

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

**In the Matter of the Request for Funding Paid Vacation  
Services for:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**DDS Case No. CS0018154**

**OAH No. 2024060414**

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 24, 2024, by videoconference.

Claimant represented herself and was assisted by Doug Pascover.

Keri Neal, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 24, 2024.

## **ISSUE**

IRC asserted the issue was whether it should approve a movement of funds in claimant's spending plan to authorize 40 hours per year of paid vacation time for claimant's full-time employees. Claimant asserted she was not requesting a movement of funds, she was simply requesting that her spending plan clarify that her approved funds include paying 40 hours per year of vacation time which had been authorized in the past. Thus, the issue to be decided is whether IRC is required to make that clarification in claimant's spending plan.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant, a 57-year-old female, resides in her own home. According to her Client Development Evaluation Report (CDER), she is eligible for regional center services based on her diagnosis of epilepsy, although at one point in the hearing claimant asserted she did not have epilepsy so her eligibility was unclear. Documents introduced at hearing indicated claimant's primary diagnosis was PNES-Psychogenic Non-Epileptic Seizures. Claimant also has several other, non-qualifying diagnoses.

2. Claimant participates in the Self-Determination Program (SDP). Her current budget for 2023-2024 was approved for a total of \$208,643.82. The approved plan allocates funds by categories, services, and codes. Claimant's budget includes services for Living Arrangement, Code 320.

3. IRC denied claimant's request to include 40 hours per year of paid vacation time for full-time employees as part of her SDP spending plan. IRC issued a notice of action denying that request, claimant appealed, and this hearing followed.

4. IRC's Position Statement and claimant's rebuttal thereto set forth the parties' respective positions.

## **Self-Determination Program**

5. In 2013, the Legislature enacted Welfare and Institutions Code section 4685.8, requiring the Department of Developmental Services (DDS) to implement a statewide SDP to provide individuals and their families with more freedom, control, and responsibility in choosing services and supports to help them meet objectives in their Individual Program Plan. DDS began pilot programs in certain regional centers, and oversaw statewide working groups from various regional centers and consumer groups to develop policies and procedures to implement the program.

6. Starting July 1, 2021, the SDP was available to all eligible regional center consumers, who wished to use it. All regional center consumers now have the option to have their services delivered through the SDP model or continue to receive services through the traditional model. With the SDP model, while participants have more choice over which services they receive and who delivers those services, participants also have more responsibility because they must manage their own budget resources with the assistance of a Financial Management Service (FMS) and support from the regional centers. The regional centers must certify that the cost of the SDP does not exceed the cost if the individual were to remain in the traditional services model.

7. After the budget is certified, the participant and regional center must develop a spending plan identifying the cost of each good, service, and support that

will be purchased with regional center funds. Each item in the spending plan must relate to goals in the participant's Individualized Program Plan (IPP) and be identified by a specific service code from a list of codes DDS publishes. A participant can annually transfer up to ten percent of the funds in any budget category to other budget categories without regional center approval. Transfers exceeding ten percent require regional center approval.

8. Participants may also create Person Centered Plans, but these plans do not obligate regional centers to fund any of the items listed therein, nor must regional centers approve those plans. However, regional centers are required to certify individual SDP budgets and review spending plans to ensure compliance with applicable laws and federally-approved categories.

## **Evidence Introduced at Hearing**

9. IRC Consumer Services Coordinator (CSC) Mirianne Kirk, IRC SDP Program Manager and Systems of Care Program Manager (PM) Alejandra Rivera, claimant, and Mr. Pascover testified, and documents were introduced. The findings reached in this decision are based thereon.

10. Claimant's Person Centered Plans, created by claimant with the assistance of Mr. Pascover and others who were not regional center employees, documented her needs, supports, goals, outcomes, other personal information, and a budget narrative. The Person Centered Plans clearly documented that claimant's "full-time employed staff would receive 40 hours of paid vacation per year, included in the budget." Claimant testified that these plans are the only ones prepared "by" her, as opposed to other documents which are prepared "for" her. The plans are where she gets to tell her story. Her 2023 Person Centered Plan referenced the negative incidents she had with

prior caregivers. PM Rivera testified that Person Centered Plans do not require regional central approval, but are considered when creating regional center certified budgets and reviewing spending plans.

11. Claimant's 2024 IPP described claimant's present living arrangement, approved budget, her medical condition and needs, her approved services, her goals, and desired outcomes. Nothing in that IPP mentioned vacation pay for claimant's staff.

12. Signed SDP Worksheets to Determine Spending Plan listed the budget category, SDP services, SDP service codes, amounts paid per year, and descriptions of the services provided. Nothing in those worksheets specifically referenced vacation pay for claimant's staff.

13. An April 24, 2024, Movement of Funds Breakdown documented funds being transferred to give claimant's full-time caregivers 40 hours of paid vacation. However, claimant asserted, she was not asking to move funds, or that her budget be increased; she was simply asking that her budget be clarified to show that her authorized funds were being used to pay vacation for full-time staff.

14. Emails documented correspondence between the parties regarding the vacation pay request.

15. Employment documents set forth claimant's employee's agreement to provide services for claimant at an agreed-upon hourly rate. Paid vacation time was not specifically listed as an employee benefit.

16. The SDP Program Service Codes document states that service code 320 is used for "Community Living Supports (Individual and Agency)." Community Living Supports are "services that facilitate independence and promote community

integration for participants, regardless of the community living arrangement. Services include support and assistance with socialization, personal skill development, community participation, recreation and leisure, and home and personal care, among others, as further described below. Payments for Community Living Supports do not include the cost for room and board.” Further:

Community Living Supports are provided to a participant in his/her home and community to achieve, improve, and/or maintain social and adaptive skills necessary to enable the participant to reside in the community and to participate as independently as possible. Services are provided in environments that support participant comfort, independence, preferences and the use of technology. The participant’s choices are incorporated into the services and supports received. The participant has unrestricted access, and the participant’s essential personal rights of privacy, dignity and respect, and freedom from coercion are protected.

The service settings are integrated in, and facilitate each participant’s full access to the greater community, which includes opportunities for each participant to engage in community life, control personal resources, and receive services in the community.

The specific services provided to each participant will vary based on the individual, the individual’s preferences and the community setting chosen. The specific types and mix of

supports that an individual receives as well as any special provider qualifications shall be specified in the [IPP].

The document then listed seven items that described different types of possible Community Living Supports. Vacation pay is not listed as one of those items.

17. The Setting Assessment Tool stated that the federal Home and Community-Based Services (HCBS) Final Rule requires individuals with disabilities be provided full access to the benefits of community living, and that services be offered in settings that are integrated in the community. This assessment tool must be completed to determine eligibility for SDP services.

18. The January 13, 2022, DDS Directive for SDP Goods and Services provided guidance to determine what costs can be included in the SDP budget. As stated, before any good or service can be included in an individual budget or SDP spending plan, "the planning team must first be clear about how the good or service addresses an identified need or goal in the IPP." Further, the directive stated that, per DDS's January 11, 2019, directive, "SDP funds can only be used for goods and services that have been approved by the federal Centers for Medicare and Medicaid Services and are not available through other funding services (e.g., Medi-Cal, In-Home Supportive Services, schools, etc.)."

19. November 22, 2023, and July 8, 2024, Updated Goods and Services Directives from DDS added services that could be funded outside an SDP participant's budget. Those added services were not relevant to this hearing. Enclosure A attached to these updated directives noted that "after the individual budget amount is determined, the participant develops a spending plan to use the available funds to purchase goods and services which meet their [sic] IPP goals and objectives." The

enclosures each referenced several steps to consider when developing the spending plan. Step 6 stated in part: "Once the spending plan has been completed, the regional center reviews the spending plan for compliance with state law, including verification that the identified goods and services are eligible for federal financial participation and are not used to fund goods or services that are available from generic agencies."

20. DDS's April 25, 2024, Directive was issued to provide guidance regarding employer burden and other employment-related costs. The Directive stated: "Employer burden and other employment-related costs are applicable to employing an SDP participant's staff under the co-employer or the sole employer models." PM Rivera testified that claimant employed staff under the sole employer model. The April 25, 2024, Directive further stated:

Employer burden costs are required to be incorporated in the SDP participant's spending plan. Other employment-related costs may be required by law or company policy or they may be optional costs agreed to by the SDP participant and their [s/c] employee. The SDP participant's spending plan shall only cover the costs of the services and supports listed in their [s/c] spending plan, including the employer burden and employment-related costs identified in this directive. No other costs shall be included in an SDP participant's spending plan.

#### Employer Burden

Employer burden costs shall be identified in and paid from the SDP participant spending plan and are limited to:



- Federal Insurance Contributions Act (FICA Taxes)
- Federal Unemployment Tax Act (FUTA Taxes)
- State Unemployment Tax (SUTA Taxes)
- Employment Training Tax (ETT)
- Workers Compensation Insurance
- Paid Sick Leave

The Directive stated further:

Other Employment-Related Costs

A participant's FMS may be required to offer certain optional benefits such as Affordable Care Act health insurance or the CalSavers Retirement Savings Program to an SDP participant's employees. An FMS may also have benefits that they offer to all of their employees, including those supporting SDP participants, such as dental and vision care. The FMS shall discuss these benefits and the impact of the associated costs on the spending plan during initial service planning and at the time of any changes.

Although not required, a participant and their [sic] staff may agree to include other costs relating to employing staff such as:

- Health Insurance

- Retirement Benefits
- Overtime incurred while working with the SDP participant

21. A chart outlining the FMS model comparison set forth the tasks and responsibilities for payment depending on the FMS model.

22. CSC Kirk testified that claimant requested information for how to bill for staff vacation time after the FMS vendor wanted to know how to bill that time. CSC Kirk presented that request to the IRC SDP team, who advised that claimant had to complete a Movement of Funds form to document how the vacation time would be paid. Thereafter, the request to move funds was denied because IRC determined that vacation pay is not a fund that can be paid.

23. PM Rivera testified that regional centers are required to approve and certify SDP budgets; they do not approve Person Centered Plans as those are SDP participants' documents setting forth the various items participants are requesting. SDP budgets can be amended as needed, and there can be a movement of funds from one service to another. SDP budgets may not fund goods and services that cannot be offered under the traditional model. Regional centers review spending plans to ensure the services are allowed. Vacation time was not listed as an approved expenditure in claimant's spending plans, nor was it referenced in claimant's worksheets. IRC is not required to fund anything that is not itemized on an approved spending plan.

24. PM Rivera testified that service code 320, Community Living Support, funds those things that allow an individual to be supported in the home or community. This service code does not reference or include paid vacation time. Further, regional centers are required to comply with the laws and verify that a good

or service being requested is eligible for federal reimbursement. Paid vacation time is not a federally reimbursable service. Moreover, paid vacation time does not address any of claimant's IPP needs or goals.

25. Mr. Pascover and claimant testified regarding paid vacation time. It has always been given to claimant's staff, and is clearly set out in claimant's Person Centered Plans. It is offered to keep claimant competitive with the job market and to meet the goals outlined in claimant's IPP. Claimant described the staff turnover and issues hiring full-time staff she has encountered, and how offering paid vacation time enables her to secure full-time staff. In the past, when the FMS vendor did not want to pay vacation time, the FMS vendor agreed to pay it after being provided with a copy of claimant's Person Centered Plan. This time, when there was an issue regarding paying vacation time, IRC told claimant she would have to complete a Movement of Funds form. After claimant did so, IRC then advised it would not fund paid vacation time. Claimant said she is not seeking an increase in her budget or to move funds; she is simply seeking to have her budget clarified to state that paid vacation time is one of claimant's authorized services, a service that has been paid in the past.

26. Mr. Pascover and claimant also noted that workers' compensation and retirement benefits are not set out in claimant's budget, yet those are paid to claimant's staff. However, while that may be true, those services are clearly stated in the April 25, 2024, DDS Directive as an authorized service; paid vacation is not.

27. Claimant expressed her gratitude to IRC for the services it has provided her and discussed the benefits of SDP to her, a program she strongly supports.

## **LEGAL CONCLUSIONS**

### **Purpose of the Lanterman Act**

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is 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.” (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

### **Burden and Standard of Proof**

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, footnote 5.) In this case, claimant bears the burden to prove her budget should be clarified to include 40 hours per year of paid vacation time.

3. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. It is “evidence that has more convincing force than that opposed to it.” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **The Lanterman Act, DDS, and Regional Centers**

5. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

6. Welfare and Institutions Code section 4501 sets forth the state's responsibility and duties.

7. Welfare and Institutions Code section 4512 defines services and supports.

8. DDS is the state agency 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.) In order to comply with its statutory mandate, DDS contracts with private non-profit community 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.)

9. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.2.

10. Welfare and Institutions Code section 4685.8 requires DDS to implement a state wide SDP which shall be available to all regional centers. Subdivisions (c)(6) and (c)(7), respectively, define "Self-determination" and "Spending Plan." Subdivision (d) makes participation in the SDP voluntary. Subdivision (d)(3)(C) mandates that the SDP "participant shall only purchase services and supports necessary to implement their IPP and shall comply with any and all other terms and conditions for participation in the" SDP. Subdivision (k) authorizes an SDP participant to "implement their IPP, including choosing and purchasing the services and supports" that are "necessary to implement

the plan” and a “regional center shall not prohibit the purchase of any service or support that is otherwise allowable.” Subdivision (r)(5) requires regional centers, “in addition to annual certification, [to] conduct an additional review of all final individual budgets . . . .” Subdivision (r)(6) requires the “spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies.” Subdivision (y)(3)(D) makes SDP participants accountable for the use of public dollars.

## **Evaluation**

11. The use of the terms “such as” in the April 25, 2024, DDS Directive regarding “Other Employment-Related Costs,” suggests the costs listed are non-exhaustive, and the list of costs is exemplary only. As written, absent anything else, that Directive would not prohibit vacation hours from being included as an employment-related cost, especially since that Directive allows the SDP participant and the SDP participant’s employee to agree to other optional employment-related costs.

However, the entirety of the code sections, regulations, and Directives must be considered. As those provide, regional centers are prohibited from funding goods and services that are not federally reimbursable. Paid vacation time is not a federally reimbursable good or service, so cannot be paid. Even though paid vacation time may have been funded in the past, IRC did not approve that payment since it was not specifically identified in claimant’s budget and spending plans. Although paid vacation was referenced in claimant’s Person Centered Plans, those are documents IRC is not required to approve, so the statements in those plans did not obligate IRC to pay vacation time or authorize those payments to be made.

On this record, claimant’s appeal must be denied.

## **ORDER**

Claimant's appeal of IRC's denial of her request that her spending plan clarify that the funds approved in her spending plan and budget include 40 hours per year of paid vacation time is denied. None of the funds listed in claimant's SDP spending plan or certified budget shall be used to fund paid vacation time.

DATE: July 29, 2024

MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case Nos. 2024060414

Vs.

**DECISION BY THE DIRECTOR**

Inland Regional Center,

Respondent.

ORDER OF DECISION

On July 29, 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).) The right to a paid vacation constitutes deferred wages for services rendered when offered in an employer's policy or contract of employment. (See *Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774, 784, 647 P.2d 122, 128 (1982)). The services rendered by claimant's full time staff members are caregiving services under Living Arrangement, Community Living Support (service code 320). Caregiving services are necessary to implement claimant's IPP, and paid vacation is deferred wages for these necessary services rendered to claimant by her full-time caregiving staff members. Thus, paid vacation is an associated cost to the services necessary to implement claimant's IPP goals and needs.

2. Claimant's Self-Determination Program (SDP) budget may fund services and supports that the federal Centers for Medicare and Medicaid Services (CMS) determines are eligible for federal financial participation (FFP). (See Welf. & Inst. Code, § 4685.8, subd. (c)(6) and (e). In addition, the "January 2019 Center for Medicaid and Medicare Services (CMS) Instructions, Technical Guide, and Review Guide" states that the SDP waiver may provide that the participant has authority to determine worker wages and benefits." Claimant has determined that 40 hours a year of paid vacation is a



benefit for full time staff members who render services to claimant. Paid vacation as compensation for services rendered to claimant is permitted by CMS.

3. Inland Regional Center (IRC) shall not include 40 hours per year of paid vacation as a line item in claimant's SDP Budget/spending plan. However, 40 hours per year of paid vacation time for full time staff shall be part of the compensation for services rendered to claimant by her full-time staff under Living Arrangement, Community Living Support, service code 320. Paid vacation is an indirect, associated cost of services rendered to claimant.

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 granted. Claimant is permitted to utilize funds from her SDP budget/spending plan to fund paid vacation time.

IT IS SO ORDERED on this day August 21, 2024

*Original signed by:*

Nancy Bargmann, Director