

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0020828

OAH No. 2024090919

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this consolidated matter¹ on January 22, 2025, in San Bernardino, California.

¹ This matter was consolidated for hearing with DDS No. CS0020826, OAH No. 2024090917, claimant's sister's appeal of the same issue, but separate decisions for each appeal were issued.

Stephanie Zermeño, Appeals and Resolution Specialist, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant who was not present.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 22, 2025.²

ISSUE

Is IRC required to fund claimant's request of the expenses incurred in establishing a Special Needs Trust (SNT) and the associated legal fees?

SUMMARY

Claimant's request must be denied because funds to establish an SNT and its associated legal fees are not specialized services that regional centers may fund.

² The record in claimant's other appeal regarding social recreation was left open to allow claimant to upload exhibits. However, claimant uploaded those exhibits to this matter, as well as to that matter. The exhibits incorrectly uploaded to this matter after the record was closed were removed from Case Center and not considered for this appeal. The exhibits were considered in the social recreation appeal.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, a 10-year-old male, resides in his home with his parents and two siblings, including his sister, who is also an IRC client. According to his Individual Program Plan (IPP),³ he is eligible for regional center services based on his diagnoses of mild intellectual disability, autism spectrum disorder, and epilepsy. Claimant is in the process of transitioning to the Self-Determination Program.

2. On July 25, 2024, IRC advised claimant in a Notice of Action (NOA) that his request that IRC fund the expenses of establishing an SNT was denied. IRC set forth the reasons for its denial in the NOA.

3. Claimant appealed that denial, and this hearing ensued.

Self-Determination Program

4. In 2013, the Legislature enacted Welfare and Institutions Code section 4685.8, requiring the Department of Developmental Services (DDS) to implement a statewide Self-Determination Program 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

³ Evidence that the IPP process has not yet been completed was not relevant to the issue to be decided.

centers and consumer groups to develop policies and procedures to implement the program.

5. Starting July 1, 2021, the Self-Determination Program 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 Self-Determination Program model or continue to receive services in the traditional model. With the Self-Determination Program 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 and support from the regional centers. The regional centers must certify that the cost of the Self-Determination Program does not exceed the cost if claimant were to remain in the traditional service model.

6. 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 IPP and be identified by a specific service code from a list of codes DDS publishes. A participant can annually transfer up to 10 percent of the funds in any budget category to other budget categories without regional center approval. Transfers exceeding 10 percent require regional center approval.

Evidence Regarding SNT Fees and Expenses

7. IRC Consumer Services Coordinator (CSC) Lorena Gonzalez, IRC Program Manager (PM) Elizabeth Flores, and claimant's mother testified, and numerous documents were introduced. The factual findings are based on that evidence.

8. IRC's Position Statement set forth the rationale for its decision.

9. In May 2024, claimant's mother requested funding to establish an SNT. CSC Gonzalez advised that she was "not well-versed" in SNTs and would discuss that request with PM Flores. The request was again discussed at the July 2024 IPP meeting.

10. PM Flores denied the request for several reasons. SNTs are not a specialized service aimed at alleviating a developmental disability. SNTs are not a service exclusive to individuals with a developmental disability. There are generic resources available to create SNTs. IRC does not have a vendor to provide SNT services, nor is there a DDS-approved rate table, or means to implement this service.

11. SNTs are not limited to individuals with developmental disabilities. Numerous persons without developmental disabilities can create SNTs.

12. One generic service available to fund claimant's request is CalABLE, a savings and investment program offered by California to individuals with disabilities. Eligible individuals, family, friends, and employers can contribute up to \$17,000 a year without affecting the beneficiaries' public disability benefits. Beneficiaries who are employed can contribute even more to their accounts. Earnings spent on qualified expenses from a CalABLE account are tax-free. Qualified expenses include legal fees.

13. Claimant's parents are also a generic resource to fund the creation of an SNT. Further, claimant's mother is incorrect in her assertion that an SNT must be created before claimant can be enrolled in the Self-Determination Program, and this was previously explained to claimant's mother.

14. Services to regional center clients must be provided by approved vendors. IRC has no SNT vendors, nor has DDS authorized such a service by creating a rate table or means to implement such a service.

15. Claimant's mother asserted that IRC denied the request because of a prior case involving an IRC client where a similar request to fund SNT services was denied. However, as PM Flores credibly testified, that was not the case. IRC based its decision on applicable laws and regulations, which PM Flores explained to claimant's mother. During that discussion, PM Flores also referenced a recent case that went to hearing on an SNT funding issue where IRC prevailed. PM Flores was involved with that case, so was very familiar with it and the laws governing SNTs, and was simply using that case as an example of what recently occurred regarding the issue of funding an SNT. PM Flores said claimant's request was not denied because of that prior case; it was denied based on applicable laws. Of note, no other evidence regarding that case was introduced, and the findings reached herein are not based on that case.

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 the regional center should fund the service claimant seeks.

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. Subdivision (b) states in part:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and

maintenance of an independent, productive, and normal life.

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 4646.4 requires regional centers to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

11. Welfare and Institutions Code section 4648 requires regional centers be fiscally responsible and purchase services or supports through vendorization or contracting.

12. Welfare and Institutions Code section 4685.5, subdivision (c)(6), which governs funding services in the Self-Determination Program, states in part: "The Self-Determination Program shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation."

Evaluation

13. SNTs are not a specialized service for individuals with developmental disabilities. Individuals without developmental disabilities can also create SNTs. There are generic resources and natural supports available to fund claimant's request. IRC does not have approved vendors to provide the service, nor has DDS created rate tables or means to implement such a service.

Moreover, even after claimant transitions to the Self-Determination Program, an SNT may still not be funded because SNT services are not federally reimbursable, and the Self-Determination Program may only fund services and supports that are eligible for federal financial participation by the federal Centers for Medicare and Medicaid Services. The creation of an SNT is not such a service.

On this record, claimant's request must be denied.

ORDER

Inland Regional Center's denial of claimant's request that it fund the expenses incurred to establish a Special Needs Trust and its associated legal fees is affirmed. Inland Regional Center shall not fund that request.

DATE: January 29, 2025

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 No. 2024090919

Vs.

DECISION BY THE DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On January 29, 2025, 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 February 11, 2025.

Original signed by:

Pete Cervinka, Director