

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0021682

OAH No. 2024100934

PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 25, 2025.

Claimant's mother appeared at the hearing and represented claimant.

Keri Neal, Fair Hearing Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 25, 2025.

ISSUE

Should IRC continue to provide funding for Brain Balance Program services through claimant's spending plan as a part of claimant's Self-Determination Program?

FACTUAL FINDINGS

Background

1. The following factual findings are derived from documentary evidence submitted by IRC and claimant, the testimony of claimant's mother, and the testimony of the following IRC representatives: Sabrina Caballero, Juan Contreras, Amanda McGuire, Edith Velasco, and Holly Miller-Sabouhi, Psy.D.

2. Claimant is a 9-year-old boy who resides with his mother and minor sister. According to claimant's Individual Program Plan (IPP), he is eligible for regional center services based on his diagnosis of autism spectrum disorder (autism) and an unspecified intellectual disability.

3. Effective May 1, 2024, claimant transitioned from traditional services into the Self-Determination Program (SDP). Claimant's SDP budget for the period from May 1, 2024, through April 30, 2025, was certified by IRC on March 21, 2024. Claimant's SDP spending plan was initially approved by IRC on April 11, 2024, which included Brain Balance Program (Brain Balance) services for three sessions each week, for a total of 93 annual sessions, under the category of "cognitive and sensory exercises" and SDP service code 334 for "individual training and education." IRC initially approved Brain Balance services for claimant because IRC believed it was an educational program. Thereafter, claimant began receiving Brain Balance services.

4. On October 22, 2024, IRC issued a Notice of Action (NOA) that it was denying claimant's request to fund Brain Balance services because it was determined to be experimental and regional centers are prohibited from funding experimental treatments.

5. On December 20, 2024, claimant filed an appeal to the NOA and requested a mediation and hearing, and argued he should continue to receive Brain Balance services through his SDP spending plan because there are other regional centers that fund Brain Balance services; traditional therapies have not addressed claimant's "sensory processing and regulation challenges"; Brain Balance services have long-term benefits for claimant's goals to reduce his dependence on regional center and state resources in the future; Brain Balance services are not experimental; and Brain Balance services align with claimant's IPP goals addressing his sensory processing and regulation challenges in ways that other therapies do not.

6. On February 11, 2025, claimant submitted an amended spending plan to "move funds" in claimant's SDP spending plan by increasing claimant's Brain Balance services to three sessions each week, for a total of 99 annual sessions. This increased amount remains and is currently being funded through claimant's SDP spending plan through aid-paid pending during the appeal process.

7. IRC's position statement and claimant's position statement set forth the parties' respective positions.

8. This hearing followed.

Self-Determination Program

9. In 2013, the legislature enacted Welfare and Institutions Code section 4685.8, requiring the Department of Developmental Services (DDS) to implement a statewide SDP 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. DDS began pilot programs in certain regional centers and oversaw statewide working groups from various regional centers and consumer groups to develop policies and procedures to implement the program.

10. Starting July 1, 2021, the SDP 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 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.

11. 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 ten percent of the funds in any budget category to other budget categories without regional center approval. Transfers exceeding ten percent require regional center approval.

12. Participants may also create Person Centered Plans, but these plans do not obligate regional centers to fund any of the items listed therein, nor must regional centers approve those plans. However, regional centers are required to certify individual SDP budgets and review spending plans to ensure compliance with applicable laws and federally approved categories.

IRC's Evidence

13. IRC admitted the following 61 documents into evidence:

- Claimant's IPP dated February 14, 2024, IPP Addendum dated May 13, 2024, Client Developmental Evaluation Report dated February 29, 2024, Person-Centered Plan dated December 18, 2023, SDP certified budget dated October 5, 2023, and SDP spending plan dated February 22, 2024, and February 11, 2025;
- SDP service codes and descriptions, DDS directive regarding SDP and goods and services dated January 13, 2022, DDS directive regarding SDP and updated goods and services dated November 22, 2023, DDS directive regarding SDP and updated goods and services dated July 8, 2024, regional center traditional "miscellaneous service codes" 2010, IRC's "Purchase of Service Policy," multiple references to statutes and regulations, and eight decisions issued by OAH;
- Brain Balance publications and related documents – "Making Breakthroughs Possible," "Research and Results," "Enrollment Agreement," "How Much Does Brain Balance Cost?," sample "Franchise Disclosure Document," sample invoices, sample "Comprehensive Assessments," sample "Cognitive Assessment Report," sample "Progress Reports," claimant's "Comprehensive

Assessment" dated May 16, 2024, and claimant's "Progress Report" dated October 3, 2024, emails between claimant's mother and IRC representatives, Brain Balance of Greater San Diego's appeal of San Diego Regional Center's denial of its vendor application dated May 3, 2023, email from Vanessa Besack of Bravehope Partners dated November 5, 2024, and job postings by Brain Balance of Greater San Diego for a "PT Sensory Motor & Cognitive Coach for Neurodivergent Kids/Teens/Adults," a "Lead Sensory Motor & Cognitive Coach for Neurodivergent Kids/Teens/Adults," and a "Sensory Motor and Cognitive Coach Intern";

- Articles and studies on Brain Balance published by "Science-Based Medicine" dated September 13, 2010, "Milwaukee Journal Sentinel" dated November 14, 2010, "NeuroBollocks" dated March 5, 2013, "Bloomberg Business Week" dated February 5, 2018, "NPR" dated June 18, 2018, Wisconsin Department of Health Services dated June 29, 2018, "Association for Science in Autism Treatment" (ASAT) in 2021, "Wikipedia" in 2025, "Mental Health Journal" dated January 17, 2020, "Science Direct" in January 2023, and "Children's Hospital of Philadelphia" dated June 9, 2020;
- References and publications regarding autism by "California Autism Professional Training and Information Network" (CAPTAIN) and Evidence-Based Practice (EBP), and "The National Clearinghouse on Autism Evidence & Practice" in 2020; and
- Other publications including "Board Certified Behavior Analyst (BCBA) Handbook" 2025, "American Occupational Therapy Association" publication titled "Learn the Steps to Licensure" 2025, "California Academy of Nutrition & Dietetics" publication titled "Become an RDN or NDTR" 2025, "American

Speech-Language-Hearing Association” publication titled “Speech-Language Pathologists” 2025, “American Physical Therapy Association” publication titled “Becoming a Physical Therapist” 2025, “Kaiser Permanente” publication titled “Medi-Cal Plan Member Handbook” 2025, and “Association of Regional Center Agencies (ARCA)” publication titled “Recommendations for Consideration When Funding Dental and Medical Services” 2024.

TESTIMONY OF SABRINA CABALLERO

14. The following is a summary of the testimony of Sabrina Caballero. Ms. Caballero has been a Consumer Services Coordinator (CSC) for 20 years. She has a bachelor’s degree in psychology and master’s degree in counseling and guidance. Her role as a CSC involves meeting with families, general advocacy such as participating in Individualized Education Plan (IEP) meetings and looking for generic resources, and creating an IPP that outlines supports, services, and goals for consumers.

15. Ms. Caballero has been claimant’s CSC for a year and a half. He is eligible for regional center services due to autism and unspecified intellectual disability. Claimant has behavioral issues including physical aggression, emotional outbursts, and eloping in the community. Claimant’s IRC services include 80 hours each month of preferred provider respite and social recreational reimbursements. His SDP spending plan was approved for \$36,600 in living arrangements, \$28,862.84 in employment and community participation, \$600 for health and safety, for a total of \$66,362.84,¹ which includes Brain Balance services. Claimant receives generic resources of 48 hours each

¹ Claimant’s SDP spending plan lists these amounts that add up to \$66,062.84 not \$66,362.84.

month of In-Home Support Services (IHSS), and Medi-Cal coverage through Inland Empire Health Plan (IEHP) / Kaiser Permanente that provides 10 hours each week of Applied Behavioral Analysis (ABA) services by Love to Learn and a monthly session of in-person mental health services. Claimant receives school services through his IEP of 30 hours a month of specialized academic instruction, 15 hours a month of speech therapy in a group setting, and 200 minutes each year of mental health services.

16. Ms. Caballero sent an email on September 20, 2024, to claimant's mother informing her that IRC would no longer fund Brain Balance services and claimant would receive an NOA stating the same. Claimant is requesting that IRC continue to fund Brain Balance services through his SDP spending plan.

TESTIMONY OF AMANDA MCGUIRE

17. The following is a summary of the testimony of Amanda McGuire. Ms. McGuire has a master's degree in public administration and more than 10 years working in the field. She has been an IRC Program Manager for Resource Development and Transportation for nearly three years. She oversees the unit that develops all the resources and services, and she works with old and new vendors. Prior to her position as a program manager, Ms. McGuire was a community placement plan specialist and community resource specialist. Prior to her employment at IRC, Ms. McGuire managed day programs for adults with disability for eight years and provided direct support as a job developer.

18. At IRC, Ms. McGuire specializes in the vendorization process where she works with vendors to provide IRC with their "intent to provide services," what those services will entail, what service codes their services fall under, and if they meet the qualifications of those service codes. The service codes are from DDS. "Miscellaneous

Service Codes” cover extra services that fill in the gaps such as tutoring. These include “specialized recreational therapy” under service code 106 for services like equestrian therapy or occupational therapy and “educational services” by licensed and/or credentialed providers for services like driving lessons and cardiopulmonary resuscitation (CPR) courses.

19. Ms. McGuire testified that Brain Balance does not meet the vendor requirements of DDS. Brain Balance does not reference its providers being credentialed and/or licensed. For instance, Brain Balance does not meet the vendor requirements for “educational services” because there is no indication in its publications and/or documentation that its providers are credentialed. Brain Balance has a session for personalized nutrition coaching but it does not reference any requirements for its providers to be a licensed dietitian or a licensed vocational nurse (LVN), which is required under the service code 720 for “diet counseling.” In addition, behavioral services must be provided by a board-certified behavioral analyst. Brain Balance has job postings with no indications that applicants need credentials and/or licensure for positions such as a “Lead Sensory Motor & Cognitive Coach” and a “PT Sensory Motor & Cognitive Coach for Neurodivergent Kids/Teens/Adults.” The job postings only state that applicants need to have a bachelor’s or master’s degree but do not mention a requirement of licensure and/or credentialing.

20. In addition, Ms. McGuire stated that Brain Balance cannot be vendored under “specialized recreational therapy” or “social recreation” because specific goals are required such as working on social skills in the community, money management, and independent skills, and these goals are not part of Brain Balance’s program.

21. Ms. McGuire also noted that Brain Balance’s enrollment agreement described the program as a “non-medical program” with activities that are physical,

cognitive, and academic to improve a student's learning, well-being, and balance. She testified these areas appeared to touch on service codes like "educational services" and "specialized recreational therapy" but they do not meet the requirements of vendorization because they do not require a licensed/credentialed professional. In a prior case, Ms. McGuire offered to assist Brain Balance in exploring vendorization but Brain Balance did not follow through. Moreover, she concluded that Brain Balance's services appeared to be experimental.

TESTIMONY OF JUAN CONTRERAS

22. The following is a summary of the testimony of Juan Contreras. Mr. Contreras is a Participant Choice Specialist (PCS) within the SDP unit at IRC. He has a bachelor's degree in psychology and social behavior. His job duties include assisting families with any concerns they have with the SDP process and their SDP budget plans. Prior to his PCS position, Mr. Contreras worked as a CSC at IRC for six years.

23. In the SDP program, the services provided must meet the SDP service code definitions created by DDS. These are different from the traditional service code definitions. The SDP budget considers the last 12 months of a claimant's budget to show what was used and unused in the traditional services model. This is used to create a claimant's SDP draft budget that references the traditional service codes. IRC must certify the SDP budget, which can be adjusted in a "movement of funds" after the budget is certified and if there are unmet needs or changed circumstances. The "movement of funds" request is reviewed by the SDP compliance review team to ensure the change complies with DDS directives and laws. In a claimant's SDP budget, the family shows how the claimant's funds will be spent and the application of SDP service codes.

24. Mr. Contreras testified that claimant's SDP budget was certified by IRC on March 21, 2024, in the total amount of \$66,362.84 for the period from May 1, 2024, through April 30, 2024. Claimant's SPD spending plan was approved by IRC on April 11, 2024. It covered SDP service codes for a personal assistant, mileage, respite, conferences, independent facilitator, and social recreational activities such as jiu jitsu classes and gear, baseball lessons and gear, golf lessons, and attendance at camp. Claimant's SPD spending plan also included "cognitive and sensory exercises" rendered by Brain Balance with three sessions each week, for 93 sessions each year, under SDP service code 334 for "individual training and education." However, IRC had approved Brain Balance in claimant's SDP spending plan because IRC initially believed that Brain Balance was an educational program.

25. IRC issued the NOA to terminate the funding of Brain Balance services because it learned that Brain Balance is experimental and it does not fit within the definitions of any SDP service codes including 331 for "community integration supports," 333 for "participant-directed goods and services," and 334 for "individual training and education." Brain Balance is experimental and cannot be funded under any SDP service code for that reason including under the default SDP service code of "participant-directed goods and services" because it is experimental. Brain Balance does not meet the definitions of any SDP service code because it lacks requirements such as needing a license and/or certification under "individual training and education" and requiring an integration goal under "community integration supports."

TESTIMONY OF HOLLY MILLER-SABOUI

26. The following is a summary of the testimony of Holly Miller-Sabouhi, Psy.D. Dr. Miller-Sabouhi has been employed as a staff psychologist at IRC for nine years. She holds a doctoral degree in psychology and is a licensed clinical

psychologist. At IRC, she is part of the eligibility team. She conducts psychological assessments, case reviews, recommendations for eligibility and continued eligibility, and participates in hearings.

27. Dr. Miller-Sabouhi has been trained in “psychometrics” on how to obtain objective information through observation. “Reliability” in psychological testing refers to how a test has reliable results repeatedly over time. “Validity” of psychological testing refers to test accuracy and how well the test measures what you claim it measures. Validity is needed for the test to have any value or meaning. Both reliability and validity are crucial in establishing high quality testing and meaningful results, and the data and research can be given value and hold weight regarding the findings.

28. Dr. Miller-Sabouhi discussed how Brain Balance is an experimental treatment. She referenced an article in the “Milwaukee Journal Sentinel” that cites doctors who are skeptical of Brain Balance’s claims about a condition it calls “functional disconnection syndrome,” which is not a condition in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR). Dr. Miller-Sabouhi noted that a comprehensive psychological assessment includes standard components and determining factors that depend on what the evaluator is trying to do. At IRC, these would include cognitive, social emotional, and behavioral assessments. IRC also looks at academic achievement tests and behavioral tests that are standardized and specifically for autism. The assessment might also include reviewing relevant records particularly regarding developmental history, medical, and educational.

29. Dr. Miller-Sabouhi looked at “comprehensive assessments” performed by Brain Balance and noted they were completed by a parent and/or Brain Balance representative who observed infant reflexes, sensory perception and processing, sensory motor skills and awareness, academic skills, and behavior. However, Dr. Miller-

Sabouhi noted a pediatrician evaluates infant reflexes; a neurologist assesses sensory perception, processing, and motor skills; and a certified educator assesses academic skills. She noted the "comprehensive assessments" had no reference to the name and credentials of the evaluator; there were no clinical observations; and recommendations such as Brain Balance sessions three times each week, weekly sensory motor sessions, weekly academic sessions, progress updates, and reassessment, did not include a statement as to how these recommendations were determined.

30. Dr. Miller-Sabouhi remarked the "comprehensive assessment" had a disclaimer on the bottom of the page stating it "is not a diagnostic tool." The "comprehensive assessment" also had the following statement, "Projections are based on the peer-reviewed research study/looking at student outcomes after completing the Brain Balance program." There was a reference to "data" being gathered from "8,000+ Brain Balance students," but the link on the page showed there were 478 students, not more than 8,000 students. There was a reference to a single diagnostic instrument, "CBS," which Dr. Miller-Sabouhi believed might be "Cambridge Brain Sciences/Systems," but she was unsure of the psychometrics of that instrument used to assess validity and reliability that are crucial in establishing high quality testing and meaningful results.

31. Dr. Miller-Sabouhi discussed other research articles regarding Brain Balance but she noted some addressed symptoms that were not specific to autism or did not reference any benefits of treatment for autism. They were instead focused on attention-related concerns or other anxiety or emotional-behavioral symptoms. Many of the studies were done by Brain Balance or included some type of compensation to Brain Balance for the study, which calls into question the integrity of the research due to the conflict of interest of Brain Balance who might benefit from a positive outcome.

Also, many of the studies were considered pilot studies and in some of the studies, the families were responsible for paying for the Brain Balance study and this could present a disparity in the findings because only some children could participate.

TESTIMONY OF EDITH VELASCO

32. The following is a summary of the testimony of Edith Velasco. Ms. Velasco has a bachelor's degree in psychology and a master's degree in education with an emphasis in applied behavioral analysis. She has worked at IRC for more than two years as a BCBA and a qualified behavioral modified professional. She previously worked for 13 years as an ABA therapist providing services for children and adults in their homes. At IRC, her duties include conducting ABA assessments to determine clinical data; conducting other direct measures like with psychological, speech, and school needs; processing the most baseline data for the child; and creating a treatment plan called a behavioral intervention plan (BIP) that sets forth milestones for the child's behaviors. She collaborates with other providers and discusses progress and services/supports for which the claimant may be eligible.

33. Ms. Velasco testified that BCBAs are ethically supposed to only follow and provide treatment that is an EBP. ABA is evidence based. She cited an article by Children's Hospital of Philadelphia titled "Evidence Based Practices," which states that EBPs for those with autism are therapies or treatments that have gone through rigorous research and review and have been found to be effective for treating individuals on the spectrum. Ms. Velasco cited an article by National Clearinghouse on Autism Evidence & Practice and the University of North Carolina at Chapel Hill titled "Children, Youth, and Young Adults with Autism," which contains a chart listing the 28 EBP/treatments for autism and Brain Balance is not on the list. Ms. Velasco also cited the CAPTAIN tool used by clinicians and others to verify treatment for autism and to

understand which treatments are EBPs and which ones are not, and Brain Balance is not on CAPTAIN's list.

34. Ms. Velasco testified that Brain Balance is not an EBP to treat autism and she could not support that Brain Balance is an empirically validated practice, because it is considered experimental.

Claimant's Evidence

35. Claimant admitted the following documentary evidence: Claimant's position statement; an email from IRC approving claimant's SDP spending plan; claimant's signed/approved SDP spending plan; claimant's comprehensive assessment by Brain Balance; claimant's progress report/cumulative by Brain Balance; an email from claimant's mother to IRC requesting the SDP service code for Brain Balance be changed to 331; an email from IRC replying to claimant's mother's email indicating Brain Balance cannot be funded by IRC because it is not evidence based and an NOA will be forthcoming; SDP service definitions; and the NOA issued to claimant regarding IRC terminating funding for Brain Balance and a copy of "The Lanterman Act Appeals Information Packet" that was included with the NOA.

TESTIMONY OF CLAIMANT'S MOTHER

36. The following is a summary of the testimony of claimant's mother:

37. Claimant's SDP is intended to prioritize individual choice and control and allow maximum flexibility. It does not require that services to be evidence-based. Claimant's IPP contains these goals and they align with the services claimant is getting from Brain Balance. Claimant's mother requested that Brain Balance be reassigned to

SDP service code 331, which supports independence, social skills, self-esteem, and the ability to regulate emotions and confidence.

38. Claimant's mother asserted that requiring Brain Balance to be an EBP is arbitrary. Brain Balance aligns with claimant's individual goals and needs and promotes inclusion. She rejected IRC's argument that Brain Balance is not evidence based.

39. Claimant's IPP sets forth goals of personal and emotional growth for claimant to continue to develop into a happy boy. Claimant has benefited from Brain Balance because it helped to improve his self-processing and self-regulation, enhance social engagement, focus and learn strategies, and reduce reliance on more restrictive supports. Brain Balance also has a "Brain Bucks" program that has been helpful for claimant.

40. In conclusion, claimant's mother asserted that IRC's termination of funding of Brain Balance is arbitrary and a wrongful termination. She also asserted that Brain Balance should be funded under a different SDP service code.

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 his SDP spending plan should continue to include funding for Brain Balance.

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, subdivision (b), states:

“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.) 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 & Institutions Code section 4648, subdivision (a)(17) provides in part: "regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown."

11. Welfare and Institutions Code section 4686.2, subdivision (d)(3) defines "evidence-based practice" as follows:

. . . a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment.

Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

12. Welfare and Institutions Code section 4685.8 requires DDS to implement a statewide SDP which shall be available to all regional centers. Subdivisions (c)(6) and (c)(7), respectively, define "Self-determination" and "Spending Plan." Subdivision (d) makes participation in the SDP voluntary. Subdivision (d)(3)(C) mandates that the SDP "participant shall only purchase services and supports necessary to implement their IPP and shall comply with any and all other terms and conditions for participation in the" SDP. Subdivision (k) authorizes an SDP participant to "implement their IPP, including choosing and purchasing the services and supports" that are "necessary to implement the plan" and a "regional center shall not prohibit the purchase of any service or support that is otherwise allowable." Subdivision (r)(5) requires regional centers, "in addition to annual certification, [to] conduct an additional review of all final individual budgets" Subdivision (r)(6) requires the "spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies." Subdivision (y)(3)(D) makes SDP participants accountable for the use of public dollars.

Evaluation

13. Claimant did not prove by a preponderance of the evidence that the treatment provided by Brain Balance has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant's disability. As a result, it is experimental and IRC is prohibited from funding Brain Balance services.

14. IRC is prohibited by the Lanterman Act from funding therapies that have not been clinically determined or scientifically proven to be effective for the treatment or remediation of developmental disabilities. The legislature enacted this prohibition not only to safeguard taxpayers from the wasteful spending of public funds, but also to protect consumers and their parents from the false hope of therapies that have not been established to meet the claims made by some of their practitioners.

15. There was inadequate support presented at hearing for the effectiveness of the treatment provided by Brain Balance. In fact, it was just the opposite, there was overwhelming support to demonstrate that Brain Balance services are experimental. The testimony by IRC's witnesses and publications they cited showed there is insufficient psychological testing of Brain Balance treatments as there is a lack of reliability and validity in the studies that reference Brain Balance. Brain Balance's own "comprehensive assessments" of clients do not include standardized testing and they are based on observations by parents and/or Brain Balance representatives who do not list their name, licensure, and/or credentials. In fact, job postings for Brain Balance indicate applicants must have a bachelor's or master's degree, but there is no mention of a requirement to be licensed or credentialed. Some articles reference a condition that Brain Balance calls "functional disconnection syndrome." This is not a condition recognized by the DSM-5-TR. In addition, other guidelines and resources used by practitioners such as CAPTAIN do not list Brain Balance as a recognized and validated

evidence-based treatment for autism. As such, the evidence establishes that Brain Balance is experimental and for this reason, IRC is precluded from funding Brain Balance under any SDP service code including the default service code 333 for "participant-directed goods and services."

16. In the alternative, even if Brain Balance was not experimental, it fails to meet the requirements of vendorization because it does not satisfy the definitions of any SDP service code, including service code 106 for "specialized recreational therapy," service code 720 for "diet counseling," and service code 334 for "individual training and education," because Brain Balance does not utilize licensed and/or credentialed providers as required by these SDP service codes. Brain Balance also does not meet the definition of SDP service code 331 for "community integration supports" because it does not integrate community-based goals.

17. Based on all the above, IRC's termination of funding Brain Balance through claimant's SDP spending plan must be upheld.

ORDER

Claimant's appeal of IRC's decision to terminate funding for the Brain Balance Program through claimant's SDP is denied.

DATE: March 6, 2025

JAMI A. TEAGLE-BURGOS
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of:

Claimant

OAH Case No. 2024100934

Vs.

DECISION BY THE ACTING DIRECTOR

Inland Regional Center,

Respondent.

ORDER OF DECISION

On March 6, 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 (Department) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted by the Department as its Decision in this matter except as follows:

- The Proposed Decision on page 17, paragraph 2, the last sentence is amended as follows: "In this case, IRC bears the burden to prove its denial of using claimant's Self Determination Program (SDP) spending plan to include funding for Brain Balance was proper."

The Proposed Decision incorrectly states that "in this case, claimant bears the burden to prove his SDP spending plan should continue to include funding for Brain Balance." The burden of proof in this case was on Inland Regional Center (IRC) to prove by preponderance of the evidence that IRC was correct to terminate the approved Brain Balance services claimant receives, since it is IRC that seeks to terminate claimant's approved Brain Balance Services. (see *Conservatorship of Hume*, 140 Cal. App. 4th 1385, 1388, 44 Cal. Rptr. 3d 906, 907 (2006), as modified on denial of reh'g (July 28, 2006) [the law has "a built-in bias in favor of the status quo," and the party asking a court to do something has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"]. IRC bears the burden of proof regarding its denial of the funding request because the service had been previously funded.

- The Proposed Decision on page 21, paragraph 17 is amended as follows: “IRC met its burden by demonstrating that Brain Balance services has not been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant’s disability, as required by Welfare and Institutions Code sections 4648, subdivision (a)(17), and 4686.2, subdivision (b)(1)(A). Based on all of the above, IRC’s termination of funding Brain Balance through claimant’s SDP spending plan must be upheld.”

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.

ORDER

Claimant’s appeal of IRC’s decision to terminate funding for the Brain Balance Program through claimant’s SDP is denied.

IT IS SO ORDERED on this day April 2025.

Original signed by:

Carla Castañeda, Acting Director