

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

In the Matter of:

CLAIMANT

v.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

OAH Nos. 2024050816 and 2024060258

DDS Nos. CS0016987 and CS0017299

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on June 28, 2024, by videoconference.

Claimant appeared on her own behalf.

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

The matter was submitted for decision on June 28, 2024.

ISSUES

1. Must RCEB allow claimant to use funds from her Self-Determination Program budget to pay travel expenses for claimant to travel out of state with a personal attendant for a medical appointment?
2. Must RCEB direct claimant's financial management service to comply with online advertising platforms' policies requiring placing a credit card on file, so that claimant can use these platforms to hire staff?

FACTUAL FINDINGS

1. Claimant is an adult in her 40s with cerebral palsy who lives independently. Pursuant to an Individual Program Plan (IPP), RCEB funds supportive living services for claimant. Since August 2023, these funds are managed through the Self-Determination Program (SDP). All payments for services through the SDP must be made through a financial management service (FMS). Claimant relies on her supported living services personal attendants to accompany her to medical appointments.
2. Due to claimant's cerebral palsy and other medical conditions, she requires orthotics. Her orthotics are now approximately 10 years old and are no longer effective. These orthotics were made for her at a clinic in New York with specialized expertise in casting orthotics for people with cerebral palsy. Claimant has tried to find a podiatrist locally to procure orthotics but has been unable to find one with similar expertise. She once purchased a pair of orthotics from a California practitioner but they caused her pain and she could not use them. Claimant's healthcare insurer will

pay for orthotics, but only periodically. If claimant obtains a pair of orthotics that are unsatisfactory, her insurer will not pay for another pair for at least a year or longer.

3. Claimant began experiencing severe pain in her feet and legs in January 2024. She contacted RCEB in early February to inquire whether she could use funds from her SDP budget to pay for an attendant to travel with her to New York, so she could return to the clinic that specializes in patients with cerebral palsy. Claimant is unable to travel alone due to her disability. In the past, her parents have accompanied her on trips, but at present they are unable to do so due to health issues.

4. Claimant's case manager responded to her that SDP funds can only be used in California.

5. Claimant persisted in requesting permission to use SDP funds to travel with a personal attendant to an appointment with the podiatrist in New York. She received the following response:

SDP funds cannot be used for airfare, lodging, or food for the Participant. For funding of medical needs related to the RCEB disability, we need to have a denial letter from insurance denying the **service**, not the provider. A personal attendant *could* travel with someone out of the state, for a short and determinate period; however, RCEB is not responsible for OT, payment accommodations though [*sic*] FMS to purchase tickets, travel advisories', costs associated with the trip while there, lodging for the Participant, etc. The trip would have to be completed within the time of their SDP period and additional funds will not be added to

cover the cost of this (if we determine we are responsible for paying based on the denial letter).

6. Claimant requested clarification and noted that she was not asking for additional funds, that her healthcare insurer would be paying for the podiatry services, and that she would not need to travel to New York more than once.

7. Claimant attended a Zoom meeting with RCEB to further explain her situation. On March 13, 2024, RCEB notified claimant that it would be submitting a request to the Department of Developmental Services (DDS) for authorization to pay expenses for a personal attendant to accompany claimant to New York for her orthotics appointment. On March 15, 2024, RCEB sent a "Request for DDS to Approve Out-Of-State Provider" to DDS.

8. RCEB notified claimant that DDS required additional information. Claimant has cooperated with every request. Claimant has continued to report to RCEB that due to her lack of appropriate orthotics, she is in constant pain, whether standing, sitting, or lying down. Claimant is extremely frustrated in the delay in receiving a response to her request, because her symptoms have worsened.

9. On June 20, 2024, RCEB notified claimant that DDS required that an occupational therapist perform an assessment. The occupational therapist contacted claimant that day. A list of in-state providers was provided to claimant, but as far as claimant could determine, none had expertise in casting orthotics for adults with cerebral palsy. As of the date of the hearing, RCEB had not reported the occupational therapist's recommendation to DDS.

10. RCEB fully supports claimant's request for out of state travel for orthotics but is unable to grant it without approval from DDS. As of the date of the hearing, DDS had not made a determination on RCEB's request for approval.

11. Claimant hires her own attendants, and her SDP budget includes advertising expenses for hiring staff. Recently, claimant's FMS, Mains'l, notified claimant that it will not place a credit card on file with advertising platforms that require one. This has limited claimant's ability to place ads on some platforms, including care.com and Indeed. She has still been able to place ads on craigslist and ZipRecruiter because these platforms do not require a credit card on file. Claimant requests that Mains'l be directed to place a credit card on file. She explained that no charges are made to the card until an ad is placed and an invoice is sent.

12. RCEB stated that it cannot control Mains'l's internal business policies and cannot order Mains'l to change its policy regarding placing a credit card on file.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman 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.) Regional centers have the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting

forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

2. The Self-Determination Program allows regional center consumers to have greater control over the supports and services needed to meet their IPP objectives. (§ 4685.8.)

3. The Lanterman Act restricts the use of regional center funds to purchase services outside of California. Section 4519, subdivision (a), provides that:

a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the consumer's individual program plan. . . Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options

considered and an explanation of why these options cannot meet the consumer's needs.

4. Claimant requests that she be permitted to use SDP funds to pay travel expenses for her to travel with a California-based attendant to a podiatric appointment in New York. The actual podiatric services will be paid for by her insurer. Claimant has established that she has an urgent need for suitable orthotics and has been unable to locate a comparable podiatrist in California who specializes in adult patients with cerebral palsy. Her request should be granted.

5. Claimant's SDP budget includes payment of advertising expenses for her to hire attendants. Mains'l's refusal to place a credit card on file is unreasonably limiting her ability to place these ads and maintain the staff she needs. Her request for an order directing Mains'l to cooperate with online advertisers' policies should be granted.

ORDER

1. Claimant is authorized to use SDP funds to pay travel expenses for claimant to travel to New York with an attendant for a single podiatric appointment.
2. RCEB shall direct Mains'l to cooperate with online advertisers' policies so that claimant can use the platforms to hire staff.

DATE:

KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024050816 and 2024060258

Vs.

DECISION BY THE DIRECTOR

Regional Center of East Bay,

Respondent.

ORDER OF DECISION

On July 2, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter. While the matter was being adjudicated with OAH, the Department of Developmental Services (Department) was still awaiting necessary information to review and approve the out-of-state service. The regional center finally provided the necessary information as an exhibit during the OAH proceedings. The Department takes judicial notice of the material submitted by the parties during the OAH proceeding. (See *City and County of San Francisco v. Carraro* (1963) 220 Cal.App.2d 509, 527 [“A court may judicially notice [of] . . . proceedings in the same case.”].) Having finally received the necessary information, on July 22, 2024, the Department approved claimant’s April 26, 2024, request that Regional Center of the East Bay (RCEB) fund claimant’s and claimant’s personal attendant’s travel expenses to New York for claimant to receive podiatric and orthotic services. (See Welf. & Inst. Code, § 4519, subd. (a).)

Given the Department’s approval of the out-of-state service, this case is now moot, and the Proposed Decision is rejected. (See *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454 [a “case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief”].) Moreover, since OAH adjudicated the matter before the Department approved or denied the out-of-state service and the Department was not a party to the proceeding, OAH lacked the authority and jurisdiction to issue any decision directing that claimant’s out-of-state service be approved or funded.

Additionally, that portion of the Proposed Decision requiring RCEB to direct the third-party FMS Mains’l to cooperate with online advertisers’ policies so that claimant could use the platform to hire

staff is also rejected. OAH lacks authority to direct action against a non-party and RCEB has no authority to require non-party Mains'l to take any such action.

Given the unique circumstances of this case, and to avoid any further unnecessary delay in claimant receiving needed medical services, pursuant to Welfare and Institutions Code section 4519, RCEB shall fund travel expense of claimant and claimant's attendant outside of claimant's SDP budget and outside of the Home Community Based Services waiver as approved by the Department.

This Order of 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 July 30, 2024.

Original signed by:

Nancy Bargmann, Director