

**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. CS0025876**

**OAH No. 2025040549**

**PROPOSED DECISION**

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on May 28, 2025, by videoconference.

Claimant's conservator represented claimant, who was not present.

Associate Director of Client Services Lindsay Meninger represented service agency Regional Center of the East Bay (RCEB).

The record closed and the matter was submitted for decision on May 28, 2025.

## **ISSUE**

May claimant use Self Determination Program (SDP) spending plan funds to pay for an iPad, laptop computer, color laser printer, and necessary software and other peripherals and cables (the technology hardware) for his direct employees' use in implementing behavior intervention services?

## **FACTUAL FINDINGS**

1. Claimant is a 22-year-old adult RCEB consumer enrolled in SDP. Claimant is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)<sup>1</sup> for services from RCEB because he is substantially disabled by autism spectrum disorder and by an unspecified disorder of psychological development. He also has seizures that cannot be fully controlled by medication.

2. On July 11, 2023, an Individual Program Plan (IPP) meeting was held for claimant, and claimant's conservator provided written consent to the IPP on July 13, 2023. The IPP included information on claimant's communication and emotional growth, his health, progress on his previously desired outcomes, and claimant's wants and needs concerning his desired outcomes. Claimant's desired outcomes include living in the family home and being well cared for with appropriate support services; continuing to make academic progress and meeting goals in his Individualized

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

Education Program; improving his behaviors, including being able to tolerate an answer of “no” without exhibiting behaviors; and improving his hygiene and being able to bathe without assistance and use the public restroom independently.

3. In July 2023, claimant 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).)

4. A Person-Centered Plan (PCP) was requested based on claimant’s election to participate in the SDP. (See § 4685.8, subd. (d)(2).) Because there was a three- to six-month wait for an assessment by an RCEB-approved facility, an exemption was granted to claimant, allowing claimant to obtain an assessment with a private facility. Claimant was assessed at Sanford Creative & Consulting Services, and a PCP was signed on February 3, 2024, and submitted to RCEB.

5. Claimant and RCEB agreed to a partial SDP spending plan on August 21, 2024, for the period running from September 1, 2024, through August 31, 2025. The goals for the SDP year included providing claimant “with supports and activities to transition from school” and “support to the family by providing trained staff to relieve family of care duties.” The spending plan budget was \$121,850.59, based on the most

recent 12 months of all regional center expenditures used to purchase services in the IPP and adjusted to reflect a change in life circumstances. (See § 4685.8, subd. (m)(1).)

6. In March 2025, claimant and RCEB agreed to the operative SDP spending plan. The spending plan includes an “increased budget for BCBA [Board Certified Behavior Analyst] assessment, updated to reflect revised budget based on BCBA reports, [and] updated to reflect approved technology purchases.” The goals for the SDP year now include, in addition to the two goals listed in Factual Finding 5, “support [for claimant] to be involved in his community with the supports to be successful,” and “support technology to allow [claimant] his greatest independence and data driven support.” The spending plan budget is \$515,342.07.

7. As relevant, the operative SDP spending plan designates the following annual amounts under service code 320 for “Community Living Supports,” with a “description/cost breakdown/frequency” of their purposes:

- \$220,320: To provide staffing supports for [claimant] to be healthy and safe at home and in the community and to provide relief for his primary caregiver on a regular basis thru the use of trained and BCBA supported staff – Could be direct employees or thru an agency approximately 360 hours a month at a range of wages from \$36 to \$50 an hour with a 20% employee burden.
- \$60,000: To provide[] BCBA supports hours to ensure well-trained staff to maintain [claimant’s] programming – 25 hours a month @ \$200/hour[.]

- \$73,500: To provide BCBA support hours to be hired as an employee at \$125 per hour with a 20% employee burden at around 70 hours a month (7 months)[.]

8. Claimant sought the technology hardware in order to implement his applied behavioral analysis services, which includes recording data accurately and in real time, creating documentation, and for other professional needs by claimant's employees. The cost of the technology hardware would come from the \$220,320 amount listed in the SDP spending plan.

9. On April 16, 2025, RCEB issued a Notice of Action (NOA) denying claimant's request to use SDP funds to purchase the technology hardware for claimant's applied behavioral analysis services. Relying on section 4648 as well as a July 2024 directive issued by the Department of Developmental Services (Department) titled, "Self-Determination Program – Goods and Services" (DDS Directive), RCEB stated the following reason for denying claimant's request:

This is because it is customary for BCBA (Board Certified Behavior Analyst) providers to provide their own equipment and supplies to provide their services. This provider in SDP is a contractor of the participant, whose rate should be negotiated to encompass all staff, supplies, and equipment to implement their services.

10. Claimant timely appealed RCEB's NOA. This hearing followed.

## **RCEB Evidence and Argument**

11. Jenifer Castañeda testified at hearing. She is the Supervisor of Federal Programs for RCEB, which includes the SDP program. She has worked at RCEB for almost 10 years, and specifically with the SDP program for five years.

12. Castañeda explained that there are three financial management service (FMS) models within the SDP: the bill payor or fiscal agent model, the co-employer model, and the sole employer model. Claimant uses a co-employer model, where claimant shares some of the employer roles and responsibilities with an FMS. Claimant has certain employer authority, including the ability to hire and fire staff, manage daily operations, train staff, and set staff schedules. However, it is the employer of record that is the legal employer of the staff. Importantly, under any FMS model, RCEB's expectation is that, as part of their negotiated rates, service providers will provide all the equipment necessary to deliver their services to the participant.

13. Castañeda testified that the collection of data is a core function of the applied behavioral analysis service the two BCBAs and staff are providing. Because the technology hardware is a functional need and not a therapeutic need for claimant, she believes the service provider, and not claimant or RCEB, should be supplying the necessary equipment to capture that information.

## **Claimant's Evidence and Argument**

14. Laura Noland, one of claimant's two BCBAs, testified at hearing. She explained that she is a contractor associated with Poppy Behavioral Services and provides only 20 percent of claimant's behavior intervention services under claimant's SDP spending plan. Samantha Chau is claimant's other BCBA and provides the bulk of claimant's applied behavioral analysis services, including direct support to claimant

and training and supervision to claimant's three direct support staff. Chau and the support staff are claimant's employees.

Noland testified about claimant's behavior intervention program. Behavioral staff are currently present Monday through Friday, from 9:00 a.m. to 7:30 p.m., and will soon include Sundays. Claimant's staff take claimant out of the home for various activities, including buying groceries, social recreation, exercise, and attending classes. During that time, claimant's staff collect data on claimant, including for claimant's IPP goals, to record any behavioral incidents, and to monitor claimant's skill acquisition progress and treatment.

15. Noland testified about claimant's request for the technology hardware, explaining that one of the essential components of claimant's behavior intervention services is the accurate and consistent data collection across all environments in which services are delivered. Noland stated that the iPad would be used to collect such data in real time and would allow claimant's staff to securely collect that data and to communicate with others. Noland noted that the other requested items would be used to generate needed visual supports, schedules, and reinforcement systems during sessions to support claimant.

Noland testified that she does not need any of the technology hardware because, as a consultant, she has her own hardware. The requested technology hardware would instead be for use by claimant's direct employees, who would use the technology hardware to, among other things, share information with her.

16. Claimant's conservator testified at hearing. Claimant's conservator testified about how difficult it is to take care of claimant. She explained that the private school claimant attended provided intensive services that helped claimant control his

aggressive behavior. Since graduating in 2023, however, claimant's aggressive behavior has returned. The information that is being gathered through claimant's behavior intervention service helps claimant and fulfills an obligation that a progress report on claimant be submitted to RCEB every six months.

17. Claimant's conservator explained that she decided to participate in the SDP because of the difficulty in finding service providers to assist both claimant and her in taking care of claimant. However, the SDP process took longer than she had expected due to a mistake made by the original RCEB case manager that was assigned to claimant. She believes that, had the mistake not been made, the parties would have completed the SDP process and SDP spending plan much sooner.

18. Claimant's conservator testified that Noland has been assisting her and claimant because Noland has known claimant for approximately 10 years. Because Noland does not live in the same vicinity as claimant, however, claimant's conservator needed to put together a local team, which included directly hiring Chau and the three behavioral technicians. Chau works with claimant three times a week. It is claimant's conservator's understanding that none of claimant's employees are employed elsewhere.

Claimant's conservator confirmed that Noland receives funds from the \$60,000 amount listed in Factual Finding 7. Chau is paid \$125 per hour which comes from the \$73,500 amount. The three behavioral technicians are paid between \$40 and \$50 per hour, which comes from the \$220,320 amount. Claimant's conservator testified that these pay rates are based on the job and the provider's experience, and do not encompass any equipment. Currently, staff use their phones to collect data on claimant.



19. Arguing that employees can be hired and fired, claimant's conservator explained that the technology hardware that claimant seeks to purchase will remain with claimant and will be used by other employees that claimant retains or hires if any of his current employees leave.

## **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. Services provided under the Lanterman Act are to be provided in conformity with the IPP. (§ 4646.) Consumer choice is to play a part in the construction of the IPP. (*Ibid.*)

5. Section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

6. The SDP gives participants greater control over which services and supports best meet their IPP needs, goals, and objectives. (§ 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (*Id.* at subd. (b)(2)(G).) Services and supports through the SDP are designed to help participants "achieve personally defined outcomes in community settings that promote inclusion." (*Id.* at subd. (c)(6).) SDP funds are used for goods, services, and supports necessary to implement the IPP. (*Id.* at subd. (c)(7).)

7. Section 4685.8, subdivision (k), provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and

supports pursuant to Section 4648.5.<sup>2</sup> A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

8. There is no dispute that claimant's two BCBA's and behavioral staff help claimant achieve his outcomes, including his involvement with and in his community, support for the family, and assisting claimant with his independence through data-driven support. The parties also do not dispute that the technology hardware requested will help claimant achieve his outcomes. The only reason RCEB denied claimant's request is its belief that SDP funds cannot be used in these circumstances because contractors "customarily" provide equipment as part of their services.

9. While it may be the case that contractors "customarily" provide the necessary equipment to perform their services, neither section 4646 nor the DDS Directive specifically prohibits or limits the use of SDP funds in situations such as claimant's. On the contrary, the language and spirit of the Lanterman Act aim for the SDP to facilitate a consumer's empowerment, independence, and integration into the community. (See § 4685.8.)

By a preponderance of the evidence, claimant has demonstrated that the purchase of the technology hardware will address claimant's direct needs and allow for continuity in addressing his needs. (Factual Finding 16.) Moreover, the technology software is not specific to a user. As a result, if the relationship terminates between

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<sup>2</sup> Under section 4648.5, regional centers' ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended. In 2022 section 4648.5 was repealed.

claimant and one of his behavioral staff, that change would not affect the benefit to claimant of having the technology hardware for use by his other employees. Consequently, using SDP funds to purchase the technology software for shared use by claimant's employees would help claimant achieve his outcomes. So long as claimant effectively directs the SDP funding for the costs of the technology hardware according to the agreed-upon SDP spending plan, the request should be granted.

### **ORDER**

Claimant's appeal is granted. Claimant may use SDP funds to purchase an iPad, laptop computer, color laser printer, and necessary software and other peripherals and cables for his direct employees' use in implementing behavior intervention services.

DATE:

MARIO M. CHOI  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2025040549

Vs.

**DECISION BY THE DIRECTOR**

Regional Center East Bay,

Respondent.

ORDER OF DECISION

On June 3, 2025, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

Given the unique circumstances of the case, 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 June 30, 2025.

Original signed by:  
For PETE CERVINKA  
Director