

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

In the Matter of:

CLAIMANT

v.

SAN DIEGO REGIONAL CENTER, Service Agency

DDS No. CS0017460

OAH No. 2024051038

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 15, 2024.

Neil Kramer, Fair Hearings Manager, represented San Diego Regional Center (SDRC).

Claimant's father represented claimant, who was not present. Claimant's mother, who did not authorize or agree to the appeal, was also present, as an observer.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on July 15, 2024.

ISSUES

1. Is SDRC permitted to change claimant's consumer services coordinator (CSC), as requested by claimant's father, given that claimant's mother disagrees with the request, and would like to keep claimant's current CSC in place?

2. Is SDRC permitted to schedule an Individual Program Plan (IPP) meeting for claimant with only one parent in attendance at the meeting, or must both parents be in attendance?

3. Is SDRC permitted to update the language within claimant's IPP when both claimant's parents do not agree to the change?

SUMMARY

Claimant is a consumer of SDRC. Claimant's parents are divorced and share joint legal custody of claimant. There is a Stipulation and Order in place from 2014, issued by Judge Robert C. Longstreth, Superior Court of California, County of San Diego (Superior Court Order), concerning the rights and obligations of each parent relating to claimant. Although SDRC has interacted with both parents unilaterally in the past, claimant's mother is not in agreement with several requests made by claimant's father concerning claimant's IPP and how SDRC is to interact with claimant and her parents going forward (as set forth in the Issues). SDRC took the position that it cannot do anything with respect to claimant's IPP goals or services (i.e., make any changes to

claimant's IPP, schedule IPP meetings, or change claimant's CSC) unless both parents agree. SDRC also took the position that it cannot meet unilaterally with either parent because the Superior Court Order gives parents joint legal custody. Claimant's father brought this appeal and argued that joint legal custody entitles him to meet unilaterally with SDRC concerning claimant and permits SDRC to make the changes he requested to claimant's IPP, despite claimant's mother's opposition. SDRC indicated it is more than willing to sit down with both parents to try to come to a resolution, but to date, has not been able to do so. SDRC argued that neither it nor OAH have jurisdiction to make changes to the Superior Court Order, and as such, the issues in this matter should be resolved by the Superior Court.

The issues here are easily resolved by reference to the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) and the Superior Court Order. Nothing in the Lanterman Act requires two parents to be present to have an IPP meeting or otherwise make decisions concerning a child. As such, SDRC may communicate and/or meet with any parent unilaterally. That does not change simply because parents are divorced.

However, in this situation, there is a Superior Court Order in place that controls how each parent may make decisions concerning claimant. Joint legal custody entitles either parent to make decisions as it relates to claimant, irrespective of the other. But where, as here, there is disagreement between claimant's mother and father regarding "medical matters," the Superior Court Order grants claimant's mother sole legal custody. Developmental disabilities are medical matters. Thus, any disagreement that arises concerning how SDRC interacts with claimant's parents, develops claimant's IPP, makes changes to claimant's IPP, or delivers services and supports to claimant, must

be resolved in favor of claimant's mother, absent further instruction by the Superior Court. Accordingly, claimant's father's appeal must be denied.

FACTUAL FINDINGS

1. Claimant, a 17-year-old girl, is a consumer of SDRC services under the category of intellectual developmental disorder (IDD).¹ Claimant's parents have been divorced for 15 years. Claimant lives primarily with her mother and visits her father. According to claimant's most recent IPP, dated February 20, 2023, claimant's parents provide a supportive environment for her and ensure she is receiving all available and needed services.

2. On February 5, 2024, a meeting was held relating to the drafting of an IPP addendum, to change claimant's goals. Specifically, claimant's father requested a change relating to claimant's cellular phone use. Claimant's mother disagreed with this change and did not sign the IPP Addendum. Thereafter, claimant's father also requested claimant's CSC be changed, and that SDRC meet with him unilaterally (i.e.,

¹ The Lanterman Act was amended long ago to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The more current DSM-5, text revision (DSM-5-TR) no longer uses the term "intellectual disability" and instead refers to the condition as IDD. In this decision, the terms "mental retardation," "intellectual disability," and "IDD" mean the same thing.

outside claimant's mother's presence). Claimant's mother did not agree to those requests.

3. On April 4, 2024, claimant's mother provided a copy of the Superior Court Order to SDRC. It is not known why SDRC did not have it on file prior to that date. The Superior Court order, dated June 16, 2014, in Case No. D523320, sets forth rights, obligations, and other arrangements pertaining to custody and visitation of claimant and her brother following the divorce of claimant's parents. Claimant lives primarily with her mother, but her father has visitation approximately every other weekend. The paragraph at issue in this case, paragraph two, reads:

The parties shall share joint legal custody of [claimant and claimant's brother], provided a Parent Coordinator is in place to ensure that the needs of the children are addressed in a timely manner in the case of disagreement. If a Parent Coordinator is not in place, [claimant's mother] shall have sole legal custody of the children regarding medical matters.

4. After reviewing the Superior Court Order, SDRC took the position that no changes can be made to claimant's IPP or services without agreement of both parents, and that SDRC cannot meet unilaterally with either parent. On May 10, 2024, SDRC sent a letter to claimant's parents explaining its position:

Thank you both for speaking with me these last three weeks regarding the concerns raised about [claimant's] IPP. Specifically, [claimant's father] requests a modification be made to the wording of outcome step #6 related to

cellphone usage, that the narrative portion of [claimant's] IPP be modified, and that [claimant] receive a new service coordinator.

This letter is to explain the regional center's proposed decision. We are denying [claimant's father's] request for a new service coordinator.

We are doing that because the two of you, [claimant's] parents, currently disagree on this course of action. As both parents currently share responsibility and authority for making decisions about [claimant's] services with SDRC, both need to agree with a change in service. Should both of you decide and agree that you would like a new Service Coordinator, we can explore other options.

I believe you have agreed with this decision because after speaking on the phone, we have agreed to meet as a planning team at a date to be determined (SDRC will facilitate scheduling) to discuss this situation and work collaboratively to determine a plan moving forward. As mentioned, I am willing to attend this meeting personally to facilitate this discussion and help the team find a resolution, keeping [claimant's] needs as they relate to services and supports from SDRC at the forefront of the discussion.

Additionally, I would like to share the following information with you; [claimant] is about to turn 18 years old, and as

such will be experiencing several, not insignificant changes in her life. She will soon be entering adulthood, exiting her high school program, likely transitioning into an Adult Transition program, and charting a course forward for her life outside of the school system. SDRC is here to support [claimant] throughout all of this, and it is important that all of the members of [claimant's] planning team (including [claimant]) work together to ensure she is receiving the best, most appropriate level of support that SDRC can provide

5. On May 28, 2024, claimant's father filed an appeal that stated the following:

1) RC will not schedule IPP/IPA to update client information without 2nd parent's (divorced) attendance at meeting.

2) RC will not reassign Service Coordinator without 2nd parent's approval. I requested working with a new Service Coordinator because of what I feel are inappropriate email communications.

3) Proposed update to [claimant's] goal #6 including the word "facilitate" cannot be updated because 2nd parent does not agree. Per Service Coordinator and Program Mgr, the word "facilitate" is not person-centered and word cannot be used in a goal.

6. On June 4, 2024, representatives from SDRC and both claimant's parents met for an informal meeting concerning claimant's father's appeal. Following the informal meeting, SDRC memorialized the meeting discussions in a letter. That letter read:

The issue to be decided is as follows:

1. Shall the SDRC change [claimant's] Service Coordinator?
2. Shall the SDRC schedule an Individual Program Plan (IPP) Meeting for [claimant] with only one divorced parent's attendance at the meeting?
3. Shall the SDRC update the language within [claimant's] IPP when both parents do not agree with the change?

Based on the information presented at the informal meeting, a review of [Claimant's] case record, a review of the Lanterman Developmental Disabilities Services Act, and the Court order issued by Judge Robert Longstreth on June 16, 2014, my decision is as follows:

1. Your request to change [claimant's] Service Coordinator is denied.
2. Your request for SDRC to schedule an IPP meeting with [claimant] with only one parent's attendance is denied.

3. Your request for SDRC to update language within [claimant's] IPP when both parents do not agree with the change is denied.

7. Claimant's father appealed this decision and this hearing followed.

8. Zachary Guzik is the Assistant Director of Children and Adolescent Services for SDRC and testified as follows: He understands claimant's father's concerns and SDRC is more than willing to meet with both parents to try to come to a resolution regarding this case. However, SDRC's position is that because both parents have joint legal custody, both parents need to be in agreement for any changes to be made to claimant's IPP, and if an IPP meeting is held, both parents need to be present. At this point, even though claimant is due for her current IPP meeting, everything is stalled. Both parents are also seeking information about the conservatorship process.

9. Claimant's father's testimony and documents he submitted are summarized as follows: SDRC has communicated in the past with only claimant's mother² and not notified him. SDRC is not interested in claimant's well-being because

² Records submitted by claimant's father (consumer ID notes and email communications relating to claimant) show that for many years, SDRC has been communicating with claimant's mother concerning claimant's services and supports without notifying claimant's father, and also scheduling IPP meetings where only claimant's mother was in attendance, rather than both parents. SDRC did not dispute that occurred, but noted they also did not have the Superior Court Order until a few months ago, which has now changed its position regarding interaction with claimant's

they are not considering the changes he wants to her IPP. SDRC should be copying both parents on all communications. Joint legal custody in California means both parents can make decisions exclusive of the other parent, so it is not right to deny him the requested changes to claimant's IPP, deny his request for a new service coordinator, or refuse to meet with him without claimant's mother being present.

As claimant's father, he represents claimant as her agent and although claimant's mother is doing the best she can, for regional center to take away his right to help claimant, only hurts claimant. Claimant has regressed, she has lost some activities of daily living, and there have been some violations of the custody order with respect to visitation, especially during COVID, which all affect his ability to act as an agent for his daughter. Claimant's father does not believe anything in the Lanterman Act requires both parents to consent to change information in an IPP; if one parent does not agree to something, SDRC can just put a note in the IPP stating as much.

Regarding paragraph two of the Superior Court Order concerning a Parent Coordinator being in place to resolve disagreements, although there was a Parent Coordinator in place for the first few years of the divorce 15 years ago, there has not been one in place since that time.

Claimant's father submitted a printout of a webpage from the California Courts website from the "Custody & Parenting Time (Visitation)" tab, regarding joint legal custody. That printout read: "With joint legal custody both

parents (i.e., that they both must be present or in agreement to any IPP or service changes).

parents have the right to make decisions and either parent can make a decision alone. But to avoid having problems and ending up back in court, both parents should communicate with each other and cooperate in decisions together.”

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state’s responsibility for persons with developmental disabilities and the state’s duty to establish services for those individuals.

3. The Department of Developmental Services (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.)

4. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

5. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability."

(*Ibid.*) Handicapping conditions that are “solely physical in nature” do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

6. California Code of Regulations, title 17, section 54000, subdivision (a), provides:

(a) “Developmental Disability” means a disability that is attributable to [intellectual disability], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to [intellectual disability] or to require treatment similar to that required for individuals with [intellectual disability].

7. In this proceeding, claimant’s father has the burden of proof to establish by a preponderance of the evidence that he is entitled to require SDRC change claimant’s consumer services coordinator without claimant’s mother’s approval; meet with SDRC outside the presence of claimant’s mother; and require SDRC update the language in claimant’s IPP without claimant’s mother’s approval. (Evid. Code, §§ 115; 500.)

Discussion

8. At the commencement of hearing, SDRC made a motion to dismiss the matter on the grounds that OAH does not have jurisdiction to consider the issues raised in the appeal. Specifically, SDRC argued that the Superior Court having jurisdiction over the custody case pertaining to claimant must decide whether one parent can unilaterally make changes or decisions to claimant’s IPP, or the services and supports she receives from SDRC, even if the other parent disagrees. Claimant’s father opposed the motion.

9. OAH has jurisdiction to hear an appeal brought pursuant to the fair hearing procedures outlined in Welfare and Institutions Code section 4712. In this case, the issues to be decided, noted above, arise under the Lanterman Act. Integral to rendering a decision as to those issues is the construction of paragraph two of the Superior Court Order relating to joint custody of claimant. While OAH does not have jurisdiction to make *changes* to the Superior Court Order that governs the rights and obligations of claimant's parents relating to claimant specified in that order, OAH does have jurisdiction to *interpret* the language of the Superior Court Order to resolve the issues in this case.

10. Claimant's mother and father are divorced. They share joint legal custody of claimant. Joint legal custody means both parents have the legal authority to make decisions regarding claimant, and do not need the other's approval. However, the Superior Court Order limits that broad authority in the cases of disagreement. It makes it clear that, if there is any disagreement, and no Parent Coordinator in place, claimant's mother has "sole legal custody of the children" regarding "medical matters."

11. An individual qualifies for regional center services if he or she has a qualified developmental disability. Section 4512 defines a developmental disability as a substantially disabling condition that originates before the age of 18, which is expected to continue indefinitely, and is limited to IDD, cerebral palsy, epilepsy, autism, and other conditions closely related to IDD or that require treatment similar to IDD. All of the conditions that qualify a person for regional center services are medical conditions; they arose because of a problem regarding how the individual developed; and as a result, regional center consumers experience challenges that manifest by way of functional limitations. All services and supports provided by regional centers are aimed at ameliorating the effects produced by each disabling condition.

Developmental disorders are, therefore, “medical matters” within the meaning of the Superior Court Order, and all business conducted by regional centers on claimant’s behalf pertain to “medical matters.”

12. There is no Parent Coordinator in place to resolve disagreements concerning claimant’s services from SDRC. Claimant’s father submitted a webpage printout from the court indicating that with joint legal custody, each parent can make decisions alone. While true, the Superior Court Order modifies that general legal proposition, in favor of claimant’s mother with respect to “medical matters.” By doing so, the Superior Court ensured that there is a final decision maker with respect to medical matters to ensure that claimant is not denied any service, support, treatment, or anything else pertaining to her well-being. So, to be clear, claimant’s mother has sole (and final) legal decision-making authority with respect to “medical matters,” which includes all interactions, services, and supports with and by SDRC, in the event of a disagreement with claimant’s father.

13. The disagreements at issue in this case are: claimant’s father would like a new CSC appointed, while claimant’s mother would like to keep claimant’s current CSC; claimant’s father would like to meet with SDRC concerning claimant outside the presence of claimant’s mother, while claimant’s mother disagrees with him doing so; and claimant’s father has requested certain changes be made to claimant’s IPP with which claimant’s mother disagrees. Given that there is disagreement on all these fronts, claimant’s mother has sole legal authority to determine the resolution of each issue. Notably, claimant’s mother has not expressed a disagreement with SDRC communicating with claimant’s father concerning claimant’s IPP or services and supports being received by claimant, and although it is not obligated to do so, SDRC

should continue to foster a collaborative environment with both parents in fulfilling its obligations to claimant under the Lanterman Act.

14. Finally, the Lanterman Act does not require both parents to be present during an IPP meeting, or any other interactions concerning claimant. As such, there is nothing inappropriate with SDRC meeting with claimant's mother alone, or without the approval of claimant's father, as it apparently has done so for a very long time. Such conduct does not violate either the Superior Court Order or the Lanterman Act.

15. This conclusion results from the intent and spirit of the Lanterman Act and the broad language of the Superior Court Order and works to ensure services and supports claimant needs are not blocked or delayed due to disagreement between claimant's parents, which was the intent of the Superior Court's Order, and shall govern how claimant's parents interact with SDRC moving forward, absent any further direction from the Superior Court.

ORDER

Claimant's appeal is denied. SDRC shall not 1) change claimant's consumer services coordinator without claimant's mother's approval; 2) meet with claimant's father outside the presence of claimant's mother (unless she agrees); or make any changes to the language in claimant's IPP requested by claimant's father unless claimant's mother agrees.

SDRC does not need both parents present to conduct any business related to claimant with respect to its obligations under the Lanterman Act. It may do so with only claimant's mother, unless a court order supersedes the June 16, 2014, Superior Court Order.

SDRC should, but is not required by either the Lanterman Act or the Superior Court Order, keep claimant's father apprised of all happenings with claimant.

DATE: July 19, 2024

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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.