

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

TRI-COUNTIES REGIONAL CENTER, Service Agency.

DDS No. CS0018707

OAH No. 2024070141

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on October 22, 2024.

Claimant was represented by his mother, who also is his conservator. The names of claimant and his family members are omitted to protect their privacy and maintain confidentiality.

Cecilia Prado, Services and Support Manager, represented Tri-Counties Regional Center (service agency).

The record closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUES

1. Is claimant's mother entitled to \$782 as reimbursement of the costs she paid for claimant to participate in a bowling league during the 2023-2024 season?
2. Is reimbursement subject to vendorization the only available mechanism to fund claimant's on-going participation in the same bowling league?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency's exhibits 1 through 7; claimant's exhibits A through O; and the testimony of Elizabeth Lopez, Ashley Walker, L. C. (father of another service agency consumer), and claimant's mother.

FACTUAL FINDINGS

Jurisdictional Matters

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.; subsequent undesignated statutory references are to this code.)
2. Claimant is a 30-year-old man who is a service agency consumer eligible for services under the Lanterman Act. (Ex. 2.)

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3. In August 2023, service agency advised claimant's mother it would reimburse her for the costs of claimant's participation in a bowling league for the 2023-2024 season. Claimant's mother spent the next several months submitting documents, receipts, and multiple requests for reimbursement totaling \$782 to the service agency. In June 2024, after still not receiving reimbursement, claimant's mother three times requested service agency to issue a Notice of Action (NOA) denying her request for reimbursement, so she could proceed with an appeal to prompt action. (Exs. B-J.)

4. On June 20, 2024, service agency sent claimant's mother a "Good Faith Belief Letter," explaining that an NOA had not been issued because her request for reimbursement had not been denied but instead delayed due to paperwork issues and clerical error of service agency staff. (Ex. 1.)

5. On June 24, 2024, claimant's mother filed an appeal with the Department of Developmental Services (DDS), complaining that service agency had issued neither the requested reimbursement nor an NOA for over seven months. Claimant's mother requested reimbursement of the costs she paid for claimant to participate in the bowling league for the 2023-2024 season, as well as direction on how claimant's future participation in the bowling league will be funded. (Ex. K.)

6. Official notice is taken that the hearing of this matter initially was scheduled for August 12, 2024, but was continued at the request of claimant's mother. In connection with that continuance, claimant's mother waived the time limit prescribed by the Lanterman Act for holding the hearing and for the ALJ to issue a decision in this case.

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7. In September 2024, claimant enrolled in the Self-Determination Program (SDP) provided for in section 4685.8. Because claimant's mother filed this appeal months before claimant enrolled in the SDP, and the appeal involves a funding request under the so-called "traditional" Lanterman Act model, the format and timing of this Decision are based on section 4712.5, subdivision (a)(1).

Claimant Participates in a Bowling League

8. In August 2021, claimant's mother convinced a local bowling alley to allow mixed teams including regional center consumers and neuro-typical adults to participate in a weekly adult bowling league. The league season runs from September through the following May. (Exs. A, B.)

9. Claimant played on a mixed team during the 2021-2022 season, along with at least one other service agency consumer. Claimant's mother sponsored the team and served as the "team mom." The same happened during the 2022-2023 bowling league season. (Ex. B.)

10. By an e-mail dated July 13, 2023, claimant's mother advised Elizabeth Lopez, service agency's Services and Supports Manager, about the bowling league. Because claimant's team had lost its sponsor, claimant's mother inquired of Ms. Lopez whether the costs of claimant participating in the bowling league constituted a social recreational activity that could be funded by service agency. (Ex. B.) Ms. Lopez requested claimant's mother provide additional information. (*Ibid.*)

11. By an e-mail dated August 31, 2023, claimant's service coordinator, Angela Cuthbert, advised claimant's mother that, after discussing the matter with Ms. Lopez, claimant's participation in the bowling league would be funded by service agency. (Testimony [Test.] of Lopez; Ex. C.) Ms. Cuthbert advised claimant's mother the

funding would be provided as a reimbursement, meaning service agency would not pay the bowling alley, but instead service agency would reimburse claimant's mother for her payments made to the bowling alley. Claimant's mother was told this process "will take a little time," and she was requested to keep documentation showing what she paid. (*Ibid.*)

12. Claimant signed up for the bowling league's 2023-2024 season. On September 26, 2023, the 2023-2024 season began. (Ex. D.)

13. In reliance on service agency's representations, claimant's mother paid \$782 for claimant to participate in the bowling league for the 2023-2024 season. (Test. of claimant's mother; Exs. E-G.)

Reimbursement Requests for the 2023-2024 Bowling League Season

14. On November 16, 2023, claimant's mother submitted to Ms. Cuthbert copies of checks, receipts, and an invoice showing she had paid for claimant to participate in the entire 2023-2024 bowling league season. She requested reimbursement of her expenses. (Exs. E1, E2.)

15. On December 14, 2023, claimant's mother submitted to Ms. Cuthbert for the second time essentially the same documents as the month before, again requesting reimbursement. (Exs. F1, F2.)

16. On February 13, 2024, Ms. Cuthbert contacted claimant's mother by e-mail to advise that Ms. Cuthbert either forgot to submit the earlier received paperwork for reimbursement or there had been an issue with processing it. Ms. Cuthbert requested claimant's mother re-send the documentation to facilitate the reimbursement process. (Ex. G1.)

17. On February 13, 2024, claimant's mother submitted to Ms. Cuthbert for the third time the documentation supporting her reimbursement request. (Ex. G2.) A few days later, Ms. Cuthbert asked claimant's mother where she would like the reimbursement check sent. (*Ibid.*)

18. On February 20, 2024, Ms. Cuthbert submitted to service agency's Resource Development Department claimant's reimbursement request and documentation, along with a VEN 600 form. (Ex. 1.) As confirmed by the testimony of service agency Resource Developer Ashley Walker, a VEN 600 is a one-page form used by service agency internally that accompanies submitted invoices and receipts for payment of a reimbursement request. According to Ms. Walker, the VEN 600 form is the start of the vendorization process. After the VEN 600 form is successfully processed, the prospective vendor is requested to complete a vendor application packet, which is described in more detail below. However, Ms. Cuthbert's submission of the VEN 600 form in February 2024 was rejected by the Resource Development Department due to an error made by Ms. Cuthbert. (Ex. 1.)

19. On May 17, 2024, the 2023-2024 bowling league season concluded. (Ex. D.)

20. On June 13, 2024, claimant's mother submitted to Ms. Cuthbert, who had married in the interim and changed her name to Angela Vazquez, a fourth request for reimbursement along with supporting documentation. This time, claimant's mother also requested service agency issue an NOA. (Ex. H.)

21. On June 18, 2024, claimant's mother for the second time requested Ms. Vazquez to issue an NOA on her reimbursement request. (Ex. I.)

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22. On June 20, 2024, claimant's mother for the third time requested Ms. Vazquez to issue an NOA for her reimbursement request. Later that day, Ms. Vazquez sent an e-mail to claimant's mother, advising her that the decision to issue an NOA was up to Ms. Lopez, and apologizing for the delay in issuing a check. Ms. Vazquez indicated service agency was in a "roll over" period, so she could not issue a check earlier than July 1, 2024. (Ex. J.)

23. On or about June 20, 2024, Ms. Vazquez resubmitted to Ms. Walker a VEN 600 form along with the invoices previously submitted by claimant's mother. At this time, service agency's Resource Development Department began the process of vendoring claimant's mother for purposes of paying her reimbursement request. (Test. of Walker; Ex. 1.)

24. On June 24, 2024, claimant's mother filed her appeal with DDS discussed above, after receiving service agency's "Good Faith Belief Letter." (Ex. K.)

25. After receiving the appeal from DDS, Ms. Lopez contacted claimant's mother and asked her to complete a vendor application packet. (Test. of Lopez.) The packet consists of 10 pages of instructions to read and blank forms to fill out with requested information. (Ex. 7.)

26. Claimant's mother told Ms. Lopez she would not complete the vendor application packet; instead, she wanted a fair hearing. (Test. of Lopez.)

27. On September 4, 2024, the bowling league's 2024-2025 season began. Claimant registered and has been participating in the league. (Ex. J.)

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28. On September 17, 2024, the parties executed an amendment to claimant's individual program plan (IPP), in which his participation in the bowling league is addressed as a desired outcome. The IPP addendum also states service agency will pay the \$782 costs from the 2023-2024 season by a one-time reimbursement. (Ex. 2.)

29. Due to the pending hearing of this matter, and claimant's enrollment in the SDP, service agency advised claimant's mother the \$782 costs would be paid through claimant's Fiscal Management Service (FMS) agency involved in his SDP as a one-time exception to remedy this appeal. Claimant's mother would not be required to complete the vendor application packet for this one-time payment. (Exs. 3, 4.)

30. On or about October 15, 2024, service agency confirmed the request for reimbursement in the amount of \$782 was processed and payment was sent to claimant's mother through claimant's FMS agency. (Ex. 4.) As of the hearing, claimant's mother had not checked the post office box where the check was sent, so she could not confirm receipt of the check.

31. Ms. Lopez testified service agency did not issue an NOA because it never denied the bowling league reimbursement request. Ms. Lopez testified the reimbursement request initially went "on the back burner" in Fall 2023 after claimant suffered a severe mental health crisis. Ms. Lopez testified further delays were caused by service agency staff focusing on other issues, such as the aftermath of a car accident claimant was involved in, and claimant's transportation service needs. Ms. Lopez agreed service agency "dropped the ball" on reimbursement, and she apologized to claimant's mother for the delays in processing the request.

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Process of Reimbursing Social Recreational Service Costs

32. Service agency's Policies and Guidelines, last approved by DDS in April 2022, affirms that service agency can fund family supports, including social recreational activities. Social recreational services are defined as "leisure-time activities designed to promote personal enjoyment, peer interaction, social growth, recreation, and enhancement of daily living skills within the community." (Ex. 5, p. A13.)

33. Ms. Lopez testified there are only two ways a social recreational activity can be funded by service agency. Either the service provider can become vendored with service agency and receive direct payment, or a consumer or the consumer's family member can become vendored and receive reimbursement from service agency for any payments made to the service provider. In this case, either the bowling alley where claimant bowled could become vendored and receive payment directly from service agency, or claimant's mother could become vendored and request reimbursement for any payments she made to the bowling alley.

34. Ms. Lopez attributes part of the delay in reimbursing claimant's mother to the fact she refused to complete the vendor application packet. However, no evidence presented indicates claimant's mother was advised of this requirement until after she filed her appeal with DDS. By the time service agency gave claimant's mother the vendor application packet, approximately seven months had passed since she first submitted her reimbursement request in November 2023. Claimant's mother was frustrated and upset by the delays and constant requests for information by service agency, and did not want to create more delays by completing and processing the paperwork. (Ex. K.)

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35. Ms. Walker testified service agency cannot pay a service provider for an IPP-approved service directly if it is not vendored. In that case, a consumer or family member would have to pay the service provider and then seek reimbursement from service agency. However, DDS prohibits regional centers from paying a consumer or family member unless they have completed the vendorization process, which is detailed in applicable regulations. (Ex. 6.) To become a vendor eligible to receive reimbursement, a consumer or family member must complete the vendor application packet. (Ex. 7) Once approved, the consumer or parent receives a vendor number, which can be used to process a reimbursement request. A reimbursement request must include the proper documentation, including proof that the service was rendered and paid for in the amount requested. The average time in processing and paying a reimbursement request is one or two months, depending on whether and when the required documentation is submitted. (Test. of Walker.)

36. L. C. has a son who is a service agency consumer. L. C.'s son also participated in claimant's bowling league during the 2023-2024 season. L. C. paid for his son's expenses. He initially requested reimbursement in November 2023. After several months, he was told his documentation was inadequate. L. C. resubmitted his request with new documentation in January 2024. Two months later service agency advised him the payment receipts were inadequate. In March 2024, L. C. submitted new payment receipts. In May 2024, L. C. called service agency to check on the status of his request; he was told for the first time he had to become vendored to receive a reimbursement payment. In June 2024, the vendorization process started for L. C. By September 2024, L. C. still had not received payment. During a meeting with service agency's executive director in September 2024 that L. C. attended, L. C. complained about how long it was taking for him to get reimbursed for his son's bowling league expense. Two days later he received a reimbursement check from service agency for

the full amount requested; three days later he received a vendor approval notification.
(Test. of L. C.)

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4717.) Although service agency did not issue an NOA, claimant's mother still was entitled to file an appeal and request a hearing because service agency had neither paid her reimbursement request nor advised her it was denying it. (§§ 4705, 4710, 4710.5, subd. (a).) Therefore, jurisdiction exists for this appeal. (Factual Findings 1-7.)

2. The standard of proof in this case 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. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In this case, claimant bears the burden of proving by a preponderance of the evidence he is entitled to reimbursement of the costs of participating in the bowling league, and he can be reimbursed by means other than vendorization.

Governing Law

4. Section 4648, subdivision (a)(3), outlines how regional centers are to secure needed services and supports required by a consumer's IPP as follows:

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the

vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; and the procedure for an individual or an agency to appeal a vendorization decision made by the department or regional center.

5. The regulations promulgated under section 4648, subdivision (a)(3)(C), are found at California Code of Regulations, title 17, section (regulation) 54310 et seq., which outline the process of becoming vendored to provide a service and receive payment from a regional center.

6. The court in *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293 (*Harbor Regional Center*), described the laws above as part of the Lanterman Act's design for regional centers "to determine what services should be provided to the developmentally disabled. The regional centers in turn contract with various agencies or individuals to provide those services." (*Id.*, p. 306, internal citations omitted.) Put another way, "Regional centers can buy services or supports to fulfill a disabled person's individual plan from individuals or agencies who have gone through vendorization, which is the process of contracting for those

services after identifying and selecting those who qualify under certain criteria." (*Id.*, p. 308.)

7. The court in *Harbor Regional Center* further observed that this process ensures DDS "has the authority to see that the regional centers operate in a uniform and cost-effective manner by, among others, developing uniform systems of accounting, budgeting, and reporting (§ 4631, subd. (a)), auditing and paying funds to the regional centers (§ 4780.5), and setting rates for various types of services that the regional centers might provide." (*Id.*, p. 306.)

8. Based on the above, it is clear the Lanterman Act intended the vendorization process to be used to reimburse consumers, their families, or their vendors for non-emergency services and supports approved through the IPP process. Neither party cited any other provision of the traditional Lanterman Act model providing a different funding mechanism to be used to reimburse a family for expenses approved by a regional center and subsequently incurred. Nor is the undersigned aware of any.

9. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . ." (§ 4706, subd. (a).) Based on this statutory provision, and the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384 (*Association for Retarded Citizens*), it has been held in prior fair hearing appeals under the Lanterman Act that a one-time retroactive reimbursement may be ordered outside of the vendorization process when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted. A one-time retroactive reimbursement is not a solution for on-going funding needs.

10. Finally, because claimant has recently entered the SDP, future funding for his participation in the bowling league is governed by section 4685.8. The purpose of the SDP is to provide consumers (also referred to as 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. (*Id.*, subd. (a).) “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. (§ 4685.8, subd. (c)(6).)

Disposition

REIMBURSEMENT OF PAST EXPENSES

11. Service agency agreed, as a one-time exception outside of the vendorization process, to pay claimant’s mother \$782 to reimburse her for the costs she paid for claimant to participate in the bowling league’s 2023-2024 season. By the time of the hearing, service agency had issued a check in that amount and mailed it to claimant’s mother. While claimant’s mother could not confirm receipt of the check as of the hearing, the preponderance of the evidence establishes the check was sent to her. Even if service agency had not agreed to provide that reimbursement outside of the vendorization process, the undersigned could order it, as discussed above, under the principles articulated in section 4706, subdivision (a), and the case of *Association for Retarded Citizens* discussed above. (Factual Findings 8-31; Legal Conclusion 9.)

PROSPECTIVE REIMBURSEMENT

12. In a sense, the issue concerning reimbursement of claimant’s current and future bowling league expenses is a request for an advisory opinion, as opposed to a

determination of an actual service request dispute. However, section 4706, subdivision (a), makes clear there is room in this fair hearing to decide issues concerning the rights of persons with developmental disabilities to receive services under the Lanterman Act. In that context, a determination of how future reimbursements can be handled will decide claimant's rights concerning how he receives some of his services under the Lanterman Act.

13. In addition, claimant's mother represented during the hearing that she had previously brought this issue to the attention of DDS through a complaint filed under section 4731, which DDS deferred to the fair hearing appeal process. Thus, if no determination is made herein, claimant and his mother would be left with no forum to litigate this issue. Such a result would thwart the purposes of the Lanterman Act, and be contrary to the dictates of the *Association for Retarded Citizens* case.

14. However, service agency is correct that the only statutory mechanism to pay reimbursement of service costs born by claimant's mother under the traditional Lanterman Act model is through the vendorization process established by section 4648 and the regulations promulgated under it. Funding outside of the vendorization process is only available in exceptional circumstances, where equity and the purposes of the Lanterman Act require it, but cannot be used on an on-going basis. In this case, the vendorization process is a suitable way for claimant's mother to be reimbursed. (Factual Findings 32-36; Legal Conclusions 4-8.)

15. The problem in this case is not the funding mechanism provided by the Lanterman Act, but how service agency has implemented it. Both claimant's mother and at least one other consumer's parent, L. C., experienced substantial delays in receiving reimbursement. It was not just the inherent delays caused by processing the paperwork and the rejection of incomplete submissions, but the failure of service

agency staff to advise at the outset that the vendorization process was required. The service agency also failed to provide at the outset the requisite vendor application packet and VEN 600 forms to the parents. This resulted in payment delays of approximately 10 months. The service agency only made the payments after the involved parents took extraordinary actions, such as bringing the matter to the attention of service agency's executive director during a meeting (L. C.) or prosecuting a fair hearing appeal (claimant's mother).

16. The discussion above pertains to the traditional Lanterman Act model. However, claimant has recently enrolled in the SDP model. That system is governed by section 4685.8. Claimant and his mother will have greater control over determining claimant's annual budget for services and supports, and there will be greater flexibility for funding social recreational services. However, the SDP system still involves decisions made through planning team meetings with service agency staff, and developing claimant's IPP. Thus, there still is some overlap with the traditional Lanterman Act model. Nonetheless, the greater flexibility of SDP may provide another way of funding claimant's bowling league without undergoing the vendorization process. As this issue was not briefed or discussed by the parties, no meaningful conclusions can be made herein. (Legal Conclusion 10.)

ORDER

Claimant's mother is entitled to \$782 as reimbursement of the costs she paid for claimant's participation in a bowling league during its 2023-2024 season.

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Under the traditional Lanterman Act model of service and support delivery, reimbursement subject to vendorization is the only available mechanism to fund claimant's on-going participation in the bowling league.

DATE:

ERIC SAWYER

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 subdivision (b) of Welfare and Institutions Code section 4713 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.