (Ex. M, p. Z274.) Mother

asserts that her own issues, and her obligation to care for two other children with special needs, makes her task of caring for Claimant much harder, and she asserts that transporting Claimant to generic resources is therefore not feasible. (Id., p. Z276.)

Service Agency's Justification for Not Funding the Requested Items

30. In the Denial Letter, Exhibit 1, TCRC asserted that the stationary bike, weight set, and treadmill are not medically indicated or required to treat any condition associated with or resulting from Claimant's autism, and that there are other sources of exercise routine available for little or no expense, whether at home or in the community. A similar assertion was made regarding the crash pad mat and balance board; they were not deemed medically indicated to treat conditions related to Claimant's developmental disability. TCRC further pointed out that there were generic sources of exercise, such as gymnastics, which had the added benefit of socialization.

31. As to the iPad and iMac, the Service Agency took the position that the primary purpose of the technology was for Claimant to use it for Game U, GameGen Coding, and video game classes. TCRC asserted that these were social-recreational or hobby activities, and that while TCRC could fund for the activities, it could not fund for equipment or necessities, pointing out that it could fund Claimant's participation in AYSO soccer, or little league baseball, but they would not fund for uniforms, playing shoes, bats or balls. To the extent that Claimant asserted an educational aspect of the computers, TCRC asserted such should be taken up with the school district.

32. TCRC asserted an in-home camera system was not an appropriate use of funding to meet Claimant's IPP goals, further asserting there was no documentation of the types of behaviors or severity of behaviors that would warrant a system beyond proactive supervision by parents.

33. As to the Spotify Kids membership and the You Tube premium requests, TCRC's position was that the former would require a Spotify Premium Family Subscription, and the Service Agency could only fund for the person being served, and not the family. As to the You Tube service, TCRC there was a free service available, essentially a generic source. Further, TCRC had training programs such as ABA and Floortime available to address Claimant's coping skills.

34. TCRC cited several parts of the Act in support of its position, including the rule that SDP participants, essentially, must use generic services and supports when available, that consideration of the family's responsibility to provide similar services and supports, and a regional center's obligation to identify and pursue all possible sources of funding for consumers. (Ex. 1, pp. A9-A10.)

35. At hearing TCRC asserted that the treadmill, exercise bike, weights and dumbbells, iPad and iMac are not evidence-based responses to Claimant's disability, or related to it, and the disability could be met through other services or supports. The You Tube and Spotify subscriptions were items that could be accessed via generic resources or free accounts. The crash pad mat, balance board, and cameras, from TCRC's point of view, were addressing behaviors or social/emotional concerns that had been addressed by the social-recreational activities previously provided or funded. (See Exhibit 83.)

Other Matters

36. The 504 report indicates that Claimant's social interactions with peers are generally positive and that he is not ostracized. His teacher further reported he is sought out by peers to talk and to play at recess, and that his peers do not comment specifically about his facial tics or noises. (Ex. C, p. Z29.) The teacher reported that at

this time, Claimant's behaviors or habits are not having a negative impact on his interactions with other students. (*Id.*, p. Z30.) As to safety issues, Claimant's teacher stated she sometimes reminds him to walk on campus, as he will run because focused on where he is going. Teacher reported that on two field trips Claimant had no problem staying with the group and was responsive to instructions. (*Id.*, p. Z 31.)

37. Mother, on several occasions in the hearing, expressed her frustration with many aspects of the process of attempting to obtain services. For example, she asserted the Service Agency said she would have to obtain denials for some of the requested items from insurers. According to Mother, such potential generic resources would require the family to buy the items and then seek reimbursement, an impractical methodology. It is reasonably inferred that Service Agency staff or consultants could determine, by dint of experience, if an insurer would in any circumstance provide a treadmill or stationary bike or other such item, or they might determine if there was even a CPT code for such an item. (CPT—Current Procedural Terminology—system was developed by the American Medical Association to be a standardized coding system for medical care professionals.) On the issue of demanding denial letters, Exhibit 23 is instructive. It is an ID Note dated May 19, 2023, where Dr. Gluck advised staff that in regard to a request to perform the Floortime assessment, TCRC would not need a denial by insurance of such a request "since most insurances (sic) don't cover it."

38. Mother asserted that the AngelSense GPS locator did not work due to coverage problems. That assertion is supported by Exhibit H, where the vendor explains that the device is not functioning well at his school due to poor cellular connection there.

39. No evidence was offered about Dr. Nudelman's qualifications, other than that he has been Claimant's pediatrician all of Claimant's life, and that he has been a pediatrician for some 40 years. His expertise in developmental disabilities is unknown. On the other hand, TCRC's physician witness, Dr. Little, has worked with persons with developmental disabilities for approximately 35 years. (Ex. 19.)

40. Dr. Little gave her opinion that the bulk of the requested items did not constitute an evidence-based response to autism. She noted that a national group, the National Autism Center National Standards Project lists approximately 15 responses to autism, and exercise equipment was not on that list. Dr. Little recommended another psychological assessment to explore what would work best for Claimant. She believes a psychologist is best equipped to determine what is clinically appropriate for Claimant.

41. Dr. Little pointed out that "Sensory Processing Disorder"—referenced by Dr. Nudelman in his letter and prescription—is not a recognized disorder under the DSM-5; she opined that Dr. Nudelman used a diagnostic code that is not quite accurate.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

2. 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. (See Evid. Code, §§ 115 & 500.) That rule places the burden of proof on Claimant. Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

General Rules Applicable to Resolving Service Disputes

3. Although there is an SDP and concomitant SDP Budget in place in this case, the SDP should be seen as a vehicle to fund services that are determined by the IPP process. Therefore, basic concepts from the Act, and especially regarding IPP development, should be considered.

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Legislature established the Act "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." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.) The Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

5. Regional centers must develop and implement IPP's, which shall identify services and supports "on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of . . . the

cost-effectiveness of each option.” (§ 4512, subd. (b); see also §§ 4646; 4646.5; 4647; 4648.) The Act assigns a priority to services that will maximize the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2); 4685, subd. (b)(5).)

6. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646. Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a fair hearing decision may, in essence, establish such terms. (See §§ 4646, subd. (i); 4705; 4706; 4707, subdivision (a)(3); 4710.5, subd. (a).)

7. Section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities” broadly, as meaning

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.

8. Section 4512, subdivision (b), provides a list of services that may be provided, in appropriate circumstances, to a consumer of regional center services. The services and supports are not limited to those set out in the statute. The list is extensive, running the gamut from diagnosis to advocacy to supported and sheltered employment.

9. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and school districts, and private entities such as insurance companies. (*Id.*, subdivision (a)(1) & (2).) Section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources. And, under section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

10. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in section 4659. (§ 4646.4, subd. (a).) The Service Agency is also required to consider the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (*Ibid.*)

11. Section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

The Self-Determination Program

12. Section 4685.8, subdivision (a), provides:

The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall 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. . . .

13. Furthermore, "Self-determination" means

a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. The Self-Determination Program shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation.

(§ 4685.8, subd. (c)(6).)

14. Self-determination gives the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (§ 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (§ 4685.8, subd. (b)(2)(G).)

15. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (§ 4685.8, subd. (d)(3)(B).) Further, the SDP requires participants to “only purchase services and supports necessary to implement his or her IPP” (§ 4685.8, subd. (d)(3)(C).)

16. When a consumer is in the SDP, the IPP team is to develop the plan, utilizing the person-centered planning process. (§ 4685.8, subd. (k).)

17. Section 4685.8, subdivision (k), provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5.¹ A regional center

¹ Under Code section 4648.5, regional centers’ ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended. In 2022 section 4648.5 was repealed.

shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

18. SDP participants and their families have the authority to make decisions about the services and support they need in their lives (§ 4685.8, subd. (y)(1)(B)) and allow the participant to decide how they want to spend their time. (§ 4685.8, subd. (y)(3)(A).)

19. When developing the individual budget, the IPP team determines 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, 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, at subd. (b)(2)(H)(i).)

Disposition

20. The reallocation of funding cannot be ordered without modifying the IPP to provide for the requested items. Strictly speaking, modification of the IPP is not the issue, but such could be considered as an adjunct to considering reallocation of the budget. Put another way, to deny the appeal because a request to modify the IPP was not squarely placed before the ALJ would tend to put form over substance.

21. The requested items are not "specialized services and supports or special adaptations of generic services and supports" within the meaning of section 4512, subdivision (b).

22. The requested items, and especially the treadmill, stationary bike, weights, crash pad, balance board, iPad and iMac are not evidence-based responses to

autism and its symptoms, and therefore should not be funded. To the extent exercise is beneficial to Claimant, as it is to everyone, generic resources should be pursued, especially programs that would allow physical activity as well as socialization. A home gym does not appear to be “designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion.” (§4685.8, subdivision (c)(6).) Likewise, socializing by computer does not appear to promote outcomes in community settings.

23. The subscriptions to Youtube Premium and Spotify Kids Membership can be accessed by a generic resource. Further, they appear to be the sort of item that families are responsible to provide to children without disabilities. (§ 4646.4, subd. (a).)

24. Claimant appears to be a boy who has significant potential, despite his autism. The requested items may well have a positive effect on his future development, but use of recognized therapies, such as ABA, Floortime, social skills training, or occupational therapy would be likely to have a positive effect as well.

25. Claimant asserted TCRC doesn’t understand SDP, and its purpose of flexibility and innovation in delivering services and supports to consumers. That has not been established. The SDP process cannot be divorced from the traditional planning process, and the SDP program has not abrogated the significant limits the Act places on expenditures, i.e., the requirement to utilize generic resources.

26. The undersigned is mindful of the manifold stresses placed on Claimant’s parents, and especially his mother, in caring for him and two other children with special needs. It appears that planning for both consumers should be carried on with a more global attack on the problems. And, Dr. Little’s opinion that further assessment should be conducted appears sound, assessment being a life blood of the IPP process.

(See § 4646.4, subd. (a).) In this regard, those expert in assessing sensory processing issues should be involved in the assessment process.

ORDER

Claimant's appeal is denied, and his budget shall not be reallocated to purchase the requested items.

DATE:

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024030388

Vs.

DECISION BY THE DIRECTOR

Tri-Counties Regional Center

Respondent.

ORDER OF DECISION

On May 28, 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 June 16, 2024

Original Signed by:

Nancy Bargmann, Director

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024030388

Vs.

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

Tri Counties Regional Center,

Respondent.

RECONSIDERATION ORDER

On June 28, 2024, the Office of Administrative Hearings (OAH) received from claimant an application for reconsideration of a Final Decision issued in this matter on June 16, 2024, by the Director of the Department of Developmental Services (Department). However, the Department did not receive claimant's application for reconsideration from OAH until July 15, 2024.

The claimant's application for reconsideration is denied. There is no mistake of fact or law or clerical error in the Final Decision and it was legally sound at the time of issuance. (See Welf. & Inst. Code, § 4713, subd. (b).) After examination of the arguments made in the application for reconsideration, OAH's proposed decision, and the administrative record, the proposed decision was correctly decided, and the Director properly adopted it as her final Decision.

IT IS SO ORDERED on this day July 30, 2024

Original signed by:

Nancy Bargmann, Director