

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

In the Consolidated Matters of:

CLAIMANTS

vs.

VALLEY MOUNTAIN REGIONAL CENTER

OAH Nos. 2024040962 and 2024040963

PROPOSED DECISION

Hearing Officer Matthew S. Block, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 3, 2024, from Sacramento, California.

Valley Mountain Regional Center (VMRC) was represented by Jason Toepel, Compliance Manager for VMRC.

Vivian David-Nicolas served as claimants' non-attorney representative. Claimants were not present.

Evidence was received, the record closed, and the matter submitted for decision on June 3, 2024.

ISSUE

Did VMRC appropriately deny the request to include funding for personal assistance (PA) services in claimants' Self-Determination Program budget?

FACTUAL FINDINGS

Background

1. Claimants are siblings who live with their sister and conservator. Claimant N is a 41-year-old female. Claimant O is a 56-year-old male. Both claimants have been diagnosed with intellectual disability and cerebral palsy and are therefore eligible for regional center services. Both claimants participate in the Self-Determination Program (SDP).

2. When natural supports and generic resources are insufficient to minimize the risks to a consumer's health and safety, VMRC may fund PA services as part of the SDP budget. PA services are typically provided to individuals to help them perform tasks that an individual without a disability could perform, such as personal care, medication reminders, and supervision.

3. PA focuses on keeping individuals safe while providing direct support in a variety of settings, including work, appointments, community activities, and in the individual's home. Per VMRC's Department-approved PA standards, they may not fund PA services if they will duplicate other services already being funded by VMRC or another public entity.

4. In previous years, both claimants received funding in their SDP budgets for 100 hours of PA services. When claimants' SDP budgets were being developed for the current year, claimants' representative requested that 115 hours of PA be included in the budget for Claimant N, and that 82 hours of PA be included in the budget for Claimant O.

5. VMRC denied the request to include funding for PA in Claimant N and Claimant O's SDP budgets for the current year on April 11, 2024. Claimants' representative filed a fair hearing request to appeal the denials on April 17, 2024. The two matters were consolidated for hearing on April 25, 2024.

Claimant N

6. Claimant N has been diagnosed with epilepsy and is under the care of a psychiatrist for medication management due to the behaviors she displays. She has an artificial lens in her eye and previously underwent hip-replacement surgery. As a result, she has difficulty maintaining her balance and requires orthopedic shoes. Claimant N receives 238 hours of In-Home Supportive Services (IHSS) and 100 hours of Waiver Personal Care Services (WPCS) per month. WPCS are designed to assist participants with maintaining independence in activities of daily living (ADLs) and preventing social isolation.

7. Claimant N receives the following services through VMRC: (1) 75 hours per month of respite; (2) 23.5 hours per month of independent living skills training; (3) 30 hours per week of day program; (4) three social recreation activities; (5) a summer camp; and (6) dental sedation services. As a result of her erratic and at times physically aggressive behavior, she requires 24-hour per day care, seven days per week, to ensure her safety and the safety of those around her.

Claimant O

8. Claimant O underwent a complete emergency colon removal in 2023 and requires ongoing medical attention because of his condition. He has been provided with an ileostomy bag. Claimant O receives 238 hours of IHSS and 130 hours of WPCS per month.

9. Claimant O receives the following services through VMRC: (1) 56 hours per month of respite; (2) 24 hours per month of LVN respite; (3) 30 hours per week of day program; (4) 17.5 hours per month of independent living skills training; (5) three social recreation activities; (6) a summer camp; and (7) dental sedation services. Claimant O has a poor sense of personal safety and requires 24-hour per day care, seven days per week.

Claimants' Evidence

10. Damonia Miller worked as an IHSS caregiver for Claimant N in 2015. Tamela Evans worked as an IHSS caregiver for her in 2023. Ms. Miller and Ms. Evans each testified at hearing about the challenges of working with Claimant N.

11. Claimant N is completely unable to control her emotions, and she becomes very angry very fast. She does not like to be told the word "no." When she is upset about something, she will scream and refuse to follow directions. She has also been known to strike herself in the face and be physically aggressive toward others, including her caregivers and strangers in the community. In the past she has thrown items at other people when she does not get her way. Both Ms. Miller and Ms. Evans quit working as Claimant N's caregiver shortly after they started, because they did not feel they could properly care for a person with Claimant N's level of intellectual disability.

12. Fred Sada works at Central Valley Adult Care (CVAC), which is the day program Claimant N attends. He testified that Claimant N frequently gives him "a lot of problems." There have been "many, many times," when Claimant N has thrown a "tantrum" so severe that CVAC has had to have claimants' sister pick her up from the program. Video footage was received in evidence of Mr. Sada arriving at Claimant N's home to take her to the program. When he approached her, Claimant N began screaming uncontrollably and refused to leave the front porch of the home.

13. Elena Oraham is an independent living skills vendor who presently works with both claimants. Ms. Oraham testified at hearing. She coaches claimants in the areas of hygiene, nutrition, personal safety, and behavior in public. She explained that both claimants require prompting to bathe and brush their teeth. Claimant N has difficulty keeping herself clean and using the restroom. She confirmed Claimant N can become extremely aggressive with no warning. Claimant O is not physically aggressive. However, he tends to elope. When he is in public, he is unable to adhere to customary societal behaviors such as knowing to wait at the end of a line as opposed to moving to the front of it.

14. Claimants' sister has been their conservator since 2010. She testified at hearing and discussed the challenges of caring for her siblings.

15. Claimants' sister explained that Claimant N's behavior is much more difficult than Claimant O's. She does not sleep well and typically wakes up several times per night. Claimants' sister wakes up at the same time and helps Claimant N use the restroom. She also wakes up Claimant O and tends to his ileostomy bag.

16. In the morning, claimants' sister typically wakes Claimant O first. She then wakes Claimant N "slowly," because Claimant N will react poorly if she feels like she is

being told what to do. Claimants' sister usually turns on a cartoon to encourage Claimant N to get out of bed. However, Claimant N frequently resists claimants' sister's efforts, and it is not uncommon for it to take an hour to persuade Claimant N to get up.

17. Claimant N experiences severe anxiety when she is in a large crowd. She will not bathe unless claimants' sister physically takes her to the shower. Claimant N's physical resistance has "taken a toll" on claimants' sister's back. Claimant N screams so loudly in the shower that claimants' sister has started wearing headphones to cancel out the noise. Claimant N gets very impatient every morning waiting for Mr. Sada to arrive to take her to the day program. However, as soon as she sees his van arrive, she begins screaming and refusing to leave the home.

18. After Claimant N leaves for the day program, claimants' sister turns her attention to Claimant O to get him ready for his day. According to claimants' sister, Claimant O obsessively fixates his attention on things he sees, and he "has to be watched." For example, claimants' sister once observed Claimant O staring at a red handle while they were riding on a bus. She knew he was intent on pulling it, and she had to continuously monitor him to ensure that he did not.

19. Claimant O is very friendly. However, his inability to adhere to societal customs has placed him in danger on multiple occasions. For instance, he once approached a woman in a store and attempted to shake her hand and place his head against her chest. The woman's son was unaware of Claimant O's disability and wanted to fight him.

20. On another occasion, Claimant O was in the locker room at the gym and overheard a group of men speaking Arabic, which he found interesting. Claimant O

stared at the men as he listened, which they mistook for physical interest and chased Claimant O from the locker room. A similar event occurred at a McDonald's restaurant. Claimant O was staring at a group of people claimants' sister described as gang members, which they interpreted as Claimant O trying to intimidate them.

21. Claimant O mimics behavior he observes in other people. For instance, he once observed a pedestrian waive to the driver of a vehicle to let them know they were free to drive down the street. When he was out in the community with his caregiver, he waived to the driver of a vehicle. However, his caregiver was crossing the street at the time and was nearly struck by the vehicle as a result.

22. Claimant O's diet is restricted because of his gastrointestinal condition. He must be carefully watched because he is obsessed with food and will eat everything in the home if no one stops him. He also enjoys consuming food and beverages that exacerbate his condition, such as carbonated beverages like soft drinks.

23. Claimants' sister is no longer able to physically redirect claimants. She suffers from fibromyalgia and back, neck, and shoulder pain. She also suffers from post-traumatic stress disorder (PTSD) from the stress of caring for her siblings.

24. According to claimants' sister, both claimants responded positively to the PA services that were previously funded by VMRC. She does not believe that IHSS and WPCS workers can adequately provide the level of support needed to ensure claimants' health and safety. IHSS and WPCS workers assist claimants with ADLs such as cooking and cleaning, but they are unable to address their disabilities on a behavioral level. Claimants' sister explained that simply telling claimants not to engage in problematic behavior will only aggravate them, and they need to work with professionals who are trained how to correct problematic behavior.

25. Yang Lor is claimants' service coordinator at VMRC. Ms. Lor testified at hearing. She is aware that both claimants have health and behavioral issues. However, she was previously unaware how severe the behavioral issues are, particularly with Claimant N. Ms. Lor acknowledged IHSS and WPCS workers probably cannot provide the level of care needed to address claimants' behavioral issues.

VMRC's Position

26. VMRC is responsible for making cost-effective use of public funds. As part of that mandate, VMRC is required to consider all other support available to the individuals they serve. VMRC is also required to fund services in accordance with its Department-approved service standards which prohibits the duplication of services being purchased by VMRC or other public entities.

27. WPCS and PA services provide similar supports, such as assistance with activities of daily living, supervision, socialization, and assistance accessing self-interest activities for recreation. After becoming aware of the WPCS support claimants were receiving, VMRC proposed to deny the request to include hours for PA services in claimants' new SDP budgets.

28. In making the decision to deny the request for PA services, VMRC considered the total support services available to both claimants. When Claimant N's IHSS, WPCS, and VMRC support service hours are considered, she receives an average of 20.5 hours of funded support per day. Adding 115 hours of PA services per month would increase the total amount of funded support hours to an average of slightly more than 24.5 hours per day. When Claimant O's IHSS, WPCS, and VMRC support service hours are considered, he receives an average of over 21 hours of funded

support per day. Adding 82 hours of PA services per month would increase the total number of funded support hours to more than 24 per day.

Analysis

29. Claimants established by a preponderance of the evidence that VMRC should approve the request to include funding for PA services in claimants' SDP budget for the current year. VMRC may not fund PA services if they would be duplicative of other services claimants are already receiving from VMRC or another public entity. However, claimants demonstrated, and their service coordinator appeared to concede, that PA services would not be duplicative of the WPCS services claimants are currently receiving, because the WPCS services are insufficient to properly address claimants' behavioral issues. Consequently, claimants' request to include funding for PA services in their current SDP budgets should be approved.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, section 4500 et seq.) Under the Lanterman Act, regional centers fund services and supports for persons with developmental disabilities.

2. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code sections 4700-4716.) The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimants have the burden of proving by a preponderance of the evidence that VMRC should approve the requested PA hours. (Evid. Code, § 115.)

3. The Department is the public agency in California responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) To comply with its statutory mandate, the Department contracts with private, non-profit agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.) Each regional center is responsible for consumers within a geographic region of the state called a "catchment area."

4. Welfare and Institutions Code section 4512, subdivision (b), defines "[s]ervices and supports for persons with developmental disabilities," in relevant part, as:

...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. The determination of which supports and services are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of

each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option....

5. Welfare and Institutions Code section 4512, subdivision (e), defines “[n]atural supports” as:

...personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

6. Welfare and Institutions Code section 4646 provides, in relevant part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of

services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

- (b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

[¶] . . . [¶]

7. Welfare and Institutions Code section 4646.5, subdivision (b) provides:

For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer, or if appropriate, the consumer's parents, legal guardian, authorized representative, or conservator requests an individual program plan review, the individual program plan shall be reviewed within 30 days after the request is submitted, or no later than 7 days after the request is

submitted if necessary for the consumer's health and safety
or to maintain the consumer in the home.

8. Welfare and Institutions Code section 4685.8 requires the Department to implement a statewide SDP. The SDP must be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice. The SDP is designed to give the consumer greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).)

9. The SDP requires the "IPP teams, when developing the individual budget, to determine 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, and the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option...." (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).)

10. The "IPP team shall utilize the person-centered planning process to develop the IPP for a participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the participant to achieve the outcomes set forth in the participant's IPP and ensures their health and safety. The completed individual budget shall be attached to the IPP." (Welf. & Inst. Code, § 4685.8, subd. (j).)

11. The amount in a participant's budget may be adjusted if the IPP team determines the adjustment "is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in

purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures.” (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii)(I).)

12. Claimants established by a preponderance of the evidence that PA services are necessary to ensure their health and safety and would not be duplicative of other services they are already receiving. Consequently, funding for PA services should be included in claimants’ SDP budgets for the current year.

ORDER

Claimants’ appeal of the denial of their request to include funding for PA services in their SDP budgets for the current year is GRANTED.

DATE: June 11, 2024

MATTHEW S. BLOCK
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case Nos. 2024040962 & 20240440963

Vs.

DECISION BY THE DIRECTOR

Valley Mountain Regional Center,

Respondent.

ORDER OF DECISION

On June 11, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

For the reasons explained below, the attached Proposed Decision is rejected. Instead, the Department holds as follows:

1. Participants in the Self-Determination Program (SDP) shall only purchase services and supports necessary to implement their Individual Program Plan (IPP). (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).)
2. The SDP requires the IPP team, when developing the individual budget, to determine 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, and the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).)
3. The IPP team shall utilize a person-centered planning process to develop the IPP for each participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the participant to achieve the outcomes set forth in the participant's IPP and ensures their health and safety. (Welf. & Inst. Code, § 4685.8, subd. (j).) Participants in SDP shall implement their IPP, including choosing and purchasing the services and supports allowable necessary to implement the plan. (Welf. & Inst. Code, § 4685.8, subd. (k).)

4. The amount in a participant's budget may be adjusted if the IPP team determines the adjustment is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures, and the regional center also certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustments, would have occurred regardless of the individual's participation in SDP. (Welf. & Inst. Code, § 4685.8, subd. (m)(1)(A)(ii).)

5. After reviewing the evidence presented at the hearing, Claimants did not establish by a preponderance of the evidence that VMRC should include funding for personal assistance (PA) services in their respective SDP budgets:

a. Claimants' SDP budget is not maximized through the allocation of funds for services in the SDP spending plan. For example, Claimant N's SDP spending plan compensates for five services utilizing the same amount of money budgeted for eight services. Claimant O's spending plan compensates for five services utilizing the same amount of money budgeted for 10 services.

b. Claimants' request for PA services in their respective SDP budgets to address Claimants' behavioral issues are, in part, addressed through generic resources or other SDP budgeted services. For example, in Claimant O's March 14, 2024 IPP, their goal to decrease unacceptable social behaviors is to be accomplished, in part, by working with day program staff. Claimant O's SDP budget does not identify this goal with Day Program service. In Claimant N's March 14, 2024 IPP, their goal of addressing her behavioral issues is to be decreased with the use of psychiatry services.

c. Claimants' SDP budget and spending plan should be reassessed to ensure the participants are achieving outcomes set forth in their respective IPP and ensure their health and safety, pursuant to Welfare and Institutions Code section 4658.8, subdivision (j).

6. Within 30 calendar days of the date of this final decision, VMRC shall hold separate person-centered planning process IPP meetings with the IPP team pursuant to Welfare and Institutions Code section 4685.8, subdivisions (j) and (m)(1)(A)(ii), to review and, if necessary, revise either of claimants' SDP budget. The IPP meeting shall also address including PA services for either claimant. As part of this IPP meeting VMRC shall advise claimants about the rights they have under Welfare and Institutions Code sections 4710, et. seq. and 4731, along with contact information for the Office of Clients Rights Advocacy.

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 July 11, 2024.

Original signed by:

Nancy Bargmann, Director