

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

In the Matter of:

Claimant

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0015599

OAH No. 2024040460

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on May 28 and June 5, 2024, by videoconference.

Vivian David-Nicolas represented claimant, who was not present.

Senait Teweldebhran, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

The record was closed, and the matter was submitted for decision on June 5, 2024.

ISSUE

Did IRC improperly deny claimant's proposed spending plan allocation to AJL Enterprises for day programming and transportation services?

SUMMARY

Claimant failed to prove by a preponderance of the evidence that IRC acted improperly when it denied claimant's request to allocate funds in his spending plan to AJL Enterprises for day programming and transportation services.

FACTUAL FINDINGS

Background

1. Claimant is a 27-year-old male, who is eligible for regional center services due to a diagnosis of autism spectrum disorder (ASD) and intellectual disability. He lives at home with his parents and brother. Claimant is non-verbal and requires constant supervision.

2. Claimant participates in the home and community-based services (HCBS) waiver program. Claimant is receiving 283 hours of In-Home Supportive Services (IHSS) provided by his mother, and supplemental social security income (SSI) with his mother as the payee. Claimant is currently enrolled in the Self-Determination Program (SDP) and is in his second year in the program.

3. Claimant previously attended In-Roads Creative Programs, Inc. (In-Roads) day program. Claimant was transported to and from In-Roads on Mondays,

Wednesdays, and Fridays from 9:00 a.m. to 1:00 p.m. by Andreas Transportation. In-Roads has a staff to participant ratio of 3:1.

4. On May 10, 2023, claimant engaged in physically aggressive behaviors, such as kicking and biting, which culminated in an In-Roads staff member receiving medical attention. Claimant's physically aggressive behavior had been increasing in intensity, duration, and frequency in the time leading up to the incident. Claimant did not respond to staff's attempts at redirection during his behaviors. On May 11, 2023, during what had originally been claimant's annual review, In-Roads decided that the "day program with the 3:1 ratio is no longer clinically appropriate," and claimant was dismissed from the program.

5. Claimant submitted a proposed spending plan dated March 14, 2024, to IRC for approval. The proposed spending plan allocated over \$88,000 for community integration supports to AJL Enterprises (AJL) for a day program and transportation.

Notice of Action

6. On April 8, 2024, IRC issued a Notice of Action (NOA), which denied claimant's proposed spending plan, more specifically, the allocation to AJL. The reason for the denial was stated as duplicative to the services provided by the FMS. The SDP requires the use of a financial management service (FMS), which manages and directs disbursement of funds contained in the claimant's budget. The FMS directly funds day program and transportation providers from claimant's budget. IRC noted in the NOA that the allocation to AJL would therefore be duplicative of services that are already provided by the FMS.

7. After receiving the NOA, claimant requested an appeal. IRC believed that AJL would have been performing the same services that the FMS does. Claimant

provided additional information, including a program design for AJL. It became clear that AJL was formed to actually provide a day program for claimant and, in the future, for other individuals.

8. IRC then determined that the denial of funding to AJL was affirmed, but the reason was that AJL did not meet the HCBS final rule. HCBS is a federally funded program that provides funding to regional centers for services and supports directed at helping maintain developmentally disabled persons in the home as opposed to an institutionalized setting. The funding is provided according to specified rules and regulations in both state and federal law, including guidance to ensure that services being provided to claimant meet the Individual Program Plan (IPP) goals for consumers. Although there was not a NOA stating this reason for denial, the parties agreed that the added information regarding AJL, and the new reason for denial, could be considered for this hearing.

The Self Determination Program

9. Claimant participated in the SDP, which is a program designed to allow families more flexibility and choice with regard to their services. The SDP is a voluntary alternative to the traditional way regional centers provide services and supports. Participants have control of a certain amount of money, known as an individual budget (budget), to purchase needed services and supports. The budget is the total amount of regional center funds that are available to the SDP participant each fiscal year and is based upon the amount of purchase of service funds used by the individual in the most recent fiscal year. This amount can be increased or decreased if the IPP team determines that the participant's needs, circumstances, or generic resources have changed.

10. The IPP team may also adjust the budget to support any needs or resources that were not addressed in the IPP. Examples include a change in living situation, services that were previously provided but are no longer needed, and services that were included in the IPP but were not used due to illness or lack of provider availability, thus incurring no costs.

11. The purchased support services are not required to be purchased from a regional center vendor provider. However, the services must be able to be federally reimbursed and meet the HCBS final rule.

AJL Day Program and HCBS Final Rule

12. AJL is a corporation formed in the state of California by claimant's mother on January 29, 2024. The Statement of Information filed with the California Secretary of State on March 25, 2024, listed the type of business as "caregiving for those with special needs."

13. At the request of IRC, claimant submitted a program design for AJL. The program design stated that participants would receive "personalized attention with a 2:1 staff-to-participant ratio." It listed the program goals. Under the heading of "program structure," the program design listed center-based activities, which were to be provided at a "dedicated facility equipped with necessary amenities and resources." However, the program design did not provide the address for this dedicated facility. Additionally, the program design lacked any way to measure claimant's progress toward reaching the goals contained in his IPP, and how the goals stated in the program design would assist claimant in reaching the goals contained in his IPP.

14. To assist in determining eligibility to provide services in the SDP, and therefore compliance with the HCBS final rule, a setting assessment tool form must be completed by the provider and the regional center.

15. Cameron Pickrel is claimant's consumer service coordinator (CSC) at IRC. On March 7, 2024, Pickrel signed the setting assessment tool form as the regional center representative. At hearing, IRC acknowledged that, the setting assessment tool form should not have been signed, especially since there was no address for the facility provided on the setting assessment tool form.

Claimant's Additional Evidence

16. Claimant's mother testified on behalf of claimant. Her testimony is summarized as follows. Claimant has not been receiving community integration support services since he was dismissed from In-Roads. Claimant is non-verbal and will become very anxious and frustrated if he is not understood when he is trying to communicate. When claimant gets anxious, he does engage in injurious behavior both to himself and others. Claimant will "bear hug" someone when he becomes frustrated trying to communicate with them. Because of his ASD and other challenges, claimant must eat on a schedule. He is very rigid when it comes to his feeding schedule. The incident at In-Roads happened because claimant must eat at 11:00 a.m. and lunchtime at In-Roads is 11:30 a.m. Claimant was attempting to express that he must eat at 11:00 a.m. and when he felt like he was not being heard, he bear-hugged the staffer.

After claimant was dismissed from In-Roads, it became clear that he needed a day program that would provide a 2:1 staff to participant ratio both for his safety and so that he would be able to do the things he wants and/or needs to do. CSC Pickrel did provide a list of day programs. However, most of the vendors on the list were too

far away, and none of them offered a 2:1 ratio. AJL will be a day program with a 2:1 ratio. Initially, claimant will be the only client, but she hopes to add other participants in the future.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code¹ section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Lanterman Act provides 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.)

3. Section 4646.4, subdivision (a), requires regional center to establish an internal process to ensure compliance with federal and state laws and regulations

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

when purchasing services and supports. It also requires regional centers to consider generic resources and the family's responsibilities for providing services and supports when considering purchasing services and supports for consumers.

4. Section 4648 requires regional centers to ensure that services and supports enable consumers to achieve the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, in conformity with the IPP. This section also requires fiscal responsibility from regional centers.

5. Section 4685.8, subdivision (a), establishes the SDP and requires it be available in every regional center catchment area and provide participants and their families with "an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. . . "

6. Section 4685.8, subdivision (c)(7), defines the spending plan as the plan the participant develops using their budget funds to "purchase goods, services, and supports necessary" to implement their IPP.

7. Section 4685.8, subdivision (d)(3)(C), requires that the participant only purchase services and supports that are necessary to implement their IPP.

8. Section 4685.8, subdivision (r)(6), requires that the regional center verify that the goods and services be eligible for federal reimbursement, and that they not be used to pay for goods or services available through generic agencies.

Discussion

9. Claimant did not provide enough information to determine if AJL's day program would be compliant with the HCBS final rule. Although the setting

assessment tool was signed by CRC Pickrel, IRC admitted it was signed in error as there was not an address on the form. It is difficult to understand how it could be determined that AJL was compliant with the setting assessment when there was no address included in the setting assessment. IRC determined correctly that it was unable to certify at this time that AJL's day program would comply with HCBS final rule. As a result, it cannot permit the requested funding.

10. A preponderance of the evidence also did not establish that AJL's service is not duplicative of services provided by claimant's FMS. SDP participants must use an FMS to direct the distribution of funds contained in an individual budget to meet the participant's IPP goals. The FMS directly funds day program providers and transporters. It is not cost effective to fund a corporation to duplicate the services of the FMS.

ORDER

Claimant's appeal from IRC's denial of claimant's proposed spending plan that allocated funds to AJL Enterprises for transportation to and from and participation in AJL's day program is denied.

DATE: June 12, 2024

TRACI C. BELMORE
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024040460

Vs.

DECISION BY THE DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On June 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 actions on the attached Proposed Decision of the ALJ:

1. The Factual Findings in the Proposed Decision are adopted in full.
2. The Legal Conclusion that claimant did not provide enough information to determine if AJL Enterprise day program would be compliant with the Home Community-Based (HBCS) final rule is adopted.
3. The Legal Conclusion that a preponderance of the evidence did not establish that AJL Enterprise is not duplicative of services provided by claimant's Financial Management Service (FMS) provider is not adopted. The evidence supports that AJL Enterprise is not serving the same function or providing duplicative services to that of an FMS provides.

The Proposed Decision is adopted based on the actions described above. 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.

ORDER

Claimant's appeal is denied and Inland Regional Center's denial of claimant's request to allocate funds in claimant's Self Determination Program (SDP) budget/spending plan to AJL Enterprises for day programming and transportation services is affirmed.

IT IS SO ORDERED on this day July 12, 2024.

Original signed by:

Nancy Bargmann, Director