

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

DDS No. CS0019543

OAH No. 2024071011

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 3, 2024, by videoconference.

Claimant's authorized representative represented claimant, who was not present.

Kathy Cattell, Assistant Director of Client Services, represented San Diego Regional Center (SDRC).

Oral and documentary evidence was received. The record was initially closed on October 4, 2024. Claimant asked to reopen the record to submit a closing statement. That request was granted and claimant was given until the close of business on

October 7, 2024, to submit a closing statement. Claimant, however, did not submit a closing statement. The matter was submitted for decision on October 7, 2024.

ISSUE

Is SDRC required to approve therapy and counseling services through a marriage and family therapist to be funded through claimant's Self-Determination Program's spending plan?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is 24 years old and lives with her parents. She receives regional center services under the intellectual disability (ID) category. She receives Social Security, has Medi-Cal health coverage through the Molina Health Plan, and has private insurance through her father's health coverage. Claimant receives 260 hours of In-Home Supportive Services provided by her mother, who is also her conservator. Per claimant's most recent Individual Program Plan (IPP), claimant struggles with her emotional health and stability.

2. Claimant participates in the Self-Determination Program (SDP). Her current budget was approved for a total of \$85,105.08. The approved plan allocates funds by categories, services, and codes.

3. SDRC denied claimant's request to include the services claimant is receiving from a marriage and family therapist, Julie Anderson. SDRC issued a notice of action denying that request, claimant appealed, and this hearing followed.

4. SDRC's Position Statement and closing brief identifies its position and has been duly considered.

Self-Determination Program (SDP)

5. In 2013, the Legislature enacted Welfare and Institutions Code section 4685.8, requiring the Department of Developmental Services (DDS) to implement the SDP statewide to provide individuals and their families with more freedom, control, and responsibility in choosing services and supports to help them meet objectives in their IPP.

6. Starting July 1, 2021, the SDP became 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 and be identified by a specific service code from a list of codes DDS publishes.

8. Regional centers are required to certify individual SDP budgets and review spending plans to ensure compliance with the Lanterman Act and federally approved categories.

Evidence Introduced at Hearing

9. Melissa Melgar, Coordinator of Behavior Services at SDRC, Daniel Web-Rex, Program Manager at SDRC, Julie Anderson, a Licensed Marriage and Family Therapist (LMFT), and claimant's mother testified. The evidentiary record consists of Exhibits 1 to 23. As noted, SDRC submitted its position statement and claimant was given the opportunity to submit a closing statement.

10. Ms. Melgar is the SDRC Coordinator of Behavioral Services. She has been with the regional center for seven years. She holds a master's degree in clinical psychology and is a board certified behavioral analyst (BCBA).

11. Ms. Melgar got involved in claimant's matter after claimant's mother on July 12, 2024, asked SDRC to approve the services of Ms. Anderson, LMFT. In this email claimant's mother describes the services Ms. Anderson was providing claimant as "behavioral intervention" to work on "behavioral modifications." Claimant's mother states in her email that claimant needs Ms. Anderson's services to address claimant's "challenging mental health issues . . ." (Exhibit 16, A119.) Claimant's mother asks SDRC to sign the revised SDP spending plan to include Ms. Anderson's services.

12. Ms. Melgar testified that SDRC cannot fund Ms. Anderson's services for several reasons. First, claimant's mother wants Ms. Anderson to provide behavior intervention services for claimant's "challenging mental health issues," per claimant's mother in the July 12, 2024, email.

The problem as Ms. Melgar sees it is that Ms. Anderson is treating claimant for “Bipolar Disorder and Unspecific Trauma,” per a letter Ms. Anderson wrote regarding her treatment of claimant. This letter is part of the record. In her letter, Ms. Anderson does not identify ID, claimant’s qualifying diagnosis for regional center services. Thus, Ms. Anderson is not providing a service or support directed toward the alleviation of claimant’s developmental disability, ID, as required by Welfare and Institutions Code section 4512, subdivision (b).

13. Another problem with the therapy Ms. Anderson is providing claimant, as a matter of SDRC’s ability to fund the service, is that Ms. Anderson is not certified as a behavior analyst to provide behavior modification intervention services under applicable Service Code categories, which SDRC must apply. (Exhibit 12; Service Codes 612, 613, 615, 620.) Ms. Anderson in her testimony did not dispute that she is not certified as a BCBA.

14. In addition, Ms. Anderson in her letter does not have a behavior modification plan with goals and outcomes, as required under Welfare and Institutions Code section 4686.2, to qualify the services Ms. Anderson provides claimant as “behavior intervention services.” Ms. Anderson writes in her letter she is employing certain treatment modalities namely, Cognitive Behavioral Therapy, Interpersonal and Rhythm Therapy, and Neurodivergent Affirming Trauma Informed Therapy, to support claimant’s nervous system regulation.¹ But she does not cite goals or outcomes as

¹ At the time Ms. Anderson wrote her letter she was a Registered Associate Marriage and Family Therapist. She became fully licensed in August 2024 as a Licensed Marriage and Family Therapist.

Welfare and Institutions Code section 4686.2 requires for the service she provides claimant to be considered “behavior intervention services.” Ms. Melgar questioned whether these treatment modalities are behavioral interventions. She commented they look “internally” to address problem behaviors.

15. David Web-Rex, SDRC Program Manager, testified that another problem with Ms. Anderson’s proposed services as a matter of SDRC’s ability to fund it is that under her SDP, claimant must exhaust generic resources available to her. Psychological services under the SDP may be covered “only when the limits of psychological services furnished under the approved state plan are exhausted.” (Exhibit 11, A90.) Claimant has not shown she exhausted generic resources, specifically, Medi-Cal through the Molina Health Plan and SDRC is not required to supplant services provided by public agencies. In this regard, Ms. Melgar testified she contacted claimant’s Medi-Cal health plan through SDRC’s contact with the plan to see if claimant submitted a request for psychological services. The health plan contact told Ms. Melgar it had received no such call on claimant’s behalf.

The Testimony of Ms. Anderson and Claimant’s Mother

16. Ms. Anderson testified she began treating claimant on April 23, 2024. She is not certified as a BCBA, and she has not received training in applied behavior analysis.

With regard to her work with claimant, Ms. Anderson employs the therapeutic modalities mentioned above to help claimant regulate her nervous system and

manage stress.² Ms. Anderson has not developed a behavior modification plan with specific goals for claimant. She believes she is helping claimant with her behavioral problems. As an example of the issues Ms. Anderson helps claimant to address, she cited her work with claimant to help her manage “the separation anxiety” she experiences.

17. Claimant’s mother testified she had trouble accessing services she believes her daughter needs.³ She said she exhausted efforts to get resources, the resources were maxed out and she could not get resources for her. Claimant’s mother expressed frustration in developing the SDP and getting the modalities she feels her daughter needs.

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

² This decision does not draw any conclusions regarding the merits of Ms. Anderson’s treatment of claimant. With this stated, it appears claimant has benefited from her work with Ms. Anderson, per claimant’s mother, and Ms. Anderson presented as conscientious and committed to helping claimant. The issue in this decision concerns only whether SDRC is required to fund claimant’s therapy with Ms. Anderson.

³ Claimant’s mother elected not to testify but she adopted statements she made during the hearing as her statements under oath.

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 include the therapy services Ms. Anderson provides claimant. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

Evaluation and Disposition

3. Claimant’s appeal is denied. She did not prove SDRC must fund the therapeutic services claimant receives through Ms. Anderson. This conclusion is reached for these reasons:

4. Claimant did not show she pursued funding for Ms. Anderson’s services through her Medi-Cal health plan, or through her private health coverage. Before SDRC can fund Ms. Anderson’s services claimant was required within the SDP to exhaust all generic and private resources. (Welf. & Inst. Code, § 4685, subd. (d)(3)(B).) Claimant’s health plan has no record that claimant submitted a claim for Ms. Anderson’s services, claimant did not provide proof her Medi-Cal health plan was asked to fund the service, or that the plan denied her request. Further, there is no evidence claimant asked her private health coverage to fund Ms. Anderson’s service.

5. SDRC is, further, prohibited from using its funds to supplant the budget of an agency such as Medi-Cal for services it is required to provide to the general public, and it must utilize public and private community agencies and service providers to obtain direct treatment and therapeutic services, except in emergency situations. (Welf. & Inst. Code, § 4648, subds. (a)(8) and (f).) Because claimant has Medi-Cal and Medi-Cal serves the general public, claimant was required to first pursue coverage for claimant's therapy through Medi-Cal as discussed immediately above.

6. In addition, under claimant's SDP budget, SDRC can fund Ms. Anderson's psychological services for claimant "only when the limits of psychological services furnished under the approved state plan are exhausted." (Exhibit 11, A90.) No evidence was offered that claimant reached the limits of psychological services under her approved state plan. Claimant's mother's statement that resources were maxed out does not appear correct based on the record.

7. Claimant's request also must be denied because under the Medicaid Home and Community-Based Services Program (HCBS) waiver only certain providers may provide behavioral intervention services. Regional centers provide home and community-based services to people with significant physical and cognitive limitations, allowing them to remain living in their homes or homelike settings rather than being institutionalized. (Social Security Act § 1 et seq., codified at 42 U.S.C. § 1396n, subd. (c).) To be eligible, individuals must meet level-of-care standards required for institutionalization in the absence of HCBS. (42 U.S.C. § 1396n, subd. (c)(1).) Therefore, any services provided under the SDP must comply with the HCBS waiver.

The HCBS waiver lists qualifications for Behavioral Analyst and Behavioral Management Assistant, which are the same as those for vendorized Behavioral Analyst

and Behavioral Management Assistant defined under the Regulation. (Exhibit 21, A194.) (See Cal. Code Regs., tit. 17, § 54342, subds. (a)(11), (a)(12), & (a)(13).)⁴

Under the HCBS waiver, a Behavioral Analyst is an individual "[l]icensed in accordance with Business and Professions Code as appropriate to the skilled professions staff" and has a "[c]ertification by the Behavior Analyst Certification Board accredited by the National Commission for Certifying Agencies." (Exhibit 21, A194.) Ms. Anderson is not certified as a BCBA. Ms. Anderson, further, did not complete course work, either as a licensed marriage and family therapist or associate marriage and family therapist in applied behavior analysis, to meet this certification requirement. (Regulation § 54342, subd. (a)(13).)⁵ SDRC is thus prohibited from funding the services Ms. Anderson provides claimant to the extent those services can be considered behavioral intervention services.

ORDER

Claimant's appeal of SDRC's denial of her request to include the services claimant is receiving from marriage and family therapist Julie Anderson is denied.

⁴ Hereafter, all citations to the California Code of Regulations, title 17, will be referred to as "Regulation."

⁵ Under Welfare and Institutions Code section 4686.2, subdivisions (a)(1) and (a)(2), Ms. Anderson's work with claimant cannot be considered intensive behavioral intervention services because there is no evidence she conducted a behavioral assessment of claimant or that she designed an intervention plan.

None of the funds listed in claimant's approved SDP spending plan or budget shall be used to fund Ms. Anderson's services.

DATE: October 10, 2024

ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024071011

Vs.

DECISION BY THE DIRECTOR

San Diego Regional Center,

Respondent.

ORDER OF DECISION

On October 10, 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 October 30, 2024,

Original signed by:

Pete Cervinka, Acting Director