

Notice:

At the request of the claimant, certain potentially identifying information has been redacted from the decision for purposes of its public posting.

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

In the Matter of:

CLAIMANT

and

REGIONAL CENTER OF THE EAST BAY, Service Agency.

DDS No. CS0022531

OAH No. 2024110857

PROPOSED DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on January 9 and February 13, 2025, by videoconference.

Claimant represented herself at hearing.

Mary Dugan, Appeals Specialist, represented the Regional Center of the East Bay (RCEB), the service agency.

The record closed and the matter was submitted for decision on February 13, 2025.

ISSUES

1. Must RCEB allow payment for an Apple ID subscription from claimant's Self-Determination Program (SDP) spending plan budget through an escrow payment service rather than the payment being made directly by a Fiscal Management Service (FMS)?
2. Must RCEB allow claimant to access her SDP spending plan budget to pay her monthly cellular (cell) phone bill?
3. Must RCEB allow claimant to access and increase her SDP spending plan budget to pay rent for an artist studio working space?

FACTUAL FINDINGS

1. Claimant is an adult living by herself in a rented one-bedroom apartment. Claimant is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)¹ for services from RCEB because she is substantially disabled by autism spectrum disorder.
2. The purpose of an Individual Program Plan (IPP) meeting is to use a person-centered approach to consider the needs and preferences of a regional center client and, as appropriate, their family, using an individualized needs determination to develop the provision of services and supports to assist a client to achieve their

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise stated.

personal outcomes and life goals and promote inclusion in their community through a cost-effective use of public resources. (§ 4646.) In addition, services and supports should be provided in the least restrictive environment that will “foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible,” and “services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.” (§ 4502, subd. (b)(1).)

3. On June 20, 2024, an IPP meeting was held for claimant, and the meeting was continued to October 28, 2024. An IPP with person-centered objectives was developed during the two meetings, and claimant provided written consent to the IPP on October 28, 2024. Claimant’s IPP includes four desired outcomes. Outcome Three is for claimant to “successfully establish rewarding artmaking practices” which includes her purchasing “equipment and supplies needed to build her business.” Outcome Four is for claimant to “build her own business, as well as maintain and secure her technology requisites” and she wants:

support to build her own business by developing a YouTube channel called “Redacted” where she can produce artmaking, process and tutorial videos to promote online sales of her designs and her art by marketing through social media or YouTube channel.

4. Claimant has elected to participate in the SDP. The SDP was added to the Lanterman Act to “provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP.” (§ 4685.8, subd.

(a.) An IPP for an SDP participant is subject to the same requirements as for Lanterman Act consumers who do not participate in the SDP. (§ 4685.8, subd. (c)(4).) Just as for Lanterman Act consumers who do not participate in the SDP, the SDP consumer's IPP identifies the consumer's needs and goals, and describes services the regional center will provide or fund to meet those needs and goals. (§§ 4646, 4685.8, subd. (b)(2)(H)(i).)

In the SDP, the consumer directs spending from an "individual budget," representing "the amount of regional center purchase of service funding available to the participant for the purchase of services and supports necessary to implement the IPP." (§ 4685.8, subd. (c)(3).) An SDP participant's initial annual individual budget is "the total amount of the most recently available 12 months of purchase of service expenditures," adjusted to reflect changes such as "prior needs or resources that were unaddressed." (*Id.*, subd. (m)(1).) The total budget may not exceed the amount that "would have been expended using regional center purchase of service funds regardless of the individual's participation in the" SDP. (*Id.*, subd. (m)(1)(B)(ii).)

The SDP consumer directs spending from this individual budget according to an approved "spending plan," which must "identify the cost of each good, service, and support that will be purchased with regional center funds." (§ 4685.8, subd. (c)(6).) All such goods, services, and supports must be "necessary to implement" the consumer's IPP. (*Id.*, subds. (c)(6), (d)(3)(C).)

SDP consumers are required to utilize the services of an FMS provider of their choosing. A designated FMS provider manages helps SDP consumers manage their individual budget and spending plan, but the FMS agency does not control the budget or spending plan. (§ 4685.8, subd. (c)(1).) The SDP consumer submits expenses to the

FMS provider and the FMS provider pays all providers, including employees hired by the SDP consumer, directly. (*Ibid.*)

5. Claimant's operative SDP spending plan, year two, runs from September 1, 2024, through August 31, 2025. The spending plan budget for this period is \$159,735.60. Claimant's designated FMS provider is Cambrian. On September 3, 2024, claimant and RCEB provided consent to implement this SDP spending plan.

The spending plan designates \$10,000 under the service code 336 for "Technology" and details five items. One of the items is "Subscriptions & fees" and includes payment for "AppleID."

The spending plan designates \$40,000 under the service code 331 for "Community Integration" and details three items. One of the items is "Co-working studio space for \$750 per month." The purpose of the item is to provide:

A low-sensory environment that promotes low-key social contacts and can provide me a means to manage my anxiety in social settings. This will also enable me to . . .
Produce You Tube videos for my channel

6. On September 13, 2024, at an IPP meeting, claimant made two requests to RCEB: allow payment from her SDP spending plan for her Apple ID subscription (as set forth in Factual Finding 5) to be paid through an escrow account instead of being directly paid by Cambrian, and to include her monthly cell phone bill in her SDP spending plan under technology (service code 336). Claimant's requests were discussed at the IPP meeting, and RCEB denied both requests.

7. Also on September 13, 2024, RCEB sent claimant a letter and attached Notice of Action (NOA) denying her two requests set forth in Factual Finding 6. Regarding the first denial, RCEB explained it “is unable to make payments to anyone other than the direct provider in Self Determination.” RCEB further explained:

The [SDP] operates under a Waiver under the Social Security Act. Waivers are required to practice under assurance to the State and Federal Government on how funds are spent. The Self Determination Waiver describes Appendix I (Financial Accountability), that payments are to be made by qualified FMS agencies and for services rendered, directly to providers of services. RCEB is unable to modify the regulatory safeguards in place in the Waiver.

Regarding the second denial, RCEB explained that a “cell phone bill is [an] expense that every individual is responsible to fund when owning a cell phone, regardless of developmental disability.” RCEB further explained that Lanterman Act section 4501:

describes that services and supports purchased by Regional Centers must be for support and services to approximate the everyday living of a person the same age without a developmental disability.

8. On September 18, 2024, at an IPP meeting, claimant made a request to RCEB that it fund, through her SDP spending plan, rent for an artist studio space for her to do arts and crafts activities and produce video recordings for YouTube content. This artist studio space is in addition to her existing co-working space. Claimant’s request was discussed at the IPP meeting, and RCEB denied her request.

9. On October 21, 2024, RCEB sent claimant a letter and attached NOA denying her request set forth in Factual Finding 8. RCEB explained that since claimant's SDP spending plan already included \$750 per month for rent for a co-working studio, her request for rent for an artist studio space would be duplicative, and "the law prohibits a duplication of services and supports and requires cost effective decision making regarding these services" in accordance with sections 4646 and 4697 of the Lanterman Act.

10. On November 22, 2024, claimant filed an appeal regarding RCEB's three denials, and she included detailed explanations for the basis of her appeal.

Regarding claimant's request to fund payment for an Apple ID subscription through an escrow account, claimant argues that Apple will not accept third party payments, such as from Cambrian, and her debit card is "required to be on file and linked to [her] Apple ID." Claimant acknowledges that a method of payment offered by Cambrian, use of a "Bento card" (a pre-paid debit card that Cambrian pays), would work, but it would require her on a monthly basis to "change the priority of debit/cards listed in [her] Apple ID account." Claimant argues that the "Bento card payment method is too vulnerable to failure" as "I may not remember to switch debit card priority at the right time, with the wrong debit card being billed." Claimant is instead requesting that an escrow account such as PayPal or AppleCash be authorized in which her SDP spending plan funds would be pre-paid into the account by Cambrian and then used after a purchase has been made.

Regarding claimant's request to include her monthly cell phone bill in her SDP spending plan, she does not dispute that a cell phone is an expense that everyone who owns a cell phone is responsible to pay, regardless of developmental disability." She instead argues in her appeal that paying for cell phone service herself is "too

expensive," she uses her cell phone for other purposes such as opening the front door to her apartment, and cell phone service "is a core part of accessing emergency services to keep [her] safe."

Regarding claimant's request for rent for an artist studio working space, she acknowledges that her SDP spending plan funds her "quiet 10x10 semi-private secured office space." Her perceived benefits from the office space include socialization opportunities with neurotypical people, a place to "come to everyday outside of [her] apartment," and free tea and coffee. Claimant argues that since the artist studio was included in her year one spending plan, even though there was no dollar amount associated with the item and she never actually pursued renting an artist studio space during that year, it should be allowed now. Claimant argues:

[I] believe that an artist studio should not be seen as a duplicative service with the co-working space because [I] cannot pursue the activities that [I] seek to do at one place at the other, and vice versa. they have separate functions, hence are not duplicative. [F]urther, art-making is a long-standing unsupported [IPP] goal.

Claimant also argues that the nature of the machines she uses for her art activities would be too loud for her currently rented office space and also argues that her currently rented office space is too loud for production of YouTube videos for her channel. Claimant further argues that the artist studio is not duplicative because it serves a separate purpose from that of her currently rented office space, she requires "access to a room of my own where I may practice my art," and practicing her art serves a therapeutic purpose.

11. Ann Marie Miller, RCEB Case Management Supervisor; Janice Jung, RCEB SDP Choice Specialist; and Lindsay Meninger, RCEB Associate Director of Client Services, testified at hearing. Miller, Jung, and Meninger persuasively explained the basis for RCEB denying claimant's three requests at issue. Their testimony aligned with the reasoning in RCEB's notices to claimant set forth in Factual Findings 6 through 9. Meninger further persuasively testified and cited to documentary evidence that the Department of Developmental Services (Department) has provided written guidance to regional centers and consumers that the federal waiver underlying the SDP allows for a SDP spending plan to fund the purchase of technology, but not to pay for a utility service, such as a monthly cell phone service plan required to use a cell phone.

Claimant's Additional Evidence

12. Claimant testified at hearing on her behalf. Her testimony and other evidence were generally consistent with her appeal request set forth in Factual Finding 10. Regarding her request for a separate artist studio space, claimant argued in writing and at hearing that it would serve a separate and distinct need from her current co-working space:

This is necessary to be a place where I can actually setup my a bonafide studio for my video recording and artmaking, while at the same time maintaining my office [] for community integration, meeting rooms to allow a neutral place to invite people for meetings like for my IPP meetings with my case managers, meeting with vendors like [] my tech coach, a future IF should that materialize and being able to maintain a low-stress social connection with the people who also have their office workspace here.

The main reasons for the separate artist studio is that I *cannot* use my machines here at The Office (3-d printer, sewing machine, toaster oven, tools like hammers, saws, drills), and I don't want to use the same tools in my apartment, I'm sure the building manager and my neighbors wouldn't like that. Furthermore it is likely that I would be more isolated if I only had the artist studio, were I to have to give up The Office. Also, the Office room I have is a fantastic rent for a 10x10 room. One of the downsides of the office studio is it will not be conducive to recording videos because of the noise and lack of soundproofing. Right now I have all my artist supplies and tools in my apartment and I would like to use the artist studio to house them there.

Also to remind you about my housing challenges: The Office was mainly to provide me somewhere to be in order to escape the horrible environment at my old apartment during the day, such that I wouldn't have to spend money to buy coffee to hang out at a coffee shop to escape the [] apartment noise vibrations and dust. It's now a place where I feel very much at home with the low stress social interactions I have with others and with [], the Community Manager.

I need both spaces to move forward to live the life I seek to live independently.

Claimant also argued in writing and at hearing that her request for an artist space was not recreational in nature:

I find this particularly offensive because making art is not recreational to me. I went to the "Redacted". I have a Bachelor's in Fine Art. I am put off that artmaking is considered recreational when I am clearly educated in matters of art. I also have an AA in fashion design, so sewing and needle arts is not recreational to me, but part of my vocation, as would be painting, photography, beading and so on. I am a multimedia artist without a place to do my art.

I have already explained that I am not allowed to make noise or house machines in the Office space. I could not use a toaster oven for polymer clay work.

Additionally my artist studio is needed for therapeutic purposes to deal with my trauma, it is NOT for recreational purposes. It is also to provide me a space to video my youtube channel which is to be **part of my business**.

[Emphasis in original.]

13. Claimant submitted a letter and emails from Emma Martin, Program Director at The Center for Independent Living, Inc., in support of her request for an artist studio space. Martin wrote on September 24, 2024, that claimant's:

. . . access to an artist studio is not recreational for [claimant], but rather is deeply therapeutic and important to

her mental/emotional health; it is also an important part of community integration/social participation which serves a distinctly **different purpose** than The Office. [Emphasis in original.]

Martin wrote a letter on January 3, 2025, in further support of claimant's request:

The role of artist studio serves a distinctly different purpose than her co-working The Office, where she maintains low-impact social contact she deeply values. The artist studio will allow her to complete her goals to start a YouTube Channel and space for semi-industrial activities that are not possible at The Office co-working space, where members work on computers. Additionally the artist studio would afford her a sound stage to record her YouTube videos and provide her the sound barrier she requires to record without interruption or distraction, which would be the case were she to record her YouTube videos at The Office. [Claimant] is very active watching YouTube and has made several social connections around the world that she cherishes. She would like to enrich these connections by starting her own channel. An artist studio provides her this necessary space to make these goals real and attainable.

At the same time, The Office allows her a sense of belonging in a local community of others not defined by disability, but as a larger cohort of Berkeley professionals.

The social contacts she has at the Office are low stress and do not trigger [claimant]. People accept her there and that's really important to her self-esteem. If she has to choose between being social and being creative, that seems critically unfair to force a person who has endured so many struggles already to finally regain her footing after several traumatic experiences and who has struggled her entire life with social cues, to choose between one or the other. She should be provided support for both. However, if she does have to choose the artist studio over the co-working space, then she would be free to pursue her artistic pursuits, but at the cost of being socially isolated.

Ultimate Factual Findings

APPLE ID SUBSCRIPTION

14. Claimant did not prove that the solution offered by Cambrian to fund her Apple ID subscription was not feasible, nor did she prove that it was legally permissible for Cambrian to use an escrow account such as PayPal or AppleCash to prepay the costs for her Apple ID subscription. The testimony of Miller, Jung, and Meninger, and documentary evidence from RCEB, was more persuasive on this issue.

CELL PHONE BILL

15. Claimant did not prove that it was appropriate or permissible for her monthly cell phone bill to be paid from her SDP budget as a support or service related to her developmental disability. The testimony of Miller, Jung, and Meninger, and documentary evidence from RCEB, that a cell phone bill is an everyday need of a

person the same age without a developmental disability, was more persuasive on this issue.

ARTIST STUDIO SPACE

16. An SDP budget is based on the costs for the supports and services that RCEB would otherwise fund for a consumer who does not participate in the SDP. As set forth in Factual Finding 4, a consumer's IPP identifies the need for supports and services for a consumer related to their developmental disability. While claimant's IPP identifies a need for her to build her own business, the need centers around YouTube video production. Moreover, as set forth in Factual Finding 5, one of the purposes of the currently agreed upon co-working studio space is for claimant to produce YouTube videos, which she now argues requires a separate artist studio space. Claimant failed to prove that as a condition of her developmental disability, as described in her operative IPP, she has the need for both a co-working studio space and artist studio.

LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review a service agency's service decisions. (§ 4710 et seq.) Claimant bears the burden of proof in this matter and the standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Through the Lanterman Act, the State of California has accepted responsibility for persons with developmental disabilities. The Lanterman Act mandates that "[a]n 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.) The purpose of the Lanterman Act is twofold: (1) to prevent or minimize the institutionalization of persons with developmental disabilities and their dislocation from family and community, and (2) to enable persons with developmental disabilities to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives. (§§ 4501, 4685; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Department is the state agency responsible for implementing the Lanterman Act. It contracts with regional centers that are charged with the responsibility of providing developmentally disabled individuals with access to services and supports best suited for them. (§ 4620, subd. (a).)

4. As set forth in Factual Finding 14 through 16, claimant failed to meet her burden to prove: (1) that RCEB must allow payment for an Apple ID subscription from her SDP spending plan budget through an escrow payment service rather than having the payment made directly by an FMS provider; (2) that RCEB must allow her to access her SDP spending plan budget to pay her monthly cell phone bill; or (3) that RCEB must allow her to access and increase her SDP spending plan budget to pay rent for an artist studio working space.

ORDER

Claimant's appeal is denied.

DATE:

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024110857

Vs.

DECISION BY THE DIRECTOR

Regional Center of the East Bay,

Respondent.

ORDER OF DECISION

On February 21, 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. 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 March 10, 2025.

Original signed by:

PETE CERVINKA
Director

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024110857

Vs.

**RECONSIDERATION ORDER,
DECISION BY THE ACTING DIRECTOR**

Regional Center of the East Bay,

Respondent.

RECONSIDERATION ORDER

On March 24, 2025, the Department of Developmental Services (Department) received from claimant an application for reconsideration of a Final Decision in the matter referenced above, that was issued by the Director on March 10, 2025.

The application for reconsideration is denied. Claimant did not demonstrate a mistake of fact or law, or pursuant to Welfare and Institutions Code section 4713, subdivision (b), that would warrant a reconsideration application to be granted. Furthermore, claimant did not request the Administrative Law Judge (ALJ) to recuse themselves pursuant to Welfare and Institutions Code section 4712, subdivision (g), and failed to demonstrate that the ALJ was unable to accord a fair and impartial hearing or consideration.

There are no changes to the Final Decision, and it remains effective as of March 10, 2025. All parties are bound by the Final Decision. This is the final administrative Decision. Each party has the right to appeal the Decision to a court of competent jurisdiction within 180 days of receiving the final Decision.

IT IS SO ORDERED on this day April 3, 2025.

Original signed by:

Carla Castañeda, Acting Director