

**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. CS0025239

OAH No. 2025030569

PROPOSED DECISION

Administrative Law Judge Stephanie E. Haffner, State of California, Office of Administrative Hearings, heard this matter on April 14, 2025, by videoconference.

Claimant's mother represented claimant at the hearing. Claimant was not present.

Executive Director's designee Mary Dugan represented service agency Regional Center of the East Bay (RCEB).

The matter was submitted for decision on April 14, 2025.

ISSUE

Must RCEB fund components of claimant's prescribed ketogenic diet under her Self-Determination Plan?

FACTUAL FINDINGS

1. Claimant is a 14-year-old consumer of services from RCEB. She has autism and epilepsy. Claimant is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from RCEB. (All further statutory references are to the Welfare and Institutions Code unless stated otherwise.)

2. Claimant receives RCEB-funded services through the Self-Determination Program (SDP, see § 4684.8).

3. In approximately January 2025, RCEB approved payment for certain nonperishable foods under a prescribed ketogenic diet, to be included in claimant's SDP spending plan. Promptly upon approval, claimant began submitting purchase requests to purchase the approved items to her Financial Management Service (FMS) provider. The FMS provider then purchased the items.

4. On February 3, 2025, claimant's Individual Program Plan (IPP) was updated for the period from February 3, 2025, through January 31, 2026. The IPP includes the goal to manage seizure activity, and states that it is important for claimant to take supplements and maintain her specialized diet. It states that RCEB will fund \$11,577.60 towards Specialized Medical Equipment and Supplies "for supplements and foods" to meet claimant's health needs.

5. On March 3, 2025, RCEB issued a notice of action to deny the purchase of “food items” for claimant’s SDP spending plan, stating:

The request is to fund Bone Broth Protein, Palmini Rice/Noodles, Miracle Rice/Noodles, Coconut cream, Cocolune coconut yogurt, Macadamia nut butter, Mario pitted snack olives, Granola bakery – Keto granola cinnamon crunch, Monk fruit zero calorie sweetener without erythritol (sic), and evolved nut butter cups.

(These foods are referred to in this decision as “the disputed food items.”) In the notice, RCEB cited Title 42 of the Code of Federal Regulations, section 441.310, subsection (a)(2), which states that federal financial participation under Medicaid Home and Community-Based Services waivers is not available for “the cost of room and board.”

6. Claimant timely filed a fair hearing request. This proceeding followed.

Self-Determination Program

7. 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.)

8. The Department of Developmental Services (DDS) 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).)

9. The Legislature added the Self-Determination Program (SDP) 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).) The SDP program is established under the Medicaid Home and Community-Based Services waiver.

10. 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).)

11. 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).) 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).)

12. SDP consumers are required to use the services of an FMS provider of their choosing. A designated FMS provider helps an SDP consumer manage the consumer’s 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 directly. (*Ibid.*)

13. Claimant’s case manager, Chaaya Vandhna, and case manager supervisor, Kim Limato, testified at hearing that claimant initially was approved in approximately January 2025 to incorporate the disputed food items in her SDP spending plan. When the time came to renew the IPP and SDP spending plan, Limato and Vandhna realized that SDP expenditures for the disputed food items had been approved in error.

14. RCEB’s supervisor of federal programs, Jennifer Castañeda, also testified at hearing. She described the policy interpretation that federal regulations preclude using SDP funds for “room and board,” meaning “food.” Castañeda offered a definition of food to include items that are accessible at stores for purposes of meal preparation.

Claimant’s Nutritional Regimen

15. On January 15, 2025, claimant’s pediatric neurologist prescribed all of the disputed food items except Bone Broth Protein, pursuant to her ketogenic diet. The neurologist also prescribed certain other nutritional supplements that RCEB continues to fund as Specialized Medical Equipment and Supplies.

16. RCEB does not dispute that the ketogenic diet is a treatment that is clinically proven to be safe, effective, and appropriate for claimant, and does not dispute that the diet is appropriate and cost-effective for her. RCEB also acknowledges that claimant's health insurance will not fund the disputed food items. RCEB contends that it is not authorized to fund the disputed food items solely because they are food.

17. Claimant's mother testified at hearing. She stated that claimant receives ongoing treatment from the Stanford Medicine Children's Health epilepsy clinic for intractable epilepsy. Claimant has been prescribed a ketogenic diet to help control her epilepsy, under close supervision from her medical team. Supervision includes quarterly blood draws to monitor for potential adverse effects from the ketogenic diet.

18. The ketogenic diet consists of very high amounts of fat, and very low amounts of carbohydrates. Claimant's mother stated that such foods are not easily found in nature. To keep claimant in ketosis, caretakers measure claimant's foods and calculate macronutrients to the gram. Claimant must strictly adhere to the diet at all times for it to be effective.

19. Claimant's mother estimated that the disputed food items constitute five to 10 percent of claimant's overall diet. Most of claimant's foods—such as avocados, eggs, nuts, and seeds—are purchased as part of the family's ordinary grocery shopping. In contrast, the disputed food items are shelf-stable items, purchased separately at specialized stores, that other members of the family do not consume.

20. Claimant's mother contends that the disputed food items function as nutritional supplements for claimant. For example, attention is needed to ensure that claimant gets enough fiber because the ketogenic diet is so high in fat. Foods such as Palmini Rice/Noodles and Miracle Rice/Noodles provide fiber that claimant cannot

easily obtain from other foods while remaining in ketosis. The disputed food items were selected by claimant's nutritionist as most appropriate for her ketogenic diet, even as compared with other similar items available in stores, such as other brands of olives.

21. In addition, foods such as the Cocomelon coconut yogurt, Mario pitted snack olives, and keto granola cinnamon crunch are kept on hand and available for claimant to eat when she is away from home. Because of the strictness of the diet and the otherwise unnatural balance of foods, claimant cannot eat in the community without such shelf-stable foods on hand that meet the criteria for the ketogenic diet.

22. The disputed food items cost approximately three to 10 times more than similar nonketogenic foods such as standard rice, noodles, granola, yogurt, and peanut butter.

LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review RCEB's decisions. (§ 4710 et seq.) RCEB bears the burden of proof by a preponderance of the evidence to terminate a current service or support to claimant set forth in the IPP. (Evid. Code §§ 115, 500.)

2. Services and supports that an IPP identifies for a regional center to purchase must conform to "the regional center's purchase of service policies, as approved by" DDS. (§ 4646.4, subd. (a)(1).) Such services and supports must be eligible for federal financial participation as determined by the Centers for Medicare and Medicaid Services (CMS). (§ 4646.8, subd. (c)(6).)

3. CMS regulations provide that “the cost of room and board” is not an available expenditure for federal financial participation in a Home and Community-Based Services waiver program. (42 C.F.R. § 441.310, subd. (a)(2).) Technical guidance from CMS defines “board” to mean “three meals a day or any other full nutritional regimen.” (CMS, *Application for a §1915(c) Home and Community-Based Waiver [Version 3.6, January 2019]: Instructions, Technical Guide and Review Criteria*, Item 6-C: Room and Board (Jan. 2019).) For example, a state may claim federal financial participation for one meal per day as part of a “meals on wheels” program. (*Ibid.*)

4. DDS has not yet developed formal regulations to govern the SDP. DDS has issued directive memoranda, however. (§ 4685.8, subd. (p)(2).) A directive that DDS issued on July 8, 2024,¹ states that SDP funds can only be used for goods and services that have been approved by CMS and are not available through other funding sources or natural supports. The directive states that “room and board,” defined to include “groceries” and “meals,” is not an allowable expense because it is “prohibited in federal waiver programs.”

5. The July 2024 DDS directive provides that Specialized Medical Equipment and Supplies are an allowable expense, defined to include non-durable “medical supplies” that are necessary to address an SDP participant’s functional limitations. The January 2019 CMS technical guidance contains a similar definition. (*Application for a §1915(c) Home and Community-Based Waiver, supra*, Item 4: Specialized Medical Equipment and Supplies.)

¹ Available at <https://www.dds.ca.gov/initiatives/sdp/program-directives/>

6. Overall, with one exception, RCEB is not required to fund components of claimant's prescribed ketogenic diet under her SDP. Items made to resemble traditional noodles and rice, nut butter, granola, coconut yogurt, and olives, among other disputed food items, are items that claimant would consume as food. They are not nutritional supplements and therefore are not eligible for purchase under SDP in the category of Specialized Medical Equipment and Supplies.

The exception is Bone Broth Protein, which is not a food. This protein powder is a nutritional supplement that is added to claimant's food. Because it is a nutritional supplement, Bone Broth Protein is an eligible expense for claimant's SDP in the expenditure category of Specialized Medical Equipment and Supplies.

ORDER

Claimant's appeal is granted in part and denied in part.

The determination in the Notice of Action to deny the purchase of food items in claimant's SDP spending plan—specifically Palmini Rice/Noodles, Miracle Rice/Noodles, Coconut cream, Cocojune coconut yogurt, Macadamia nut butter, Mario pitted snack olives, Granola bakery - Keto granola cinnamon crunch, Monk fruit zero calorie sweetener without erythritol, and evolved nut butter cups—is sustained.

Claimant's request for RCEB to approve the purchase of Bone Broth Protein is granted.

DATE:

STEPHANIE E. HAFFNER

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2025030569

Vs.

DECISION BY THE DIRECTOR

Regional Center of the East Bay,

Respondent.

ORDER OF DECISION

On April 23, 2025, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Proposed Decision is adopted by the Department of Developmental Services 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 4712.5, subdivision (a)(1), 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 May 21, 2025.

Original signed by:
PETE CERVINKA
Director