

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**and**

**NORTH BAY REGIONAL CENTER, Service Agency.**

**DDS No. CS0014522**

**OAH No. 2024030943**

**PROPOSED DECISION**

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on September 25 and October 29, 2024, by videoconference.

Claimant represented themselves at hearing.

Beth DeWitt, Director of Client Services, represented the North Bay Regional Center (NBRC), the service agency.

The record was held open for the parties to submit written closing arguments. The arguments were timely submitted and marked for identification as follows: NBRC's post-hearing argument is Exhibit 27, and claimant's post-hearing argument is Exhibit

AAC. The record closed and the matter was submitted for decision on December 2, 2024.

## **ISSUE**

As clarified at hearing, did NBRC improperly deny claimant's request to increase their Self-Determination Program (SDP) spending plan budget to fund an additional 16 hours daily of supported living services (SLS) for a total of 24 hours of daily SLS?

## **FACTUAL FINDINGS**

1. Claimant is an adult living in their own home with at least two other adult housemates. Claimant is employed full-time and works from home. Claimant is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)<sup>1</sup> for services from NBRC because they are substantially disabled by autism spectrum disorder. Claimant relies upon a combination of natural supports and NBRC-funded services to manage their day-to-day needs.

2. The purpose of an Individual Program Plan (IPP) meeting is to use a person-centered approach to consider the needs and preferences of a regional center client and, as appropriate, their family, using an individualized needs determination to develop the provision of services and supports to assist a client to achieve their personal outcomes and life goals and promote inclusion in their community through a

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise stated.

cost-effective use of public resources. (§ 4646.) In addition, services and supports should be provided in the least restrictive environment that will “foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible,” and “services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.” (§ 4502, subd. (b)(1).)

3. On January 28, 2022, an IPP meeting was held for claimant, and the meeting was continued to March 25, 2022. An IPP with person-centered objectives was developed during the two meetings, and claimant provided written consent to the IPP on March 25, 2022.

4. On July 18, 2022, a Client Development Evaluation Report (CDER) was developed for claimant. A CDER contains diagnostic and evaluation information for individuals who are at least three years old and qualify for eligibility under the Lanterman Act. CDER data are used to assist the regional center interdisciplinary team (IDT) in assessing the overall status of individual clients. The data permit the IDT to identify the client’s capabilities and needs, and the condition(s) that impede the client’s progress. Identification of these attributes is necessary for planning purposes, as well as for developing and initiating specific strategies to enhance independence and quality of life.

5. NBRC Service Policy Manual, Purchase of Services, describes when NBRC will authorize funding services for a client. The policy provides that, among other requirements: the service must be related to a condition of the developmental disability; must achieve goals or objectives that are clearly stated and defined by measurable outcomes; must not be duplicative of other natural supports, generic

services or purchases by NBRC; and must be cost effective. CDER data is considered when NBRC determines whether to fund a service for a client.

6. NBRC SLS Procedure describes the parameters for NBRC to fund SLS for a client that, are in addition to those set forth in the Purchase of Services policy. These parameters include, but are not limited to: the client must be at least 18 years of age; the client must not live in a home with a parent or conservator; the client has expressed a preference for living independently; and SLS is offered for as long and as often as needed, with the flexibility required to meet a client's changing needs over time and without regard solely to the level of disability. There are also documentation and assessment requirements for the initial determination and any subsequent renewals by NBRC to fund SLS.

7. On August 8, 2022, United Supportive Living, a SLS provider, wrote a report after assessing claimant's need for SLS. As part of the assessment, United Supportive Living reviewed documents and completed an intake interview with claimant and their partner. United Supportive Living opined that claimant required eight hours per day of assistance and support to ensure their safety and to assist with their activities of daily living (ADL), such as: bathing preparation, gathering hygienic products, "essentials"; and maintaining a clean hygiene and groomed body. In addition, the eight hours of SLS would be used for: assisting and supporting claimant with transportation to and from their medical, dental, and psychiatric appointments; assisting and supporting the maintenance of claimant's residence through cooking, household cleaning, laundry, and shopping (personal and grocery); and ensuring claimant has access to transportation required for social and recreational activities.

8. On November 23, 2022, an IPP meeting was held for claimant. The August 8, 2022, United Supportive Living report was reviewed at the meeting. On

December 6, 2022, claimant's CDER was updated, and an addendum to claimant's IPP was issued by NBRC that addressed claimant's need for SLS. The addendum authorized the provision of 248 hours per month (eight hours per day) of SLS to address claimant's identified needs. The SLS was authorized to address the following needs of claimant:

- Assisting with common daily living activities such as meal preparation, including planning, shopping, cooking, and storage activities;
- Performing routine household activities aimed at maintaining a clean and safe home;
- Locating and scheduling appropriate medical services;
- If necessary, selecting and moving into a home and locating and choosing suitable house mates;
- Settling disputes with landlords;
- Managing personal financial affairs, as requested;
- Recruiting, screening, hiring, training, supervising, and dismissing personal attendants;
- Dealing with and responding appropriately to governmental agencies and personnel;
- Asserting civil and statutory rights through self-advocacy;
- Building and maintaining interpersonal relationships;
- Participating in community life;

- Provide 24-hour emergency assistance;
- Provide assistance meeting claimant's individual needs.

9. In January 2023, claimant elected to participate in the SDP. The SDP was added to the Lanterman Act 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." (§ 4685.8, subd. (a).) An IPP for an SDP participant is subject to the same requirements as for Lanterman Act consumers who do not participate in the SDP. (§ 4685.8, subd. (c)(4).) Just as for Lanterman Act consumers who do not participate in the SDP, the SDP consumer's IPP identifies the consumer's needs and goals, and describes services the regional center will provide or fund to meet those needs and goals. (§§ 4646, 4685.8, subd. (b)(2)(H)(i).)

In the SDP, the consumer directs spending from an "individual budget," representing "the amount of regional center purchase of service funding available to the participant for the purchase of services and supports necessary to implement the IPP." (§ 4685.8, subd. (c)(3).) An SDP participant's initial annual individual budget is "the total amount of the most recently available 12 months of purchase of service expenditures," adjusted to reflect changes such as "prior needs or resources that were unaddressed." (*Id.*, subd. (m)(1).) The total budget may not exceed the amount that "would have been expended using regional center purchase of service funds regardless of the individual's participation in the" SDP. (*Id.*, subd. (m)(1)(B)(ii).)

The SDP consumer directs spending from this individual budget according to an approved "spending plan," which must "identify the cost of each good, service, and support that will be purchased with regional center funds." (§ 4685.8, subd. (c)(6).) All

such goods, services, and supports must be “necessary to implement” the consumer’s IPP. (*Id.*, subds. (c)(6), (d)(3)(C).)

10. Year one of the SDP spending plan for claimant ran from June 1, 2023, to May 31, 2024. The spending plan included the amount of funds NBRC would have spent for eight hours per day of SLS for claimant. On a date not established by the evidence, claimant provided written consent to implement this spending plan.

11. On a date not established by the evidence, but prior to February 2024, claimant requested that NBRC increase the amount in their SDP budget to fund four additional hours of SLS per day, for a total of 12 hours of SLS per day. As discussed further below, claimant asserted the additional SLS hours were required to meet their individual needs.

12. On February 19, 2024, Lorena Hernandez, Psy.D., authored a two-page letter in which she opined claimant met the criteria for the following diagnoses:

F84.0, Austim, Level 1

F90.2 Attention deficit hyperactivity disorder, combined presentation

6B41 Complex Posttraumatic Stress Disorder, with anxious and depressive symptoms.

The letter did not specifically address claimant’s needs for SLS. The letter was provided to NBRC staff, who reviewed and considered the information in the document.

13. On February 29, 2024, on behalf of NBRC, DeWitt drafted a Notice of Action (NOA) denying claimant’s request for four additional hours of SLS per day. The

reason for the denial was, “[t]he [IDT] has determined that approved [SLS] in the amount of 8 hours a day, 7 days a week can fulfill the needs requested.” The NOA was provided to claimant along with various Lanterman Act statutes and regulations, and the NBRC Purchase of Services policy set forth in Factual Finding 5.

14. NBRC informed claimant that an updated formal assessment establishing their need for additional SLS was necessary for it to approve their request for additional SLS hours, and as claimant is an SDP participant, claimant is responsible for arranging and paying for the assessment. The completed assessment should then be provided to NBRC for its review to determine if claimant’s need for SLS has increased.

15. On March 25, 2024, claimant filed an appeal. Claimant described their reasons for appeal as follows:

[Claimant] needs support during most waking hours for all ADLs, including during their workday. Here are some tasks that [claimant] needs support with during their workday:

Plugging in and setting up their computer

Adjusting their posture to minimize back pain

Getting food and water throughout the day

[Claimant] has trouble opening packaging/water bottles on their own, so prepackaged food and water bottles nearby aren’t a solution

Getting up to go to the bathroom

Social and communication aspects of the job



[Claimant] usually has to work from bed due to not having enough energy/support to get out of bed. [Claimant] has currently used all their allowable leave from work due to not having enough support during work hours to get through the day.

Here are some other challenges that [claimant] has had due to not having enough support:

UTIs from not having support to get to the bathroom

Dehydration, passing out, and nausea/vomiting from not being able to eat/drink

Migraines, muscle strain, and falls from trying to get out of bed without support

Dropping and breaking dishes from trying to get food/water on their own. This is then a hazard because they can't clean up the broken glass

[Claimant]'s lack of support is interfering with their ability to perform tasks related to employment and community integration, putting them at risk of losing employment.

[Claimant] also is lacking in support regarding their physical and mental safety.

16. On May 1, 2024, an IPP meeting was held for claimant, and the meeting was continued to May 21, 2024. NBRC requested that claimant provide written

approval of the IPP created as a result of these meetings, but claimant has not yet done so.

17. On May 9, 2024, claimant contacted an agency, Divine Fijian Home Care, to discuss the completion of an SLS assessment. At hearing, claimant suggested they have contacted or tried to contact other agencies to obtain an SLS assessment, but as of the date of hearing, claimant has not yet completed the process to have an updated SLS assessment.

18. Year two of claimant's SDP spending plan runs from June 1, 2024, to May 31, 2025. On May 21, 2024, claimant provided written consent to implement a temporary renewal spending plan that included the amount of funds NBRC would have spent for eight hours per day of SLS for claimant and not claimant's requested amount of funds for 12 hours of SLS per day. Claimant provided their written consent pending the outcome of the present hearing.

19. On June 19, 2024, Christopher Swales, M.D., wrote a short letter that stated:

For my patient [claimant] I recommend both a new SLS assessment to assess their current support needs and also an increase in support. They need more support day to day. Their current level of support is insufficient for positive quality of life as well as contributing to significant health challenges and impacting their ability to work at their job.

On October 23, 2024, Dr. Swales wrote a second short letter that stated:

For my patient [claimant] I recommend both a new SLS assessment to assess their current support needs and also an increase in support. They need more support day to day, and also overnight care, as symptoms worsen overnight in terms of cognition and other challenges. Their current level of support is insufficient for positive quality of life as well as contributing to significant health challenges and impacting their ability to work at their job.

Dr. Swales did not testify at hearing and the evidence did not establish the basis for his recommendations; therefore, little weight was given to the letters.

20. Allen Davis, NBRC Case Management Supervisor, and Ellisa Reiff, NBRC SDP Supervisor, testified at hearing in a credible manner regarding the decision made by NBRC to deny claimant's request for additional SLS hours (in addition to the agreed upon eight hours of SLS per day). They explained that, based on the information available, NBRC believes claimant's needs can be met through the currently approved eight hours of SLS per day. They reiterated the need for NBRC to obtain updated assessment information supporting claimant's request for additional SLS hours and that NBRC would reevaluate its decision once it received updated SLS assessment information. However, as set forth in Factual Findings 14 and 17, claimant is responsible for arranging and paying for the SLS assessment and they have not yet done so.

Reiff also argued that claimant's current eight hours of SLS are sufficient because claimant has chosen to have some of those hours be provided remotely instead of in person. Reiff's argument was given little weight because how claimant

decides to have their current SLS delivered is not dispositive on claimant's need for additional SLS.

### **Claimant's Additional Evidence**

21. Claimant testified at hearing on their behalf regarding their need for an additional 16 hour of SLS per day. Their testimony and evidence on this issue, including various photographs of claimant and their living area, was generally consistent with their appeal request set forth in Factual Finding 15. Claimant did not clearly describe how their needs have changed since the completion of the August 8, 2022, United Supportive Living assessment that opined that eight hours of SLS would be sufficient to meet claimant's needs as set forth in Factual Findings 7 and 8. Despite NBRC informing claimant of the need for an updated SLS assessment, claimant has failed to obtain this assessment and provide it to NBRC.

22. Claimant called Raye Redlo to testify on their behalf. Redlo is claimant's housemate and has known them for approximately six years. Redlo has a master's degree and has acted as a public health advocate for approximately 10 years. Redlo described their observations of claimant's need for assistance with ADL and the SLS currently provided to claimant. Redlo testified to their belief that claimant needed ADL support 24 hours per day. Redlo was not asked and did not describe their opinion of how claimant's needs, if at all, have changed since the August 8, 2022, SLS assessment. On this basis, Redlo's testimony was given little weight as to the ultimate issue in this matter.

## **Ultimate Factual Finding.**

23. Claimant did not prove that they require, related to a condition of their developmental disability, any additional hours per day of SLS in excess of the currently approved eight hours.

## **LEGAL CONCLUSIONS**

1. The Lanterman Act entitles claimant to an administrative fair hearing to review a service agency's service decisions. (§ 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires NBRC to fund an additional 16 hours of SLS per day. The standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Through the Lanterman Act, the State of California has accepted responsibility for persons with developmental disabilities. The Lanterman Act mandates that "[a]n 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.) The purpose of the Lanterman Act is twofold: (1) to prevent or minimize the institutionalization of persons with developmental disabilities and their dislocation from family and community, and (2) to enable persons with developmental disabilities to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives. (§§ 4501, 4685; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Department of Developmental Services (Department) is the state agency responsible for implementing the Lanterman Act. It contracts with regional

centers that are charged with the responsibility of providing developmentally disabled individuals with access to services and supports best suited for them. (§ 4620, subd. (a).)

4. As set forth in Factual Finding 23, claimant failed to meet their burden to prove that they require any additional SLS hours per day to meet their needs, related to a condition of their developmental disability, beyond what has been approved. NBRC has a duty to consider the results of any updated SLS assessment of claimant that is provided to NBRC.

## **ORDER**

Claimant's appeal is denied.

DATE:

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant,

OAH Case No. 2024030943

vs.

**DECISION AND ORDER BY THE DIRECTOR**

North Bay Regional Center,

Respondent.

ORDER OF DECISION

On December 5, 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 in full.
- North Bay Regional Center (NBRC) shall assist claimant and his family or authorized representative to locate a Supported Living Service (SLS) provider to conduct an SLS assessment of claimant to determine the appropriate number of SLS hours necessary to meet claimant's Individual Program Plan (IPP) goals and needs consistent with Welfare and Institutions Code sections 4646, 4685.8, subdivision (d)(3)(c), and 4689, subdivision (p), including assisting claimant on providing any required documentation to support and complete this SLS assessment.

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