

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

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

REGIONAL CENTER OF ORANGE COUNTY

DDS Case No. CS0018526

OAH Case No. 2024060795

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on August 6, 2024, in Santa Ana. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant represented himself. Claimant's name is omitted to maintain the confidentiality of this proceeding. Because claimant's speech is affected by Cerebral Palsy, Aaron Brown (caregiver) and Scott Paladichuk (advocate) assisted claimant by clarifying his comments and testimony at hearing.

Ublester Penaloza, Assistant Manager of Fair Hearings and Mediations, represented Regional Center of Orange County (service agency).

ISSUE

Shall service agency assist claimant in obtaining an appropriate expenditure report from Cambrian Financial Management Services?

EVIDENCE RELIED ON

In making this decision, the ALJ relied on service agency exhibits 1 through 7, and claimant exhibits A through E. The ALJ also relied on the testimony of Jeffrey Johnson, Area Supervisor; Leslie Walker, Custodian of Records; and claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a 47-year-old man who is eligible for services under the Lanterman Act based on his qualifying diagnosis of Cerebral Palsy. (Ex. 4.)

3. Claimant is a participant in the Self-Determination Program (SDP). The SDP process includes creating an annual budget for services and supports funded by service agency. (See Legal Conclusions 8-13.) In April 2024, claimant hired Cambrian Financial Management Services (Cambrian FMS) to act as his financial management services provider (or FMS). (Testimony [Test.] of claimant; Exs. 4, 5.)

4. On April 26, 2024, claimant sent an e-mail to service agency complaining that Cambrian FMS had not yet trained or paid his SDP workers. (Ex. 3.) Service agency construed claimant's e-mail as a complaint under Welfare and Institutions Code section 4731. (Undesignated statutory references are to this code.)

5. By letter dated May 23, 2024, service agency responded to claimant's above-described e-mail. Service agency advised claimant that if he was dissatisfied with its response, he could elevate his complaint to the Director of the Department of Developmental Services (DDS) pursuant to section 4731. (Ex. 2.)

6. On June 19, 2024, claimant submitted to DDS an Appeal Request Form, in which he objected to service agency treating his above-described e-mail as a complaint under section 4731; requested service agency assist him in obtaining an appropriate expenditure report from Cambrian FMS; and contended his appeal was properly filed under the Lanterman Act. (Ex. 1.)

Claimant's Relevant Background Information

7. Claimant lives in a two-bedroom apartment. He has elected to not attend a day program. (Ex. 4.)

8. Claimant is employed as a surveyor for the State Council on Developmental Disabilities. His job duties include meeting with families and individuals to complete surveys and intakes related to services and generic resources. (Ex. 4.)

The Self-Determination Program

9. Claimant is participating in the SDP. The centerpiece of the SDP is the annual budget created by the parties. The consumer (or participant) has wide discretion in using funding in the budget for the various services and supports

identified therein as he or she sees fit. That flexibility allows the participant to reprioritize services and supports throughout the fiscal year, and reallocate spending among the various services and supports as needs arise. While a participant must use an FMS provider, the participant has the sole discretion in deciding who to hire. (See Legal Conclusions 8-13.)

10. Claimant's annual SDP budget is over \$300,000, and includes 6,940 hours per year of supported living services, a Lifeline Personal Emergency Response system, \$197.41 per month in transportation expenses to fund for gas and insurance costs, and 40 hours per week of community integration training. (Test. of Johnson; Exs. 4-6.)

11. By letter dated December 21, 2018, DDS advised regional centers throughout the state of the various duties and responsibilities of FMS providers. One such duty is to provide monthly statements to the participant and involved regional center that includes the amount of funds allocated by budget category; the amount spent in the previous 30 days; and the amount of funds remaining in the individual budget. (Test. of claimant; Ex. E, p. B27.)

Claimant's Problems with Cambrian FMS

12. Claimant's prior FMS provider cancelled its contract with him. (Test. of claimant.) Cambrian FMS replaced the prior FMS provider, effective April 1, 2024. (Test. of Johnson; Ex. 2.)

13. Cambrian FMS initially experienced a delay in completing live scan fingerprint checks of claimant's workers. Once advised of the delay, claimant's Service Coordinator (SC), Chris Docherty, attempted to obtain an extension of FMS services from claimant's prior FMS provider while Cambrian FMS was working out the delay. Claimant's prior FMS provider refused. (Ex. 2.)

14. Cambrian FMS also needed to train claimant's workers on how to use its time sheet system, which is different from what claimant had used in the past. Cambrian FMS scheduled a Zoom training session in early April 2024, but then cancelled it without notice. Cambrian FMS later conducted the time sheet training on April 16, 2024. SC Docherty observed the training and believed it was sufficient. (Ex. 2.)

15. On April 22, 2024, claimant reported to SC Docherty his workers were not getting paid, even though they completed the time sheet training. Claimant also indicated he had difficulty authorizing hours through Cambrian FMS's portal. SC Docherty e-mailed Cambrian FMS to notify them of these problems. Cambrian FMS responded on April 23, 2024, telling SC Docherty it would reach out to claimant that day to discuss the issues. (Ex. 2.)

16. On April 29, 2024, SC Docherty again contacted Cambrian FMS to request that it provide Claimant with payroll support. SC Docherty helped to provide Cambrian FMS with a sample staff schedule. In early May 2024, claimant's workers advised SC Docherty they were working directly with Cambrian FMS and the pay issues had been resolved. (Ex. 2.)

17. As a result of the above, claimant told SC Docherty he wanted to work with a different FMS provider. (Ex. 2.) All referrals sent to alternative FMS providers were declined. (Ex. 2.) As of the hearing, Cambrian FMS is the only vendored FMS provider available to work with claimant. (Test. of claimant.)

Service Agency Contentions

18. In the May 23, 2024 letter addressing claimant's e-mail complaining about Cambrian FMS, service agency's Executive Director conceded Cambrian FMS had not provided good customer service, and he was concerned that Cambrian FMS has

displayed a laissez-faire attitude towards claimant's SDP. The Executive Director pledged that service agency staff would follow up with Cambrian FMS to address this concern. (Test. of Leslie Walker; Ex. 2.)

19. Area Supervisor (AS) Jeffrey Johnson testified that service agency has no control over a participant's FMS provider. In this case, other than contacting Cambrian FMS over the training and payroll issues as SC Docherty has done, there is nothing else service agency can do. AS Johnson added that service agency could only get more deeply involved with Cambrian FMS if claimant exited the SDP. Custodian of Records Leslie Walker testified similarly.

Claimant's Contentions

20. Claimant testified that while he greatly appreciates SC Docherty's assistance, he still is not receiving satisfactory monthly statements from Cambrian FMS. Claimant is particularly interested in overtime information in such a report, as his workers commonly work overtime. Claimant needs that information to monitor how much is left in his budget and avoid running out of money to pay his workers. Claimant testified his prior FMS provider gave him overtime spending information, and he does not understand why Cambrian FMS cannot. Claimant also finds it hard to communicate with Cambrian FMS, so he needs service agency assistance.

21. Claimant submitted e-mail correspondence received by him and SC Docherty from Cambrian FMS, which advised that Cambrian FMS "typically [does] not break down what was paid by Regular/OT rate etc." (Ex. A, p. B2.) However, attached to the two e-mails in question are several pages showing regular and overtime pay to claimant's workers from May through early July 2024. (Ex. A, pp. B1-5; Ex. D, pp. B19-22.)

22. Claimant argued in closing that service agency has better access to its vendorized provider than him. Because the Lanterman Act requires an FMS provider to issue a monthly report, it should not be difficult for service agency to get Cambrian FMS to comply with his request for overtime information. While service agency indicates it may be able to offer greater assistance if claimant returns to the traditional service delivery system, he does not want to exit the SDP simply because service agency will not help him with Cambrian FMS. Even though his e-mail was treated as a section 4731 complaint, no real action has been taken on it. Thus, a fair hearing appeal under the Lanterman Act is the only recourse he has left to get the information he wants from Cambrian FMS.

23. Claimant submitted e-mail correspondence with DDS's SDP Ombudsperson dated July 30, 2024. The DDS Ombudsperson facilitated Cambrian FMS sending claimant an electronic link allowing him access to his monthly reports containing the information specified in DDS's December 21, 2019 letter. For that reason, the DDS Ombudsperson closed her inquiry regarding the matter. (Ex. A, pp. B1-2.)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As claimant is requesting something service agency has not before agreed to do, claimant bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

2. The standard of proof is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

This standard is met when the party bearing the burden of proof presents 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.)

3. A proposed decision is issued because this case involves federal funding under the SDP. (§ 4712.5, subds. (d) & (e).)

Jurisdiction

4. An administrative fair hearing to determine the rights and obligations of the parties under the Lanterman Act to appeal a contrary regional center decision is governed by sections 4700 through 4714.

5. Section 4710 delineates two types of notifications that a regional center is required to provide a consumer regarding a decision or action from which a request for a fair hearing can result. In subdivision (a) of section 4710, a regional center is required to provide a notification when it proposes to "reduce, terminate, or change services set forth in an individual program plan [IPP]" or when a consumer is determined to be no longer eligible for services. In subdivision (b) of section 4710, a regional center is required to provide a notification when it decides "to deny the initiation of a service or support requested for inclusion in the [IPP]."

6. Conversely, section 4731 provides for a complaint process by a consumer "who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center . . . or service provider. . . ." (§ 4731, subd. (a).) The complaint is first submitted to the involved regional center's director. (§ 4731, subd. (b).) If the consumer is not satisfied with the regional center's proposed resolution, the complaint can be elevated to DDS. (§ 4731, subd. (c).)

7. The complaint mechanism under section 4731 shall not be used “to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an individual program plan, for which there is an appeal procedure established in this division [referring to sections 4700-4714].” (§ 4731, subd. (e).)

The Self-Determination Program

8. Section 4685.8 governs regional center consumers participating in the SDP. The purpose of the SDP is to provide participants and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPPs. (§ 4685.8, subd. (a).)

9. “Self-determination” is defined as a voluntary delivery system consisting of a comprehensive mix of services and supports, selected, and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. (§ 4685.8, subd. (c)(6).)

10. Section 4685.8, subdivision (d), provides participation in the SDP is fully voluntary. A participant may choose to participate in, and thereafter may choose to leave, the SDP at any time.

11. The participant must use an FMS provider, but the participant is allowed to choose which one. (§ 4685.8, subds. (b)(2)(F), (d)(3)(E).) The selected FMS provider must meet standards and certification requirements established by DDS. (§ 4685.8, subd. (b)(2)(F).) Pursuant to section 4685.8, subdivision (t), an FMS provider is required

to become vendored by a regional center. Subdivision (u) of the same statute requires the regional center to pay the full expenses of the FMS provider.

12. An FMS provider assists the consumer to manage and direct the distribution of funds contained in the individual budget, and ensure that the participant has the financial resources to implement their IPP throughout the year. These may include bill paying services and activities that facilitate the employment of service and support workers by the participant, including, but not limited to, fiscal accounting, tax withholding, compliance with relevant state and federal employment laws, assisting the participant in verifying provider qualifications, including criminal background checks, and expenditure reports. (§ 4685.8, subd. (c)(1).)

13. Section 4685.8, subdivision (s), requires the FMS provider “shall provide the participant and the regional center service coordinator with a monthly individual budget statement that describes the amount of funds allocated by budget category, the amount spent in the previous 30-day period, and the amount of funding that remains available under the participant's individual budget.” As noted above, in 2019 DDS circulated a letter to all regional centers reiterating this requirement for providing a monthly budget statement.

Disposition

14. Claimant’s request for service agency assistance in getting expenditure reports from Cambrian FMS with overtime information does not meet the definition of an issue subject to a fair hearing appeal under section 4710. Claimant’s request does not involve a regional center proposed reduction, termination, or change of service set forth in his IPP, or a denial of the initiation of a service or support. In fact, service agency has issued no notice of proposed action relative to this issue.

15. Similarly, claimant's request for service agency action does not involve a dispute concerning the nature, scope, or amount of services and supports that should be included in his IPP, as phrased in section 4731, subdivision (e). Hiring an FMS provider would be a service or support within the meaning of subdivision (e). But a complaint over the performance of the FMS provider that a participant hired is not. The word "nature" should not be read so broadly as to include the dispute in this case, otherwise any complaint by a consumer having any connection with a service funded under an IPP would be excluded from the complaint process under section 4731, and would result in the creation of a category of fair hearing disputes not covered by section 4710 as discussed above.

16. Instead, the dispute in question involves claimant's contention that his right to expenditure reports containing overtime information has been improperly or unreasonably denied by a service provider, Cambrian FMS. Such a dispute is squarely within the parameters of section 4731, and therefore is not subject to a fair hearing appeal under sections 4700 through 4714.

17. Finally, it is noted that the overriding principle of the SDP is participant choice. While a participant is required to use an FMS provider, it is up to the participant to select the FMS provider. The participant may choose to replace an FMS provider if dissatisfied with its service. In this case, Cambrian FMS is required by statute to provide monthly budget reports. Claimant does not contend the information required by statute (or the DDS letter) has been withheld, other than overtime payment information. However, neither the statute nor the DDS letter references overtime payment information. In any event, after SC Docherty got involved in the situation, it appears Cambrian FMS has begun providing claimant with overtime payment information. As established by the service agency employees who testified at

the hearing, there is nothing else service agency can do to assist claimant. These circumstances bolster the conclusions above that this dispute is properly resolved within the complaint process set forth in section 4731, not a fair hearing appeal under sections 4700 through 4714.

18. Under California Code of Regulations, title 17, section 50966, subdivision (b), a case filed under the Lanterman Act may be dismissed if the matter "does not comply with statutory requirements." Since there is no jurisdiction to resolve this dispute as a fair hearing appeal under the Lanterman Act, claimant's appeal does not comply with statutory requirements, and this case shall be dismissed. (Factual Findings 1-23; Legal Conclusions 1-17.)

ORDER

Claimant's appeal is dismissed.

DATE:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024060795

Vs.

DECISION BY THE DIRECTOR

Regional Center of Orange County (RCOC),

Respondent.

ORDER OF DECISION

On August 14, 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 action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. 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.

IT IS SO ORDERED on this day September 4, 2024.

Original signed by:

Nancy Bargmann, Director