

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

**In the Matter of:**

**CLAIMANT**

**and**

**REGIONAL CENTER OF ORANGE COUNTY, Service Agency**

**DDS No. CS0025831**

**OAH No. 2025040581**

**PROPOSED DECISION**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 23 and June 3, 2025.

Claimant was represented by his mother. The names of Claimant and his family members are not used in this proposed decision for privacy reasons.

Ublester Penaloza, Assistant Manager, Fair Hearings and Mediations, represented the Regional Center of Orange County (RCOC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 3, 2025.

## **ISSUE**

Should RCOC provide funding through Claimant's Self-Determination Program spending plan for the Brain Balance program?

## **EVIDENCE RELIED UPON**

Claimant's evidence: exhibits A through T (except exhibits D and Q), AA, AB, and BB; testimony of Nancy Rangel, Ed.D., Amy Weir, Luis Andrade, Anthony Rangel, Marlene Elizalde, Psy.D., and Claimant's mother and father.

RCOC's evidence: exhibits 1 through 16; testimony of Carie Otto, Rebecca Sirbu, M.A., Bonnie Ivers, Psy.D., Iris Richard, M.D., and Crystal Chavez.

## **FACTUAL FINDINGS**

### **Background**

1. The Department administers the Lanterman Developmental Disabilities Services Act (the Lanterman Act or the Act) to ensure that necessary services and supports are provided to persons with developmental disabilities to help them lead more independent, productive, and normal lives. (Welf. & Inst. Code, § 4500.) RCOC is one of 21 nonprofit regional centers established by the Act to "evaluate the developmentally disabled persons (whom the Act calls 'consumers'), develop individually tailored plans for their care, enter into contracts with direct service providers to provide the services and support set forth in the plans, and monitor the implementation of those contracts and the consumers' plans. [Citations.]" (*Shalghoun*

*v. North Los Angeles County Regional Center, Inc.* (2024) 99 Cal.App.5th 929, 937.)

Each regional center serves consumers within a particular geographic area of the state known as a "service catchment area," as specified in a contract with the Department. (Welf. & Inst. Code, §§ 4620, subd. (a), 4640, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(58).)

2. Claimant is a 22-year-old man who is eligible for regional center services due to diagnoses of intellectual disability and autism. He resides with his mother and father, who serve as his conservators. Claimant has been a regional center consumer since he was a young child, and RCOC has funded various Lanterman Act services and supports for Claimant over the years. RCOC has not previously funded the Brain Balance program, which is at issue in this case.

3. The Brain Balance program is a franchised program available at privately-owned "Brain Balance Achievement Center" franchisees in California and elsewhere. The program generally consists of several in-center sessions per week involving cognitive, sensory, and physical activities "designed to address the underlying causes of neurobehavioral issues, rather than just treating the symptoms." (Exhibit C, p. B140.) It also includes nutritional instruction and coaching. According to proponents of the program, "It's based on the principle of neuroplasticity, the brain's ability to change and adapt. The program uses a combination of physical, sensory, and cognitive activities to stimulate brain function and build new connections." (*Ibid.*)

4. In 2022, Claimant began attending Brain Balance program sessions at a nearby Brain Balance franchisee, with his school district paying for the sessions. Claimant stopped attending the sessions after a few months, but he resumed in June 2024 with the same payment arrangement from his school district. Claimant liked the program, and his parents and Brain Balance instructors saw improvements in his

functioning and a decrease in his maladaptive behaviors. RCOC was not involved in the decision or funding for Claimant to start or resume the Brain Balance sessions.

5. In November 2024, Claimant transitioned from the traditional model of receiving services and supports from RCOC to the Self-Determination Program. The Self-Determination Program is a voluntary program under the Lanterman Act designed “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” than the Act’s traditional model for delivery of services and supports through regional center vendors. (Welf. & Inst. Code, § 4685.8, subd. (a).) The Self-Determination Program allows participants and their families to have an annual budget for services and supports to meet the objectives of the participant’s Individual Program Plan (IPP). (See Welf. & Inst. Code, § 4685.8.) Claimant’s budget and spending plan included a variety of services and supports, but they did not include funding from RCOC from the Brain Balance program.

6. Claimant’s funding from his school district for the Brain Balance program was scheduled to end in early April 2025 after Claimant turned 22 years old. With that deadline approaching, Claimant’s mother requested approval from RCOC to use Claimant’s existing Self-Determination Program budget to pay for the Brain Balance program once the school district’s funding ended. On February 5, 2025, representatives of RCOC met with Claimant’s mother to review and discuss the request. Shortly after the meeting, RCOC sent a written notice of action to Claimant’s mother denying the request. The stated basis for the denial was a determination of RCOC that “there is a lack of scientific evidence of the efficacy of the Brain Balance program, which is considered experimental therapy. The Lanterman Act prohibits

Regional Centers from funding experimental therapy in both the traditional and self-determination models.” (Exhibit 2, p. A7.)

7. On April 7, 2025, RCOC received a timely appeal of the notice of action requesting a hearing on the denial. Initially, the case was set for a single day of hearing on May 23, 2025. After it became apparent an additional day of hearing was necessary, Claimant’s mother waived the time limit prescribed by law for the hearing officer to issue a proposed decision to the extent necessary to allow the hearing officer 10 days from the conclusion of the hearing to issue the proposed decision.

## **Hearing**

8. RCOC called its clinical director (Bonnie Ivers, Psy.D.), a consulting physician (Iris Richard, M.D.), and a board certified behavior analyst (Rebecca Sirbu, M.A.) to testify about the lack of scientific evidence and studies supporting the Brain Balance program. All three witnesses opined that the program has not been clinically determined or scientifically proven to be effective for the treatment or remediation of autism spectrum disorder. Furthermore, it is not considered “evidence-based practice,” which means “a decisionmaking process that integrates the best available scientifically rigorous research, clinical expertise, and individual’s characteristics.” (Welf. & Inst. Code, § 4686.2, subd. (b).) According to RCOC’s other witnesses (Carie Otto and Crystal Chavez), this means RCOC may not fund Claimant’s Brain Balance sessions under either the Self-Determination Program or the traditional service model.

9. Claimant’s witnesses from the local Brain Balance Achievement Center he attends (Nancy Rangel, Ed.D., Anthony Rangel, and Amy Weir) acknowledged that the Brain Balance program is not evidence-based practice for the treatment or remediation of autism spectrum disorder. While the program uses some Applied

Behavioral Analysis (ABA) principles, it is not an ABA program. A psychologist for Claimant (Marlene Elizalde, Psy.D.) also agreed the Brain Balance program is not evidence-based practice. Claimant also has a diagnosis of intellectual disability, and none of Claimant's witnesses or evidence indicated the Brain Balance program is scientifically proven to treat or remediate that disability.

10. Nonetheless, all of Claimant's witnesses testified Claimant has shown improvements in his functioning and a decrease in maladaptive behaviors since starting the Brain Balance program, and they all recommended that he continue the program. The witnesses also uniformly testified that Claimant will likely regress in his social and adaptive skills if he does not continue in the Brain Balance program. According to Claimant's parents, consistency is critical for Claimant's behavior, and it is hard to recover lost progress caused by schedule disruptions and changes. Given these considerations, Claimant's mother requests an exception allowing use of Self-Determination Program funds to continue funding Claimant's Brain Balance program sessions.

11. Considering the parties' evidence, there is a lack of proof that the Brain Balance program has been clinically determined or scientifically proven to be effective for the treatment or remediation of autism spectrum disorder or intellectual disability. There is also a lack of proof that the Brain Balance program reflects evidence-based practices. These findings are dispositive in this case and preclude granting Claimant's appeal, as described below.

## LEGAL CONCLUSIONS

### Legal Standards

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under the fair hearing and appeal procedures in the Act. (Welf. & Inst. Code, § 4706, subd. (a).) “‘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.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of Claimant’s services and supports “shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (*Ibid.*; see also Welf. & Inst. Code, § 4646, subd. (a).)

2. The Lanterman Act prohibits regional centers from funding experimental treatments or scientifically unproven therapeutic services. “Notwithstanding any other law or regulation, effective July 1, 2009, 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. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice.” (Welf. & Inst. Code, § 4648, subd. (a)(17).)

Furthermore, with respect to ABA services or intensive behavioral intervention services, the Lanterman Act limits purchases to services that reflect evidence-based practices. "Notwithstanding any other law or regulation to the contrary, regional centers shall: [¶] (A) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions." (Welf. & Inst. Code, § 4686.2, subd. (b)(1).)

3. Claimant has requested that RCOC approve the use of Self-Determination Program funding for the Brain Balance program. RCOC has not previously approved the use of funds for that program, and thus Claimant is seeking to change the status quo. As the party proposing to change the status quo, Claimant bears the burden of proving the change is justified. (See Evid. Code, § 500; *In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) The burden of proof on both issues require proof by a preponderance of the evidence, because nothing in the Lanterman Act or another law provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].)

## **Analysis**

4. The evidence does not demonstrate a basis for granting this appeal. The evidence does not prove that the Brain Balance program has been clinically determined or scientifically proven to be effective for the treatment or remediation of Claimant's disability, as required for RCOC to approve funding for it. (Welf. & Inst. Code, § 4648, subd. (a)(17).) The program was also not shown to reflect evidence-based practices, which would be required for RCOC to approve its funding if it were a form of ABA service or intensive behavioral intervention service. (Welf. & Inst. Code,



§ 4686.2, subd. (b)(1).) Absent such proof, RCOC is prohibited from funding the Brain Balance program under the Lanterman Act, either through the Self-Determination Program or otherwise. Therefore, RCOC was justified in denying the request to approve Claimant's use of Self-Determination Program funds for the Brain Balance program.

5. Claimant's mother requests an exception to these funding restrictions due to the improvement Claimant has shown while participating in the Brain Balance program. But there is no legal basis for an exception in this case, and the funding restrictions are dispositive of Claimant's appeal. Therefore, RCOC's denial of approval of Claimant's use of Self-Determination Program funds for the Brain Balance program must be upheld.

## **ORDER**

Claimant's appeal is denied.

DATE:

THOMAS HELLER  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2025040581

Vs.

**DECISION BY THE DIRECTOR**

Regional Center of Orange County,

Respondent.

ORDER OF DECISION

On June 13, 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 July 8, 2025.

Original signed by Michi Gates for  
PETE CERVINKA  
Director

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2025040581

Vs.

**RECONSIDERATION ORDER,  
DECISION BY THE DIRECTOR**

Regional Center of Orange County,

Respondent.

On July 23, 2025, the Department of Developmental Services (Department) received an application for reconsideration of a Final Decision issued by the Director on July 8, 2025.

The application for reconsideration is denied. A review of the Final Decision and record does not support a finding of factual or legal error that would change the Final Decision. The Final Decision remains effective as of July 8, 2025. All parties are bound by this Reconsideration Order and Final Decision.

Each party has the right to appeal the Final Decision to a court of competent jurisdiction within 180 days of receiving the Final Decision.

IT IS SO ORDERED on this day August 17, 2025.

*Original signed by:*

Michi Gates on behalf of Pete Cervinka, Director