

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

DDS No. CS0023741

OAH No. 2025010609

PROPOSED DECISION

Michelle C. Hollimon, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 5, 2025.

Claimant's mother.¹ appeared at the hearing and represented claimant.

Bridgette Webster, Attorney at Law, represented San Diego Regional Center (SDRC).

¹ Claimant's mother is a licensed California attorney.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 5, 2025.

ISSUE

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

FACTUAL FINDINGS

Background

1. Claimant is a 25-year-old male who resides with his parents. He is eligible for regional center services under the category of intellectual disability.
2. Claimant transitioned to the SDP effective January 1, 2022. Under the SDP, a budget and spending plan for claimant is prepared and approved by SDRC on an annual basis. Since claimant began participating in the SDP, his spending plan has included funding for sessions for Brain Balance, a multi-modality treatment program designed to engage and strengthen different regions of the brain.
3. On December 18, 2024, SDRC issued a Notice of Action (NOA) that it was denying claimant's request to continue purchasing Brain Balance services and terminating service payment effective January 1, 2025. The basis for denial and termination was that SDRC now understood Brain Balance services to be experimental in nature, and SDRC is prohibited from funding experimental treatments.

4. On January 16, 2025, claimant's mother filed an appeal to the NOA and requested a mediation and hearing, and argued claimant should continue to receive Brain Balance services through his SDP spending plan. The reason for claimant's mother's appeal were: the service was and still is needed to fulfill claimant's Individual Program Plan (IPP) goals including independent living; Brain Balance services are evidence-based and support service code 334 (individual training and education) goals; and Brain Balance has fulfilled these goals successfully the last two years.

5. This hearing followed claimant's mother's appeal.

Self-Determination Program

6. 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. Starting July 1, 2021, the SDP was available to all eligible regional center consumers.

7. Under the SDP, participants have more flexibility regarding which services they receive and who delivers those services. The total amount of regional center funds available to the participant to fund needed goods, services and supports is determined annually (individual budget). Once the individual budget amount is determined, the participant 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. Regional centers are required

to certify individual SDP budgets and review spending plans to ensure compliance with applicable laws and federally approved categories.

SDRC's Evidence

TESTIMONY OF DAVID WEBB-REX

8. The following is a summary of the testimony of David Webb-Rex. Mr. Webb-Rex is SDRC SDP's Program Manager. He holds a bachelor's degree in elementary education and previously worked as a special education teacher. Mr. Webb-Rex began working for SDRC in 2021.

9. Mr. Webb-Rex described the SDP as a voluntary "opt-in" program available at all regional centers. The SDP structure is defined in the Lanterman Act. The SDP is a "new" model for services, run by the participants themselves. Participants contract their own services and are not required to use a regional center vendor to receive services. However, service providers must meet the criteria set forth in the Lanterman Act. All SDP services must be approved for funding by Medicare and Medicaid services to qualify as an SDP covered service. Further, regional centers cannot pay for any treatment that is experimental, meaning not evidence-based.

10. Mr. Webb-Rex testified that an SDP participant has both an individual budget and a spending plan. The individual budget is the total amount of money the participant has to spend, which is calculated based on what the regional center would have funded under the traditional service system. The spending plan details on what the funds budgeted for the participant will be spent.

11. Mr. Webb-Rex testified that the July 8, 2024, DDS directive provides specific guidance on what can and cannot be purchased or funded under the SDP (July

2024 DDS directive). Per the July 2024 DDS directive, SDP funds can only be used for goods and services that “have been approved by the federal Centers for Medicare and Medicaid Services” and cannot be funded by other sources, such as Medi-Cal or In-Home Supportive Services. The July 2024 DDS directive also addresses the use of participant-directed services and experimental treatments, stating that “experimental or prohibited treatments shall not be provided.”

12. Brain Balance was a previously approved service through the SDP, as SDRC originally understood Brain Balance to be an after-school tutoring program. This understanding was based on the information families provided to SDRC. After further investigation into the program by SDRC, SDRC determined Brain Balance to be an experimental program that was not evidence-based. As such, SDRC stopped approving Brain Balance service requests.

13. According to Mr. Webb-Rex, very few SDRC clients included Brain Balance in their SDP spending plans. SDRC worked with each family that had Brain Balance in their spending plan to try and find an alternative qualifying program. SDRC discussed with claimant’s representative in December 2023 during their annual IPP meeting that SDRC would not be able to continue funding Brain Balance treatments as it was experimental. SDRC agreed to provide a transition period for the 2024 budget year for claimant to find other qualifying services.

14. Brain Balance funding was again discussed in December 2024. SDRC and claimant’s family were not in agreement. Mr. Webb-Rex testified that claimant’s father is an owner of the local Brain Balance franchise where claimant is receiving services. Claimant’s family wanted SDRC to continue funding Brain Balance services. On December 18, 2024, SDRC issued a NOA that it was denying claimant’s request to

continue purchasing Brain Balance services and terminating service payment effective January 1, 2025.

TESTIMONY OF MELISSA MELGAR

15. The following is a summary of the testimony of Melissa Melgar. Ms. Melgar is SDRC's Coordinator of Behavior Services. Ms. Melgar is a board-certified behavioral analyst. She has been with SDRC for approximately seven and a half years, and in her current position for approximately five and a half years.

16. Ms. Melgar testified she first began researching the Brain Balance program when claimant's father, the Executive Director of Brain Balance's San Diego franchise, applied for vendorization with SDRC. The application for vendorization was denied, and subsequently appealed. Ms. Melgar authored SDRC's Vendor Appeal Position statement (appeal statement), dated June 6, 2023, which addressed SDRC's concerns regarding Brain Balance.

17. One of the main concerns expressed in the appeal statement, which Ms. Melgar reiterated in her testimony, was that "published materials on Brain Balance involve testimonials, self-reports, and low-quality research studies." In order to qualify as an approved SDP service, the service must be evidence-based and not experimental.

18. Ms. Melgar testified that claimant's father provided some pages from a Brain Balance publication containing information regarding recent research and studies on the Brain Balance program. Ms. Melgar testified she obtained the entire publication "Building and Optimizing Brain Health and Connectivity, Brain Balance: An Integrative Approach to Improving Attention, Behavior, and Cognition, Research and Results" (Brain Balance research publication) online. The Brain Balance research

publication cites 37 separate sources of information. Ms. Melgar testified that she reviewed each of the 37 sources and provided a detailed chart of her findings.

19. Ms. Melgar testified that of the 37 sources cited in the Brain Balance research publication, seven specifically addressed the Brain Balance program. The remaining 30 sources were "collateral research," meaning they may have looked at a component of the Brain Balance program, such as nutrition, but not the Brain Balance treatment program as a whole. Ms. Melgar testified that if the studies do not evaluate all treatment components of Brain Balance, it is impossible to know what works from it.

20. Regarding the 30 collateral research sources, 11 of the 30 sources are not research studies but papers or articles on various topics. The remaining 19 sources were research studies, but not on Brain Balance specifically. These research studies addressed attention-deficit hyperactivity disorder (ADHD) (two studies), autism (two studies), attention and motor deficiencies (one study), reading disorders (one study), and typical individuals in which no diagnosis was required (13 studies). Of these 19 research studies, four simply reviewed prior data, which would not allow for control of other variables.

21. Regarding the seven research studies that did address Brain Balance specifically, Ms. Melgar testified that there were multiple issues with them. First, none of the seven studies targeted claimant's age group. Second, several of the studies were authored by Rebecca Jackson, who is employed by Brain Balance. Ms. Melgar testified that having a stake in the success of the Brain Balance program calls into question the credibility and reliability of research studies authored by Ms. Jackson.

22. Additionally, all seven studies did not have randomized control trials which would be necessary to ensure gains made by participants were due to Brain Balance treatment. One of the seven studies had no randomized trial; one study was retrospective data analysis that said there was a control group, but which was not a true control group, as to have a true control group, you would have to have two groups at the same time with some in treatment, others not in treatment, and a comparison of the two groups.

23. Further, one of the seven studies used parent reports as their only measurement tool. In this study, Brain Balance was not evaluated by any outside source. Another study was conducted only on children with ADHD, not a developmental disability. Studies related to Brain Balance and ADHD cannot be used to support Brain Balance as an evidence-based service for individuals with developmental disabilities as it remains unknown how individuals with developmental disabilities would respond to the Brain Balance program.

24. Ms. Melgar testified that the best available scientific rigorous research is required under the law. Scientific rigor is defined by the National Institute of Health as:

the strict application of the scientific method to ensure robust and unbiased experimental design, methodology, analysis, interpretation and reporting of results. This includes full transparency in reporting experimental details so that others may reproduce and extend the findings.

To meet this scientific rigor standard, Ms. Melgar testified there needs to be credibility and reliability with the research studies, as well as true, randomized control

groups. The publications used by Brain Balance are inherently biased and lack scientific rigor.

25. Ms. Melgar testified regarding review of the Brain Balance program by a Wisconsin Department of Health Services advisory committee (Wisconsin committee). The program was initially reviewed in April 2012 and re-reviewed in 2015 to determine if Brain Balance treatment was a proven and effective treatment for individuals with autism spectrum disorder and/or other developmental disabilities. The Wisconsin committee determined there was not enough evidence demonstrating the use or effectiveness of Brain Balance treatment. The Wisconsin committee deemed Brain Balance treatment as experimental based, in part, on there not being "at least one high quality study that demonstrates experimental control and favorable outcomes of treatment package." Ms. Melgar testified that her conclusion regarding the Brain Balance program is the same as the Wisconsin committee—Brain Balance is not an evidence-based treatment.

26. Ms. Melgar testified that she visited a Brain Balance facility last year during the vendor appeal process. Ms. Melgar previously testified regarding her visit in another OAH matter, describing the facility as "clinically unusual." Ms. Melgar testified that she was provided glasses with blinking lights and asked to put on the glasses during her visit to the facility. She noted that computers at the facility had eye tracking software and tasks would be completed at the computer while wearing devices given by the facility. Ms. Melgar testified that the services offered by Brain Balance were not standard services used for someone with developmental disabilities.

27. Ms. Melgar reviewed the decisions in three other OAH matters regarding Brain Balance funding, as well as the OAH decision for the matter in which she testified. Ms. Melgar testified that she reviewed the expert testimony in the other

matters and her position is consistent with what other regional center experts have concluded and what OAH has determined—Brain Balance is not evidenced-based and therefore cannot be funded by SDRC.

SDRC's DOCUMENTARY EVIDENCE

28. SDRC presented 33 documents, all of which were received into evidence. Some of SDRC's supporting documents are discussed in more detail below.

29. SDRC provided Brain Balance vendor appeal documents as follows: May 3, 2023, letter from Jon Pak, Executive Director of Brain Balance of Greater San Diego to Mark Klaus, Executive Director of SDRC "re: Appeal to denied vendor application," SDRC's Vendor Appeal Position Statement dated June 6, 2023, and June 26, 2023, letter from Neil Kramer, SDRC Executive Director Designee to Jon Pak regarding vendorization appeal decision. These documents address Brain Balance's position regarding its qualifications for vendorization, SDRC's position regarding the reasons it did not support vendorization for Brain Balance, and SDRC's denial of Brain Balance's appeal for vendorization.

30. SDRC provided a Wisconsin Department of Health Services Autism and Developmental Disabilities Treatment Intervention Advisory Committee re-review of the Brain Balance program and whether it was "a proven and effective treatment for individuals with autism spectrum disorder and/or other developmental disabilities," dated January 30, 2015. The Wisconsin review committee concluded that Brain Balance could not be considered a proven and effective treatment given the lack of research evidencing its use or effectiveness.

31. SDRC provided articles and publications entitled "Evidence-based practices in the field of intellectual and developmental disabilities: An international

consensus approach,” published in 2010, “Addressing Rigor in Scientific Studies” dated August 10, 2023, “Getting rigorous with scientific rigor” published in 2018. These publications explained evidence-based practices and scientific rigor.

32. SDRC provided a digital research and review booklet from Brain Balance entitled “Building and Optimizing Brain Health and Connectivity.” SDRC provided a summary prepared by SDRC of the research studies cited in the Brain Balance booklet, which included information regarding who was studied, the intervention addressed, and SDRC’s concerns with the results of each of the cited studies.

33. SDRC provided the DDS directive regarding SDP and goods and services dated July 8, 2024, SDP service definitions, and excerpts from Welfare and Institutions Code. The documents address allowable purchases and funded services under the SDP.

34. SDRC provided four OAH decisions addressing the issue of Brain Balance funding. SDRC requested judicial notice be taken of these decisions, which was unopposed by claimant’s representative. Notice was taken. However, it should be noted these decisions were considered for argument only, as they are not binding, nor do they have any precedential authority in this matter.

Testimony of Claimant’s Mother

35. The following is a summary of the testimony of claimant’s mother: Brain Balance has been running nationwide for approximately 10 years. Her husband researched the program and wanted to bring it to San Diego to provide additional resources to local families.

36. Approximately one year after Brain Balance began in San Diego, the COVID-19 pandemic occurred. Claimant's mother provided this information, along with the fact that Brain Balance is relatively new in San Diego, as reasons why there are not a lot of SDRC clients requesting Brain Balance services as part of their SDP spending plan.

37. Claimant's mother testified regarding the issue of Brain Balance research, noting that one of the studies regarding Brain Balance was done by a Harvard professor and that his research was not funded by Brain Balance. Claimant's mother further testified that simply because research is being funded by the owner of the entity providing a particular service, this alone is not "conclusive evidence" that the research is not credible. The materials that Brain Balance cited in its research publication were written by experts, and published materials are reviewed before publication. The information relied on by SDRC from the Wisconsin committee is old and outdated.

38. Brain Balance has specific testing measures, and all participants go through the same testing procedures to determine in what areas support is needed. Brain Balance's success can be seen through these testing measures. Claimant has improved in the past three years participating in the Brain Balance program, as evidence by his Brain Balance progress report.

39. Brain Balance does not suggest that it is a replacement for other services and emphasizes continuing other services. Brain Balance provides a multitude of services to claimant, and it would be practically impossible to replace these services, as claimant would be replacing Brain Balance services with different kinds of services from multiple providers. Claimant's mother testified that she has reached out to other programs, and she either did not hear back at all, or there are extremely long waiting

periods, and she has not heard back. It is unlikely that the support claimant receives from Brain Balance can be achieved with other services.

40. Claimant's mother understands the denial of funding for Brain Balance is not permanent. She understands SDRC's position that services must qualify pursuant to legal requirements. Claimant's mother believes there are multiple other states that approved Brain Balance services and received federal funding. She would like SDRC to again consider funding Brain Balance services.

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, fn. 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.)

Applicable Statutory Authority

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 to individuals with developmental disabilities.

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. 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.”

9. 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.

10. Welfare and Institutions Code section 4685.8, subdivision (c)(6), provides that SDP can fund services and supports only if they are approved for funding by Medicare and Medicaid Services.

Evaluation

11. 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 qualifying

disability. As a result, it is experimental and SDRC is prohibited from funding Brain Balance services.

12. SDRC 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.

13. 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 SDRC’s witnesses and publications they cited showed there is insufficient testing of Brain Balance treatments as there is a lack of reliability and credibility in the studies that reference Brain Balance. As such, the evidence supports that Brain Balance is experimental and for this reason, SDRC is precluded from funding Brain Balance.

14. Based on all the above, SDRC’s decision to deny claimant’s request to continue funding Brain Balance services through claimant’s SDP spending plan must be upheld.

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ORDER

Claimant's appeal of San Diego Regional Center's decision denying claimant's request to continue funding Brain Balance services through claimant's Self-Determination Program is denied. San Diego Regional Center may not fund Brain Balance services for claimant.

DATE: March 14, 2025

MICHELLE C. HOLLIMON
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of:

Claimant

OAH Case No. 2025010609

Vs.

DECISION BY THE ACTING DIRECTOR

San Diego Regional Center,

Respondent.

ORDER OF DECISION

On March 14, 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 13, paragraph 2, the last sentence is amended as follows: In this case, SDRC bears the burden to prove its denial of claimant's 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 San Deigo Regional Center (SDRC) to prove by preponderance of the evidence that SDRC was correct to terminate the approved Brain Balance services claimant receives, since it is SDRC 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"]. SDRC bears the burden of proof regarding its denial of the funding request because the service had been previously funded.

- The Proposed Decision on page 15, paragraph 11 is amended as follows: SDRC proved by a preponderance of the evidence 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).
- Welfare and Institutions Code section 4710, subdivision (a)(1), requires that SDRC provide at least 30-day notice to claimant prior to terminating, reducing, or changing of services. SDRC's December 18, 2024, Notice of Adverse Action (NOA) is not compliant with the 30-day notice requirement, because the effective date of the termination of Brain Balance Services (the proposed action) is January 1, 2025. Thus, SDRC only provided claimant 14-day notice between December 18, 2024 and January 1, 2025 that SDRC would terminate Brain Balance services, which is not compliant with the required 30 day notice pursuant to Welfare and Institutions Code section 4710, subdivision (a)(1).

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 SDRC's decision to terminate funding for the Brain Balance Program through claimant's SDP is denied.

IT IS SO ORDERED on this day April 9, 2025.

Original signed by:

Carla Castañeda, Acting Director