

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

In the Matter of:

CLAIMANT

and

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0021411

OAH No. 2024100334

DECISION

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on May 22, 2025, in person in Napa, California, and on June 17, 2025, by videoconference.

Claimant's father appeared for claimant, who was not present.

Director of Client Services Beth DeWitt represented service agency North Bay Regional Center.

The record closed and the matter was submitted for decision on June 17, 2025.

ISSUE

Did North Bay Regional Center (NBRC) err in proposing to discontinue funding for claimant's tutoring services?

FACTUAL FINDINGS

Introduction

1. Claimant is a sixteen-year-old NBRC consumer who has been receiving services from NBRC since 2019 based on a diagnosis of autism. Claimant attends Napa High School where he is in the 10th grade. Claimant has an Individual Education Plan (IEP) in place through the Napa Valley Unified School District (District). Claimant lives with his parents and younger sibling.

2. Claimant and NBRC are parties to a Person-Centered Individual Program Plan (IPP) dated July 17, 2024. Pursuant to the IPP, NBRC funds up to 85 hours of respite services per quarter for claimant, and up to \$500 for tutoring services through September 30, 2024.

3. During California's 2009 fiscal emergency, state lawmakers prohibited regional centers from using public funds for "[s]ocial recreation activities," other than day programs, "educational services for children three to 17, inclusive, years of age," and "[n]onmedical therapies, including, but not limited to, specialized recreation, art,

dance, and music.” (Welf. & Inst. Code¹, § 4648.5, subd. (a).) Section 4648.5 became inoperative on July 1, 2021, and was repealed as of January 1, 2022. (*Ibid.*)

4. In November 2023, claimant’s father requested that NBRC fund 1:1 in-home tutoring through a private tutor to assist claimant with his educational goals. At the time, claimant’s family had explored and exhausted all generic resources to help claimant improve his grades, and although claimant was receiving speech therapy, extra time on tests, and pre-written notes through the District, he was reportedly struggling with math, English, and biology. Claimant’s father stated that claimant would benefit from tutoring because it would enable him to improve his grades. Funding for tutoring services was allowable because the prohibition in Welfare and Institutions Code section 4648.5 against regional centers funding certain services including social recreation activities and educational services was lifted.

5. Tutoring services for claimant were initially funded by NBRC up to \$500 per month, effective November 30, 2023, through August 30, 2024, and were included in an Addendum to claimant’s IPP dated November 28, 2023. The Addendum noted that “in the absence of generic support, NBRC will fund 1:1 in-home tutoring as a one-time exception, as [claimant’s] educational curriculum is teacher-led and should be supported through his individualized education plan (IEP).”

6. At the time of claimant’s IPP renewal in July 2024, NBRC reviewed existing purchases that had been approved, including claimant’s tutoring services. NBRC determined that it was unable to continue to fund tutoring as a social recreational activity due to a change in the law (the addition of section 4688.22 to the

¹ All statutory references are to the Welfare and Institutions Code.

Lanterman Developmental Disabilities Services Act (Lanterman Act)) and Department of Developmental Services (DDS) guidance. During claimant's IPP meeting in July 2024, the NBRC service coordinator informed claimant's family that the regulation relating to social recreation activities had changed and that it no longer included "other educational services."

7. On September 10, 2024, NBRC issued a Notice of Action (NOA), proposing to discontinue funding for claimant's tutoring services. NBRC stated that "[d]ue to a change in the Social Recreational services regulation [section 4688.22] and NBRC policy, tutoring services are no longer allowable under the regulation." In support of the denial, the NOA cited sections 4646, subdivision (a); 4646.4, subdivisions (a)(1), (2), and (4); 4648, subdivisions (a)(2) and (e)(8); 4659, subdivision (a)(1); and NBRC's Social Recreational Activities Policy.

8. Claimant filed a timely appeal.

NBRC's Request for Funding Process and Subsequent Determinations

9. Megan Goitein, a case management supervisor at NBRC, testified in a credible manner about NBRC's review of claimant's request for funding for tutoring, the IPP process, and NBRC's determinations. Goitein reviews service requests made during IPP meetings for approval. When considering service requests, she reviews a claimant's IPP and if purchases are involved, she refers to NBRC's policies which are based on DDS directives and regulations. Goitein explained that NBRC does not fund all services requested by consumers and their families. When a consumer's need is identified, NBRC first seeks to exhaust all generic resources, which include school districts, insurance, and community resources.

10. NBRC initially agreed to fund claimant's tutoring in 2023 because the prohibition on funding social recreation and educational services had been lifted, and NBRC's revised purchase of service policy (NBRC Social Recreational Policy) which referenced educational services for those aged three through 17, had been approved by NBRC's Board of Directors and DDS in 2022.

11. However, at the time for renewal of claimant's IPP in 2024, Goitein reviewed NBRC's current "Social Recreational, camping and non-medical therapies Policy," which was approved by NBRC's Board of Directors on May 1, 2024, and by DDS on June 4, 2024. In its letter to NBRC approving the policy, DDS stated that "NBRC's POS [purchase of service] policy complies with W&I Code section 4688.22." The policy provides that:

Social Recreational/camping and non-medical therapies are services provided by the regional center for the purpose of assisting individuals to participate in specialized, meaningful, integrated activities that promote positive relationships, social skill development and overall health and well-being. These services can foster inclusion while diminishing the overall impact of the developmental disability. NBRC prioritizes those that face barriers to promote inclusion and ensure equal access.

12. The policy further provides that to be eligible for such services, an individual needs to be over the age of 3 and be eligible to receive NBRC services; that the requested services must be included in the IPP and relate to an identified goal and/or eligibility diagnosis; and that the requested services must be "integrated or lead to integration or inclusion in activities that are attended by people of all abilities

and backgrounds.” Goitein testified that because social recreational activities are intended to facilitate community integration and inclusion, and the policy does not specifically reference educational services, she determined that educational services do not qualify as social recreational activities.

13. All requests for funding for social recreational services require approval from NBRC’s associate director, Kelly Weber. Goitein consulted with Weber regarding whether NBRC could continue to fund claimant’s tutoring services. Reviewing the request in connection with the Lanterman Act and NBRC’s policies and procedures, they determined that educational services which include tutoring are no longer included in social recreational activities funding so those services can no longer be funded by NBRC.

14. Claimant’s IPP dated July 17, 2024, states the following under Objective No. 3 (Education/Employment/Day Services & Transportation):

[Claimant] is attending Napa High School in Napa, CA. He will begin 10th grade in Fall 2024. [Claimant] is in general education classes and excels with his schoolwork. [Claimant] attends speech 2 times a week, is in an after-school program where he receives homework help, and has two tutors for Biology and English. NBRC currently funds up to \$500 per month as this service has been available through Social/Recreational Activities funding. Due to tutoring services no longer being included in the SRA funding, NBRC funding of [claimant’s] tutoring will not be extended past 9/30/24. Purchase information for this activity is included in Objective [No.] 4 [Social, Leisure & Community Integration].

[Claimant] and his family are encouraged to consult with his school district and IEP team for any additional educational supports. Due to the change in NBRC's funding, a Notice of Action is available for [claimant's] parents if desired.

15. Goitein discussed the change in policy and proposed discontinuation of funding of claimant's tutoring services with claimant's father on August 30, 2024. Addendums to the IPP dated September 19, 2024, October 31, 2024, December 23, 2024, and January 21, 2025, stated that tutoring services are no longer allowable due to a change in section 4688.22 and NBRC policy, but extended the \$500 per month funding during the appeal process to allow time to identify other possible resources, beginning on October 1, 2024.

16. During the times that the service was renewed, Goitein had discussions with claimant's parents about other services to meet claimant's needs. Goitein requested that the parents work with claimant's school and IEP team to identify additional educational supports through the District. They discussed an online tutoring program called Paper, offered through claimant's high school. They also discussed engaging a personal assistant to help claimant remain on task for homework or projects, and help him access online tools offered by the District to assist him with his schoolwork.

17. As of January 2025, NBRC authorized funding for personal assistant services for claimant for seven hours per week effective March 1, 2025, through August 31, 2025. Claimant's father also requested funding for two 30-minute private piano lessons per week at Napa School of Music. NBRC agreed to fund the lessons effective January 1, 2025, through March 31, 2025, but proposed to reduce funding to one private lesson per week because social recreation activities are funded with the

intention of providing opportunities for socialization with peers. At the time of the hearing, claimant was still receiving funding for personal assistant services as set forth above, funding for two piano lessons per week, and \$500 for tutoring per month (pending the outcome of this hearing).

18. Goitein supervises 11 supervisors and is not aware of any other NBRC consumer who is currently receiving funding for tutoring from NBRC. She acknowledged that NBRC did fund tutoring for a few other consumers during the last few years, because the law at the time allowed for it, but those services were terminated due to NBRC's change in policy.

19. Weber, NBRC's Associate Director for Client Services, testified consistently with Goitein. Weber oversees approximately 7,000 NBRC consumers. Weber reviews the social recreational services requests for NBRC. She consults with the supervisors and service coordinators and reviews NBRC's policies and procedures to ensure that they are in alignment with regulations and statutes. She was involved in reviewing claimant's father's request for funding for tutoring for claimant.

20. Weber explained that on October 7, 2021, DDS issued a directive indicating that effective July 1, 2021, changes to section 4648.5 restored regional center authority to fund camping activities; social recreation activities; educational services for children three to 17 years of age; and non-medical therapies. In the directive, DDS requested that each regional center revise its purchase of services policies to reflect restoration of funding for these services to promote compliance with this change in statute, and submit those policies to DDS for review and approval.

21. The NBRC Social Recreational Policy that was submitted to DDS for approval stated that educational services for those aged 3-17 can support children to

achieve targeted growth in specific areas related to and impacted by the developmental disability. This policy was reviewed by the NBRC Board of Directors and approved by DDS in 2022. Weber reviewed this policy at the time of claimant's father's original request for funding for tutoring services and considered it in granting the request.

22. NBRC subsequently revised its policy to comply with section 4688.22 and submitted it to DDS for approval, which was obtained on June 4, 2024. At the time for renewal of claimant's tutoring services in July 2024, Weber reviewed section 4688.22 and NBRC's current policy. This policy does not include any language specifically allowing for funding of educational services, and Weber concluded that the policy no longer supported funding educational services including tutoring.

23. Claimant is currently receiving 1:1 tutoring in math, English and chemistry from Club Z! three times per week in hour long sessions in a remote format. NBRC funds \$500 for these sessions per month and claimant's father funds the remaining cost of the sessions, which is \$82 per month.

24. Claimant is also currently receiving tutoring services from Sylvan Learning Center (Sylvan) twice per week in hour long sessions. These tutoring services are being funded by the District.

25. Weber is not aware of any other NBRC consumers who are receiving funding from NBRC for tutoring.

NBRC's Position

26. NBRC contends that regional centers cannot fund educational services in the form of tutoring under section 4688.22, the "social recreational regulation."

27. Section 4688.22 went into effect on July 10, 2023, and was amended on July 2, 2024. Section 4688.22 requires a regional center to support and fund “social recreation services, camping services, and nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.” It is the intent of the Legislature that these services be among the services and supports within the meaning of section 4512, subdivision (b), and be made widely available to consumers. Section 4688.22 requires regional centers to develop purchase of service policies and related procedures that will “reduce administrative barriers to the utilization of these services by consumers to the fullest possible extent.”

Section 4688.22 provides the following guidance to regional centers concerning the purchase of social recreational services, camping services, and nonmedical therapies:

(b) The regional centers shall use the following principles when purchasing social recreation services, camping services, and nonmedical therapies:

(1) Consumers shall receive services and supports in settings that are typical of those in which persons without disabilities engage in social recreation, camping, or nonmedical therapies.

(2) The services described in this section shall promote community inclusion by providing opportunities to build ongoing relationships through or around shared interests or activities, and shall include both of the following:

(A) Activities that directly support a consumer's ability to participate in typical social recreation or other community activities without paid support present.

(B) Activities that may identify or develop specific interests or skills, enable the consumer to engage with others around shared affinities or goals, or otherwise build informal social networks that reduce isolation, strengthen community ties, assist the consumer in advancing their own interests and well-being, and can be a source of voluntary natural supports.

(3) (A) Regional center purchase-of-service policies and related procedures shall promote access to the services described in this section for consumers who are children, for consumers who experience disparities in the receipt of regional center services, and for consumers or their representatives who are unable to afford paying for services upfront and awaiting reimbursement.

(B) Regional center purchase-of-service policies and procedures shall refer consumers and their families to existing opportunities for social recreation services and camping services by funding those services directly along with the supports they may need to access them.

(4) Regional center purchase-of-service policies and procedures related to services described in this section shall not do any of the following:

(A) Restrict funding of the services described in this section to only those that are specialized or directed toward the alleviation of a developmental disability within the meaning of subdivision (b) of Section 4512.

(B) Require the services described in this section to meet both a recreational and socialization need, or prohibit the purchase of one-on-one services, including private lessons.

(C) In order to further the legislative intent of making such services widely available to consumers, generally prohibit or disfavor purchase of these services.

28. NBRC contends that it is statutorily prohibited from funding tutoring services because they are educational services and not social recreational services, that section 4648.5, which referenced educational services, has been removed from the Lanterman Act, and that educational services are not referenced in section 4688.22.

29. In addition, NBRC referred to its "Social Recreational, camping and non-medical therapies Policy." NBRC contends that funding tutoring services does not comply with the policy because tutoring is an educational service, it does not facilitate community integration and inclusion, and educational services are not referenced in NBRC's policy.

30. NBRC also pointed to several DDS Directives in support of its position. On November 3, 2023, DDS sent the regional centers a directive related to the addition of section 4688.22 to the Lanterman Act on November 3, 2023. The Directive referred to the addition of section 4688.22 and required regional centers to review and revise their POS policies, as needed, related to the restored services, to be compliant with section 4688.22.

31. On February 26, 2024, DDS sent the regional centers another directive clarifying the requirements contained in section 4688.22 and providing guidance to regional centers on facilitating access to providers and vendorization of social recreation services, camping services, and nonmedical therapies. Educational services are not referenced in the Directive, nor are they included in section 4688.22. Because the Directive does not explicitly state that funding educational services is permissible under section 4688.22, and section 4688.22 itself does not reference educational services, NBRC determined that it was prohibited from funding these services and removed any reference to these services from its policy.

32. NBRC supports social recreational opportunities for all individuals served by its agency. It promotes inclusion, access and joint engagement in all areas of life enjoyed by citizens of its local community. However, NBRC is subject to regulations and statutes that guide the work and services provided. Due to the repeal of section 4648.5, and the addition of section 4688.22 to the Lanterman Act, NBRC contends that it can no longer fund educational services as social recreational activities.

33. NBRC informed claimant's family regarding the change in the law and its policy in July 2024 and worked with the family to identify alternatives to support claimant's educational needs. NBRC has funded personal assistant services and music lessons and has assisted and encouraged claimant's family to gain access to generic

resources through the District. Claimant is now receiving tutoring services through Sylvan. Claimant's 2024 IEP also reflects that the high school provides claimant with speech language services and directed studies services which assist him with completing and understanding assignments. NBRC also contends that now that the District is providing tutoring services in addition to other IEP supports to claimant, NBRC is not authorized to fund tutoring services for claimant as the payor of last resort.

Claimant's Position

34. Claimant's family contends that there is nothing in section 4688.22 or the recent DDS Directives that specifically prohibits NBRC from funding educational services for consumers as a social or recreational service, or otherwise. Claimant's father testified and submitted a statement which has been considered as testimony. Claimant's father believes that the service that claimant needs most is tutoring. Claimant's father requests that claimant continue to receive the tutoring services currently funded by NBRC. Education is very important to claimant's family. Claimant's father reported that it would be difficult for them to pay for these services due to other expenses.

35. Claimant's father pointed out that the DDS directive dated November 3, 2023, actually emphasizes providing access to social recreational services, particularly for certain groups, stating that:

In revising existing POS policies, pursuant to W&I Code section 4688.22, regional centers must prioritize increasing access to those services, particularly for children, individuals who are non-English speaking, and communities of color.

Policies must also reflect a priority on access to those services, not only by referring consumers and their families to existing opportunities for social recreation services and camping services, but also by funding those services directly along with the supports needed to access them.

36. Claimant reported via his written statement that claimant “is attending 10th grade, and he is considered English learner since he came from Africa when he was little. All in all, my son is doing average with most of his subjects because of current tutoring service but he does poor on some area also.” As examples of problem areas, claimant’s father submitted a note from claimant’s biology teacher from October 2023 indicating that claimant’s grade to date in biology was a C; California Assessment of Student Performance and Progress (CAASSP) test results from Spring 2023 noting that claimant did not meet the standard in English language arts/literacy (ELA) and mathematics; and English language Proficiency Assessments for California (ELPAC) test results from Spring 2025 noting that claimant had moderately developed English skills.

37. Claimant’s father previously requested tutoring services from the District but was initially told that these services were not available. When claimant began receiving tutoring services from Sylvan, he learned that the District was able to fund the services. Claimant began receiving funding for the services referenced in Factual Finding 24 approximately three or four months ago. Claimant’s father requested that the District fund additional tutoring sessions each week with Sylvan, but the District denied this request. Claimant’s father has not requested that the District fund claimant’s tutoring sessions with Club Z!.

38. Claimant's father reported that, although claimant has an IEP and receives several interventions, including speech language services, directed studies services, and now tutoring services from Sylvan which are helpful, these services are not sufficient without the tutoring services from Club Z!. Claimant's father testified that directed studies are offered in a group setting, and that one-to-one services are more beneficial to claimant.

39. Claimant's father reported that claimant declined to participate in Paper, the free online tutoring offered to all students at Napa High School, because it is in a module format, and claimant does better with one-to-one services from a "real person" even if the program is online.

40. Claimant's father reported that claimant requires 1:1 tutoring because he gets distracted, therefore other free tutoring platforms will not help claimant.

41. Claimant's father believes that although the personal assistant services that NBRC are funding are helpful to claimant, they are not as effective as claimant's family would like because claimant prefers to engage in other activities such as basketball or school assignments during the time that is allocated for him to spend with his personal assistant. Claimant's father also noted that it is difficult to find a new personal assistant if the current one leaves the position, leaving a gap in services. Finally, claimant's father emphasized that personal assistant services are not claimant's priority, rather education is. Claimant's father indicated that if claimant cannot keep both personal assistant and tutoring services, he would prefer to keep tutoring services.

42. Claimant's father believes that discontinuing the tutoring services currently funded by NBRC will be detrimental to claimant.

LEGAL CONCLUSIONS

1. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute requires otherwise. (See Evid. Code, § 115.)

2. In seeking funding for tutoring, claimant bears the burden of proving the funding is required. In discontinuing funding for claimant's tutoring, NBRC bears the burden of showing funding is not required. Each side must carry their burden by a preponderance of the evidence.

3. Pursuant to the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (§ 4500 et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) Regional centers have the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).)

4. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options

available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

5. Regional centers must establish and follow an internal process when developing, reviewing, and modifying an IPP. (§ 4646.4, subd. (a).) The process must adhere to state and federal laws and regulations. (*Ibid.*) Purchases must conform with the regional center's DDS-approved purchase of service policies. (§ 4646.4, subd. (a)(1).) Regional centers must also identify and not supplant generic resources and supports, as well as other public and private funding sources. (§ 4646.4, subd. (a)(2)–(3).) A family is responsible for funding services and supports they would have provided a minor child without disabilities. (§ 4646.4, subd. (a)(4).) Regional centers consider the consumer's need for services, barriers to service access, and other information. (§ 4646.4, subd. (a)(5).) Regional centers are "payers of last resort," meaning they cannot pay for services available through other state and federal programs. (§§ 4659.10, 4659, subd. (a).)

6. "Services and supports" 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." (§ 4512, subd (b).) Services and supports for persons with developmental disabilities are not expanded, and no new or different service or support is authorized, "unless that service or support is contained in the consumer's individual program plan." (*Ibid.*)

7. The legislature places "a high priority on promoting the full inclusion and independence of individuals with developmental disabilities, including through opportunities for recreation." (§ 4688.22, subd. (a)(1).) As such, the legislature includes

“social recreation services, camping services, and nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music,” as “among the services and supports within the meaning of subdivision (b) of Section 4512” and provides that these services “be made widely available to consumers, not only for socialization, but to lead the lives that they want in the community.” (§ 4688.22, subd. (a)(2).)

Regional centers cannot restrict social recreational, camping, and nonmedical therapy funding to those services “that are specialized or directed toward the alleviation of a developmental disability within the meaning of subdivision (b) of Section 4512,” cannot require that services “meet both a recreational and socialization need, or prohibit the purchase of one-on-one services, including private lessons,” and cannot “generally prohibit or disfavor purchase of these services.” (§ 4688.22, subd. (b)(4)(A)–(C).)

8. The tutoring services that claimant receives from Club Z! do not appear to qualify for regional center funding in claimant’s situation. Importantly, there is no evidence that the tutoring services that claimant receives from Club Z! provides peer socialization or recreational activities that would qualify for funding as a social recreational service as contemplated by the principles set forth in section 4688.22.

Although it does not appear that the Lanterman Act specifically prohibits the reimbursement of an educational service as a social recreational service, section 4688.22, subdivision (b)(2), does require that these services “promote community inclusion by providing opportunities to build ongoing relationships through or around shared interests or activities.” These services include activities that directly support a consumer’s ability to participate in typical social recreation or other community activities without paid support present, and activities that may enable the consumer to engage with others around shared affinities or goals, or otherwise build informal social

networks that reduce isolation, and strengthen community ties. (*Ibid.*) The evidence did not show that the tutoring services claimant receives from Club Z! either "promote community inclusion" or provide "opportunities to build ongoing relationships through or around shared interests or activities." NBRC's purchase of service policy also states that the purpose of social recreational services is to assist individuals to participate in specialized, meaningful, integrated activities that promote positive relationships and social skill development and to facilitate community integration and inclusion. One on one tutoring does not meet the purpose of social recreational services.

Furthermore, regional centers are "payers of last resort," meaning they cannot pay for services available through other state and federal programs. Here claimant's situation has changed since his father first requested funding for tutoring services. Claimant is currently receiving tutoring services funded by the District.

As an educational service, it also appears that claimant's request for tutoring services above and beyond what the District is providing would fall within parental responsibility. (§§ 4512, subd (b), 4646.4, subd. (a)(4).) NBRC properly denied the request to continue funding tutoring sessions provided by Club Z!.

ORDER

Claimant's appeal is denied.

DATE:

MICHELLE DYLAN

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.