

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**SAN DIEGO REGIONAL CENTER, Service Agency,**

**and**

**DEPARTMENT OF DEVELOPMENTAL SERVICES, Interested  
Party**

**DDS Nos. CS0027325, CS0028575, and CS0028603**

**OAH Nos. 2025060169, 2025070896, and 2025070883**

**DECISION**

Mary Agnes Matyszewski, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 25, 2025, in San Diego, California.

Claimant's mother, who is also his conservator, represented claimant, who was present for part of the hearing.

Erik Peterson, Appeals and Resolution Manager, represented San Diego Regional Center (SDRC), the service agency.

Andrew Perez, Community Program Specialist III, represented the Department of Developmental Services (DDS).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 25, 2025.

## **ISSUES**

Based upon the issues raised in claimant's three appeals and his July 21, 2025, letter, some of which were duplicative, and OAH's Notice of Issues on Appeal for Hearing, served on the parties on August 19, 2025, the following are the issues on appeal:

Issues set forth in DDS No. CS0027325/OAH No. 2025060169 appeal:

Should the rate for Personal Assistance (PA) services be increased beyond the DDS approved rate?

Did SDRC fail to furnish DDS with information it requested for the rate increase including providing a renewed Medicaid home and community-based services waiver (HCBS waiver or HCBS-DD [Developmental Disability] waiver) which would have federally funded the requested waiver rate increase? This issue was also asserted in the DDS No. CS0028575/OAH No. 2025070896 appeal.

Issues set forth in DDS No. CS0028575/OAH No. 2025070896 appeal:

Did SDRC fail to complete the transfer from Golden Gate Regional Center (GGRC) to SDRC?

Did SDRC reduce the PA rate, service code 093, without issuing claimant a Notice of Action (NOA)?

Did SDRC fail to provide aid paid pending until the PA issue was resolved? This issue was also asserted in the DDS No. CS0028603/OAH No. 2025070883 appeal.

Did SDRC fail to renew the HCBS waiver resulting in the termination of PA funding in May 2025? This issue was also asserted in the DDS No. CS0028603/OAH No. 2025070883 appeal.

Did SDRC fail to complete claimant's Individual Program Plan (IPP) accurately according to DDS mandates? This issue was also asserted in the DDS No. CS0028603/OAH No. 2025070883 appeal.

Did SDRC refuse to honor claimant's parent's PA service code 093 vendorization? This issue was also asserted in the DDS No. CS0028603/OAH No. 2025070883 appeal.

Did SDRC fail to provide transportation reimbursement to claimant?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is currently 24 years old and resides in his home with his mother. He is eligible for regional center services based on his diagnoses of autism. He has also been diagnosed with epilepsy, apraxia, sensory processing disorder, obsessive compulsive disorder and attention deficit hyperactive disorder per records introduced. Claimant's mother also asserted at hearing that he has intellectual disability.

2. Claimant was previously a consumer with GGRC before relocating to SDRC's catchment area.

### **CLAIMANT'S FIRST APPEAL**

3. On June 2, 2025, DDS received an appeal request completed by claimant's mother requesting a fair hearing. The reason for the appeal was stated as follows: "Rate for PAs was decreased in inter-county transfer from GGRC to SDRC to a level that cannot sustain the retention nor hire of PAs who are able [to] assist client with intensive needs to remain safe in his home and in the community." DDS transmitted the appeal request to SDRC, which in turn, transmitted a Request to Set to OAH on June 5, 2025. The matter was scheduled for hearing on July 16, 2025. (DDS No. CS0027325/OAH No. 2025060169.)

4. On July 10, 2025, SDRC sent a letter to claimant advising it was returning his appeal because the issue claimant was appealing was not the result of any action SDRC had taken. As such, SDRC was taking "[n]o further action regarding this appeal." SDRC filed a Motion to Dismiss the matter at OAH.

5. On July 11, 2025, OAH issued an order denying the motion without prejudice finding it was a question of fact whether the appeal was within the scope of Welfare and Institutions Code section 4710.5 that must be addressed at a fair hearing.

6. On July 16, 2025, at the commencement of the hearing, OAH addressed the issue of whether DDS was a necessary party requiring joinder to this matter because claimant sought to challenge DDS's denial of an H&S waiver, as articulated in a July 7, 2025, letter from DDS to SDRC. OAH continued the hearing and fixed a date by which DDS could file a written response to be joined to these proceedings.

7. In a July 21, 2025, letter to OAH, claimant's mother wrote: "I request to clarify that I am claiming SDRC failed in their duties to furnish DDS with information they requested for the rate increase including a renewed HCBS-DD waiver which would have federally funded the waiver rate increase request."

### **CLAIMANT'S SECOND APPEAL**

8. On July 18, 2025, claimant submitted another appeal (DDS No. CS0028575/OAH No. 2025070896) requesting a hearing to address the following:

Failure of SDRC to complete inter-county transfer from GGRC to SDRC, Reduction of PA 093 rate to \$35 without NOA on 1/1/2025, Failure to renew HCBS-DD Waiver 4/2025, termination of funding 5/1/2025, Failure to complete IPP form accurately according to DDS mandates, Failure to provide "aide paid pending" until resolution of IPP, Failure of SDRC to provide DDS appropriate information when H&S waiver rate increase was requested,

Refusal to honor Parent's PA 093 vendorization, Failure to provide transportation reimbursement.

### **CLAIMANT'S THIRD APPEAL**

9. On July 21, 2025, claimant submitted a third appeal (DDS No. CS0028603/OAH No. 2025070883) requesting a hearing to address the following: "Failure to Renew HCBS-DD Waiver, Failure to Complete IPP correctly, Failure to abide by 'aid paid pending,' Termination of Services 05/01/2025, Denial of 093 Parent Coordinated Personal Assistants Funding."

### **CONSOLIDATION AND DDS JOINDER**

10. On July 27, 2025, claimant filed a request to consolidate all three matters for hearing based on the largely overlapping subject matter of each appeal. OAH fixed a date for any party to respond to DDS's opposition to joinder and request for dismissal, and claimant's request for consolidation.

11. On July 30, 2025, DDS, through counsel, filed its opposition to being joined as a party, and requested that OAH dismiss the matter based on a lack of jurisdiction. On that same date, claimant filed an opposition to DDS's request to dismiss the matter. No other responses were received.

12. On August 8, 2025, OAH issued an order granting claimant's request to consolidate these three matter, denying the motion to dismiss without prejudice, and joining DDS to these proceedings as an interested party.

13. On August 14, 2025, DDS filed its notice to appear, and this hearing ensued.

## **Evidence Introduced at Hearing**

14. Juan Gonzalez, SDRC's Health and Safety Waiver Specialist; Rosalie Goulding, SDRC's Community Services Manager; Camile Tewalt, an SDRC Program Manager; Brandon Zuniga, SDRC's Assistant Director of Client Services; Raquel Zaragoza, SDRC's Resource Coordinator; Andrew Perez, DDS's Community Program Specialist III; Margo Orlando, one of claimant's PAs, and claimant's mother, testified, and documents were introduced. The witnesses' testimony was consistent with the documentary evidence. Claimant also appeared at the hearing with his morning PA and interacted with some of the individuals present. The factual findings herein are based on that evidence.

## **POSITION STATEMENTS AND OPENING STATEMENTS**

15. SDRC's Position Statements, DDS's Position Statement, and claimant's Opening Statements and responses to the position statements set forth their respective arguments.

## **SERVICE CODES AND VENDOR RATES**

16. Services offered by vendors to regional center consumers are assigned service code numbers. Parent Coordinated PA services are assigned service code 093. Personal Assistance services are assigned service code 062. Claimant's mother also has been assigned a vendor code. At GGRC she was vendored under service code 093.

17. Mr. Perez testified that service code 093 was one GGRC used "a lot." He described GGRC as one of the smaller regional centers in California.

18. DDS sets the rates regional centers can pay vendors for services. Regional centers may also negotiate rates with vendors, but cannot pay a negotiated

rate greater than that which was in effect on or after June 30, 2008, unless the regional center demonstrates a higher rate is necessary to protect the consumer's health or safety and DDS approves the higher rate.

19. In 2019, pursuant to Welfare and Institutions Code section 4519.8, DDS submitted a rate study to the legislature addressing the sustainability, quality, and transparency of community-based services for individuals with developmental disabilities. DDS contracted with Burns & Associates to conduct a rate study which DDS oversaw. Thereafter, pursuant to Welfare and Institutions Code section 4519.10, DDS implemented the rate models proposed in the rate study. The rates and rate models set forth in the study were used to calculate rates effective April 1, 2022. Those rate models essentially continued the rate freeze, but both increased and standardized rates for certain services.

20. A current rate reform is underway which may result in rate increases.

21. DDS may waive the rates it sets for vendors to mitigate health or safety risks to consumers. This is commonly referred to as a Health and Safety waiver (H&S waiver). After thoroughly reviewing information provided by a vendor to support the request for an increased rate, a regional center may submit a request for an H&S waiver to DDS. In the request, the regional center must also provide a complete and accurate written request signed by the regional center's Executive Director justifying the need for the rate increase, a completed H&S Worksheet, a copy of the vendor's original request for the increase, and any additional documents as outlined in DDS's directive regarding H&S waivers.



## **HCBS WAIVERS**

22. An excerpt from the Waiver Primer Policy Manual (HCBS Primer) explained California's HCBS waiver. As noted, Medicaid, known as Medi-Cal in California, is a jointly-funded, federal-state health insurance program that includes long-term care benefits. The HCBS waiver program, found at Section 1915(c) of the Social Security Act (42 U.S.C. § 1396n subd. (c)), provides a way for California to offer services not otherwise available through the Medi-Cal program to serve individuals with developmental disabilities. An HCBS waiver allows the federal government to waive certain provisions of federal law so states can provide home and community-based services in lieu of institutional care. HCBS waiver participants have access to the same array of services and supports that are available to all regional center consumers.

23. Claimant was initially granted an HCBS waiver on August 1, 2007, because he required constant supervision, and had both disruptive and self-injurious behaviors causing injury. He has been recertified, most recently in 2024, and claimant's mother signed an HCBS Provider Agreement on July 1, 2025. Although claimant's recent HCBS waiver no longer included disruptive behaviors as a qualifying reason, there was no evidence that this affected any of his services.

24. Claimant's mother asserted that an HCBS waiver and an H&S waiver were related, contending claimant's HCBS waiver afforded him an H&S waiver. She cited to the HCBS Primer in support of her position. However, nothing in that document linked H&S and HCBS waivers such that an HCBS waiver was required to get an H&S waiver and, as DDS and SDRC explained, the two are not related. No evidence linking the two waivers was introduced. DDS does not require an HCBS waiver to grant an H&S waiver.

25. Internal SDRC emails in June 2025 referenced discussions between claimant's SDRC Consumer Services Coordinator (CSC) and the SDRC Federal Programs and Special Incidents Program Manager regarding claimant's mother's request for renewal of the HCBS-DD waiver. The CSC tried to explain to her that the renewal does not affect the services claimant receives. The emails noted that SDRC shared the caseload with GGRC during the transfer from GGRC to SDRC, discussed more below, and SDRC could not take over the waiver until the transfer was finalized. Now that it had been finalized, SDRC could add claimant onto the waiver as of the effective date of the transfer because waiver status is transferable through the state.

26. SDRC's Federal Programs and Special Incidents Program Manager confirmed the CSC's understanding that the waiver does not affect a consumer's benefits or services; it simply provides additional federal funding to regional centers.

27. SDRC documents demonstrated that claimant's HCBS waiver status was terminated from GGRC on April 30, 2025, and added to SDRC on August 1, 2024, the date of claimant's transfer to SDRC.

28. Several letters from Medicaid to the California Department of Health Care Services documented Medicaid's renewal of the HCBS waiver program.

29. An internet printout claimant introduced referenced concerns that the HCBS Final Rule would create disparities for individuals "with more severe disabilities by emphasizing independence and integration in ways that are difficult to achieve, potentially limiting their options to settings that meet the strict new standards." No evidence this has occurred for claimant was introduced.

## **RATE MODEL DOCUMENTS AND SERVICE DESCRIPTIONS**

30. Documents showed the various rates allowed for different services depending on staff to consumer ratios, overtime hours, and service codes. The documents were consistent with the information exchanged between the parties. Many of the documents were prepared for DDS by Burns & Associates, and listed the different service rates for the various regional centers.

31. Other documents listed the rates for care facilities. Others described the services offered under each service code.

## **GGRC INCREASED CLAIMANT'S RATE FOR SERVICES**

32. While he was still a consumer at GGRC, claimant's mother filed an appeal against GGRC which was resolved on December 13, 2023, before an Informal Meeting. As documented in the Notice of Resolution, GGRC approved an increase in PA hours at an increased hourly rate to provide sufficient assistance to claimant. (DDS No. CS0010344, OAH No. 2023100966.)

## **GGRC'S 2023 H&S WAIVER REQUEST**

33. In a February 1, 2024, letter to GGRC, DDS "conditionally and temporarily" approved GGRC's H&S waiver request, effective September 1, 2023, through June 30, 2024. DDS approved a rate of \$49.55 per hour, which was above the current rate of \$21.84 per hour. DDS noted that in its September 13, 2023, request, GGRC reported that the current rate was insufficient to hire and retain qualified staff to support claimant's needs. Claimant's mother had been supplementing staff wages with personal funds. Staff working more than 40 hours per week were paid as independent contractors, and claimant's mother provided proof of worker's compensation

insurance. DDS's letter set forth the payroll costs the rate was to include and advised that any extension requests would require proof of a worker's compensation policy. By February 15, 2024, DDS required claimant's mother to submit payroll and schedules to support staff wages and GGRC to submit a plan for staff training and additional staff qualifications and support, including behavioral support and crisis prevention training.

34. Mr. Perez explained that reasons for the approval included GGRC's smaller catchment area and COVID, which led to there being less staff available.

### **CLAIMANT'S TRANSFER FROM GGRC TO SDRC**

35. DDS has created Guidelines for inter-regional center transfers. Claimant introduced literature regarding intercounty transfers governed by California Code of Regulations, title 22, but regional centers are governed by California Code of Regulations, title 17, and the title 22 literature claimant introduced addressed Medi-Cal eligibility transfers.

36. An Inter Regional Center Transmittal form, dated July 9, 2024, documented claimant's transfer from GGRC to SDRC's catchment area on August 1, 2024. The form documented the request for "Shared Case Management Effective:" but no date was listed. A copy of the services being purchased was attached. The form identified claimant's mother as the vendor providing Parent Coordinated PA with an H&S waiver that expired on July 31, 2024. Four hundred and twenty hours per month of Parent Coordinated PA services were approved. None of the boxes identifying generic resources were checked. Claimant was not receiving Supplemental Security Income, known as SSI, but was insured with Medi-Cal and Medicare. Claimant was not in the self-determination program (SDP). The Comments section noted that claimant

had no dangerous propensities, and there was no urgent information to report. The following was stated in the Comments section:

[Claimant] is a 23-year-old male made eligible for regional center services under a diagnosis of autism spectrum disorder. He is conserved by his mother and lives with her. [Claimant] has Medi-Cal and Medicare managed under a Kaiser Senior advantage plan. His mother is his [In Home Supportive Services] IHSS worker and he receives roughly 283 hours/month. [Claimant] is prone to some acts of aggression towards service providers such as biting and hitting but does not cause serious injury. His mother manages his care as a parent coordinator of [PA] and utilizes the [H&S] waiver which is valid until 7/31/2024. This is the only service the family has or wants at this time. [Claimant's] daily activities and appointments are organized and managed by his mother and they are satisfied with this arrangement. [Claimant's] mother emailed GGRC Social Worker on July 1, 2024 and copied [SDRC], asking [claimant's] case be transferred affected 8/1/2024.

#### PURCHASE OF SERVICE:

GGRC is funding parent coordinated [PA]. This requires [an H&S waiver] which expires 7/31/24. Parent is asking for transfer to occur 8/1 so there will not be a gap in funding.

#### UPDATE 8/1:

Changing request to shared Case management so that we can fund service until SDRC is able to get their own [H&S waiver] approved by DDS. We have requested an extension from DDS.

37. In the Acknowledgment section of the form, SDRC acknowledged it would provide shared case management effective August 6, 2024. An attached document noted that claimant's mother was the approved provider of parent coordinated PA, service code 093, with a rate of "49.55 DDS rate expires 06/30/24."<sup>1</sup> The authorized amount was \$20,811.

38. On September 9, 2024, claimant's mother filed a complaint against GGRC alleging it failed to properly transfer claimant to SDRC, and setting forth the bases for her complaint.

39. In October 2024 emails from claimant's mother to GGRC, with copies to SDRC and DDS, she notified them of her grievance that GGRC failed to complete claimant's intercounty transfer to SDRC and GGRC failed to recertify claimant's HCBS waiver. She wrote she was unable to sign claimant's IPP with SDRC "due to the outstanding transfer of updated documents to SDRC." SDRC replied that the waiver had been requested by SDRC's CSC and GGRC replied that it had paid claimant's

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<sup>1</sup> The Comments section indicated it expired 7/31/24, but this was not explained at hearing.

mother for the July, August, and September parent coordinated PA services<sup>2</sup> and could request SDRC “pick up full case transfer on 11/1.” GGRC asked if that worked for claimant’s mother but advised it was unclear if SDRC had their H&S waiver.

40. Claimant’s mother replied on October 11, 2024, that GGRC’s “message reads like a recrimination of my latest grievance. That is not legal. I haven’t been able to sign an IPP with SDRC due to GGRC’s failure to conduct an inter-county transfer with all necessary documents including [claimant’s] current HCBS-DD waiver document.” DDS replied that it was sorry to see she was “still struggling with this transfer,” wanted her to know that the DDS regional center liaison to SDRC would be following up, that “[w]ith the help of our Federal Program folks, we now have a better idea of what could be the hold-up” and hoped to get updates the next week.

### **CORRESPONDENCE BETWEEN DDS, CLAIMANT, AND SDRC**

41. October 2024 emails between SDRC staff documented their inquiries with DDS regarding service codes 062 and 093, including that DDS was “pushing no” on allowing claimant’s mother to remain vendored with service code 093 as it was not federally reimbursable. Mr. Perez testified that DDS has since learned, owing to claimant’s mother’s research, that service code 093 is a federally reimbursable rate and discussed the rates for that service which are referenced below. The emails referenced in this decision contained DDS’s prior position that it was not federally reimbursable.

42. In an October 3, 2024 email, SDRC attached the rate approval letter which had been created/added to claimant’s mother’s vendor file. Of note, that letter

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<sup>2</sup> Mr. Perez testified that GGRC paid claimant’s mother at a higher rate that was not approved, so could owe that money to DDS in an audit.

was not attached to the email introduced at hearing. Claimant's mother replied by identifying the costs she incurs for staff, including mileage reimbursement, worker's compensation, payroll taxes, and training, as well as the high cost of living in San Diego. Claimant's mother asked if SDRC could assist with her request to adjust the rate shown in the attached letter "to what the actual costs for PAs amount to?"

43. Other September and October 2024 emails documented claimant's mother's inquiries regarding SDRC's funding for claimant's activities, and SDRC's response that it had hoped to get the IPP finished so it could include all services on it and not have to do an amendment later. In one email, claimant's mother advised that she let the PA from San Francisco go who was funded at \$40 per hour and rehired a PA at \$35 per hour. She was still paying \$40 per hour for the evening shift as that shift required "much more responsibility." She hoped those rates would be approved by DDS and SDRC given claimant's complex needs and the skills and experience required of his caregivers. SDRC responded that she had been approved for \$34.46, and if she needed a \$35 to \$40 hourly rate, SDRC would discuss it. SDRC advised it was working on finalizing the H&S waiver request so it would be "all set up to transfer everything by December."

### **GGRC's 2024 H&S WAIVER REQUEST AND DDS'S RESPONSE**

44. In a September 9, 2024, email and a November 1, 2024, confirming letter, which superseded its June 27, 2024, correspondence, DDS advised GGRC and SDRC that it approved GGRC's request for an extension of the prior H&S waiver approval. DDS advised it was temporarily approving "a rate of \$49.55 per hour, inclusive of some payroll costs that had not been substantiated by GGRC." This approved rate was above the current rate of \$21.84 per hour. In the Comments section DDS wrote:



In June 2024, GGRC requested an extension; however, there had been no progress on securing a worker's compensation policy. The H&S waiver was extended by [DDS] for 30 days, and the approved rate was reduced to \$44.64 per hour after removing all federal taxes and worker's compensation costs from the budget.

On September 7, 2024, GGRC submitted a request to further extend the previously approved waiver until December 31, 2024. They requested that the previous \$49.55 rate be granted for staff from the Bay Area who assisted the family's move to [SDRC's] catchment area and cross-training of new staff.

GGRC further requested a rate of \$34.88 per hour support a \$27.00 hourly staff wage to hire and retain staff in SDRC's area until [claimant's] case transfers to SDRC. The current rates for [PA] services in SDRC's catchment area are insufficient to hire and retain staff qualified to support [claimant's] needs.

45. DDS further advised that it "temporarily and conditionally approves GGRC's request to meet the reported health and safety needs of [claimant]." DDS approved the following rates at the two regional centers:

- GGRC: July 1, 2024-July 31, 2024, \$44.64 per hour;
- GGRC: August 1, 2024-December 31, 2024, \$46.66 per hour; and

- SDRC: August 1, 2024-December 31, 2024, \$34.46 per hour.

DDS wrote that the rates for GGRC were “based on the previously approved staff wage of \$40.00 per hour” which could be used for services provided in GGRC’s catchment area or for staff who live in that catchment area and traveled to claimant’s new residence to provide training and transition support to claimant. The approved rate for SDRC was based on a staff wage of \$27 per hour. The July 2024 rates did not include allowances for worker’s compensation insurance or federal taxes. The rates effective August 1, 2024, included a 5 percent worker’s compensation insurance allowance and 2.7 percent for state payroll liabilities, substantiated through receipts. Claimant’s mother reported that employees were responsible for federal taxes.

### **H&S WAIVER EXTENSION REQUEST DUE TO COMPLETING TRANSFER**

46. In a January 3, 2025, email, confirmed by a March 5, 2025, letter, DDS notified GGRC and SDRC that it had approved GGRC’s request for an H&S waiver extension. DDS recited the waiver history, noting that on August 1, 2024, under service code 093, it had temporarily approved a request to extend the previously approved waiver through December 31, 2024, temporarily approving an hourly rate of \$46.66 for staff based in GGRC’s catchment area and \$34.46 per hour for staff based in SDRC’s catchment area. DDS wrote that GGRC was now reporting that SDRC had not accepted full case transfer and was requesting a further extension of the approved rate because the current rate was insufficient to hire and train qualified staff to support claimant’s needs in SDRC’s catchment area.

47. Accordingly, DDS was “temporarily and conditionally” approving GGRC’s request, with effective dates January 1, 2025-May 31, 2025, at an approved rate of \$34.46 per hour. This rate was based on a reported staff wage of \$27 per hour, which

included a 5 percent worker's compensation insurance allowance and 2.7 percent for state payroll liabilities, substantiated through receipts. Claimant's mother reported that employees were responsible for federal taxes. DDS further advised that since claimant and claimant's mother, the parent vendor, were no longer residing in GGRC's catchment area, "this approval is expected to be time-limited. If requesting an extension, SDRC shall submit a new request by **May 1, 2025.**" (Bold in original.) DDS advised that any extension request must include updates on the status of the inter-regional center transfer and the efforts to vendor a comparable service in SDRC's catchment area.

### **EMAILS REGARDING SDRC RATES AND SERVICE CODES**

48. February 2025 emails between claimant's mother and SDRC documented she informed SDRC that when she submitted her first bill to SDRC's system, the rate listed was \$34.46, the original rate, but it had been negotiated to \$40 per hour. She noted she had been paying \$35 per hour for half the hours and \$40 per hour for the other half, as well as transportation costs. She also noted she was required to provide 40 hours of sick pay per year, paid an accountant to do payroll, and that San Diego rents were very high. SDRC responded that the extension and rate was approved by GGRC to give claimant's mother time to become incorporated and then negotiate a rate outside of H&S with SDRC. SDRC noted it had until May 31, 2025, to complete that process, after which it would not continue to fund claimant's mother under the 093 service code. Claimant's mother emailed her disagreement with that position and asked about appeal procedures.

49. In another series of February emails, SDRC advised her that service code 093 is not federally reimbursable and "currently not a service code offered by SDRC." SDRC further noted that the "goal is to have you become an LLC [limited liability

corporation] so SDRC can vendor you under the 062 (Personal Assistance) code and negotiate directly.” If she were to be vendored under 062, SDRC could offer her \$40 per hour. In one email, claimant’s mother responded that becoming an LLC required her to pay \$800 or more per year in business taxes, the LLC tax form is a more complicated tax return that also costs money, and completion of the tax form takes more time to do.

50. Mr. Gonzalez testified that claimant’s mother is the only service code 093 vendor at SDRC, and she is still vendored under that code.

51. March and April 2025 emails between claimant’s mother, SDRC and DDS documented claimant’s mother extensive education and training, her desire to no longer train staff and, instead, have them trained by Board Certified Behavioral Analysts (BCBA) through Kaiser (which had denied the request and she was appealing that denial). If her Kaiser appeal is denied, she will be requesting this service be added to claimant’s IPP. Claimant’s mother provided resumes for her staff, noting that she needed staff trained in Applied Behavior Analysis (ABA) methods. In one email, SDRC asked claimant’s mother if a \$45.98 proposed hourly rate would be sufficient, she replied it “would be amazing,” and she thanked SDRC for its efforts.

### **SDRC’S H&S WAIVER REQUEST AND DDS’S RESPONSE**

52. SDRC internal April 2025 emails discussed an H&S waiver request, including that it be retroactive. Other emails documented communications regarding the H&S worksheet.

53. On May 14, 2025,<sup>3</sup> SDRC submitted its request to DDS for an H&S waiver. SDRC noted that the current H&S parent coordinated PA rate was \$34.46 per hour and SDRC was requesting a proposed rate of \$45.98 per hour. With a total of 403<sup>4</sup> monthly hours, the fiscal impact for five months was \$23,212.80. SDRC set forth the reasons for its request including claimant's diagnoses, behaviors, and needs, the reported high turnover of staff serving claimant because of the current hourly rate, and the registered behavior technician (RBT) and certified nursing assistant (CNA) qualifications of staff which require higher rates. SDRC wrote that it had approved a courtesy vendorization under service code 093, parent coordinated PA, "as there were currently no other active vendors under 093." Claimant's mother had requested to continue under 093 as the most appropriate service delivery for claimant and SDRC "supported the continued vendorization under 093 as the amount of service hours for [PA] under the 062 service code, is limited to no more than 40 hours per week, based on demonstrated need. [Claimant] is currently receiving 100.75 hours per week."

54. SDRC completed the H&S worksheet and an H&S rate model which it submitted with its request.

55. In May 2025 emails, claimant's mother advised DDS that SDRC initially told her it did not have service code 093 and had her reapply for parent coordinated vendor with "the H&S waiver I had negotiated with DDS and GGRC years ago." DDS replied that it had reached out to SDRC who would contact her "very soon."

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<sup>3</sup> An unsigned, duplicative letter was dated April 28, 2025.

<sup>4</sup> In other documents the monthly hours were listed as 430.

56. On July 7, 2025, DDS sent a letter to SDRC's Executive Director denying SDRC's H&S waiver request. DDS listed the code sections which authorized it "to approve exemptions to rate freezes to mitigate risks to individual health and safety." DDS noted that SDRC requested an H&S waiver on May 19, 2025, that claimant's mother was the vendor under service code 093, and listed her vendor identification number. The current rate was \$24.82 per hour. In the Comments section in its letter, DDS wrote *[italics in original]*:

[DDS] previously approved a [H&S] waiver for [claimant] at \$34.46 per hour. This approved rate is based on a reported staff wage of \$27.00 per hour and includes a 5% worker's compensation insurance allowance and 2.7% for state payroll liabilities, substantiated through receipts. [Claimant's mother] reported that employees are responsible for federal taxes.

Because the case was transferring from the GGRC to SDRC, the approval was temporary until May 31, 2025, conditional on the following:

- \* Update on inter-regional center transfer, including any obstacles to a completed transfer, most recent [IPP], and current status of transfer;

- \* An update on efforts to vendor a comparable service in SDRC's catchment area.

SDRC now requests an extension at a rate of \$45.98 per hour to support a staff wage of \$35.00 per hour. The revised

request states that [claimant's mother] is unable to meet [claimant's] needs without "*educated, skilled and Board-Certified Behavior Analyst (BCBA) trained PA's*". The request letter states that, "*Current staff working with [claimant] have the following qualifications to include Registered Behavior Technician (RBT) and Certified Nursing Assistant (CNA)*".

While one of the five submitted resumes included RBT experience and one more resume indicated experience as a CNA, the supporting documentation did not include current professional licenses.

The letter states that SDRC is supporting the rate under service code 093, which is not federally reimbursable.

DDS then set forth the reasons for its denial:

1. Inadequate information about comparable resources: Per the previous approval dated March 25, 2025, SDRC was to provide "An update on efforts to vendor a comparable service in SDRC's catchment area." This assessment was not provided.

2. The request does not substantiate that the staff qualifications are related to the health and safety need: The request states that the waiver is due to [claimant's] complex behavioral support needs and states that "*Current staff working with [claimant] have the following qualifications to include; [RBT] and [CNA]*".

a. While the resumes submitted with the request identified at least one individual with experience as an RBT, most individuals do not meet the definition of an RBT under [California Code of Regulations, title 17, sections 54342, subdivision (b), 59000, subdivision (a)(37), and 59050, subdivision (a)(36).] An RBT must be licensed with Behavior Analyst Certification Board (BACB) and supervised by a Board-Certified Behavior Analyst for at least 5% of their direct time.

b. Four individuals had a combination of experience with some advanced education, such as political science, liberal arts, etc.

c. One staff indicated experience as a CNA, but no current license was provided.

d. It is unclear why a bachelor's degree or certification as a CNA is related to the health and safety needs of this individual.

3. Inappropriate Service Code: [DDS] shall not grant another extension to this waiver under service code 093. SDRC must explore a service code that is federally reimbursable.

57. As noted above, DDS no longer asserts that service code 093 is not federally reimbursable. As such, Mr. Perez acknowledged that 093 being non-reimbursable is no longer a basis for DDS's denial.



58. Before receiving DDS's formal letter denying the H&S waiver request, SDRC sent claimant's mother an email on May 22, 2025, advising her of the denial. Given that the other DDS denials were first in an email and then in a formal letter, presumably that also occurred here, although DDS's email denying SDRC's request was not introduced.

59. SDRC's May 22, 2025, email to claimant's mother advised her of the reasons DDS denied the request, provided her with contact information if she wanted further information regarding DDS's decision, and told her to reach out to SDRC to "see what other options we may be able to pursue." SDRC further advised claimant's mother that the current SDRC rates for Parent Coordinated PA services were: 1:1 \$24.82 per hour, 1:2 \$13.90 per hour, and 1:3 \$10.11 per hour. Overtime rates for Parent Coordinated PA services were: 1:1 \$29.62 per hour, 1:2 \$16.29 per hour, and 1:3 \$11.85 per hour.

60. On May 24, 2025, claimant's mother emailed DDS with copies to SDRC advising that she had received DDS's email and "devastating rejection of my H&S waiver request I made last June 2024." She noted that some of the information in DDS's email was incorrect or missing and not what she had reported. Claimant's mother wrote that DDS's determination that: "This approved rate is based on a reported staff wage of \$27.00 per hour and includes a 5% worker's compensation insurance allowance and 2.7% for state payroll liabilities, substantiated through receipts" was totally incorrect. Claimant's mother asserted the correct information was as follows, as written in original:

I made the request to the GGRC and SDRC for inter-county transfer before we moved in May 2024. I calculated my rate request at \$5. less per hour than the prior H&S waiver rate

for PA wages in San Diego. I have a PA from 8 to 2pm daily = 42 hours at \$35./hr, and a PA from 2 to 9pm daily = 49 hours at 40./hr. I have yet to receive [claimant's] community transportation support which I reimbursed my PAs. I pay worker's comp and legally required sick leave. We have contracts and my accountant issues W2s at the end of the year. I pay an accountant for this. I have to pay double when I hire a new PA for overlapping to train. I receive no respite funding. I gave up a career 20 years ago to attend to my son's complex needs and bought a house big enough for both of us with the room where he can have his therapy.

I don't see PA credentials being a requirement for H&S Waivers. See attached letter to Regional Centers. Also attached is the original letter request for a rate exemption and [claimant's Person Centered Plan] PCP.

Was a courtesy extension not requested to GGRC? An attorney with Disability Rights CA, [name] presented at the CCLN (acronym not explained) conference I attended in San Diego and she mentioned the possibility of courtesy extensions.

61. Claimant's mother next claimed in her email that DDS was also incorrect in its statement that: "Because the case was transferring from GGRC to SDRC, the approval was temporary until May 31, 2025, conditional on the following: Update on inter-regional center transfer, including any obstacles to a completed transfer, most recent individual program plan, and current status of transfer; An [*sic*] update on

efforts to vendor a comparable service in SDRC's catchment area." She wrote that the following was the correct information, as written in original:

No other program, [independent living services, supported living services, SDP] are adequate for [claimant] who cannot talk, read or write, drive a car, go to college, get married, etc. I requested Coordinated Family Supports (CFS) Vendorization and opt out of IHSS but was told parents aren't eligible. So there do not exist any qualified programs available to support someone like [claimant] who has such chronic complex needs.

I will go bankrupt paying my aides at the approved rate or I will lose my aides at this rate. Due to the severity and complex needs of [claimant's] disability of Severe Autism, Epilepsy, Apraxia Of Speech, Sensory Processing Disorder, he will be more prone the behavior issues leading to aggression, property destruction and self injurious behavior if he does not have qualified staff helping him at home and in the community. They are employing ABA methods I have trained them. Easterseals from Kaiser has just finally authorized a BCBA to conduct in-home caregiver training for 24 hours per month. I cannot find qualified trainable staff at minimum wage. Please expedite my appeal due to the harm posed by your decision.

I fight Kaiser daily and continually have to file grievances to obtain [claimant's] medical services he is entitled to with his

HCBS-DD waiver. And now with this latest decrease in supports by your department, [claimant's] ability to stay living with me is drastically threatened. Neither of us can survive without proper support. My current aides are our last resort for [claimant] to be able to live as independently as possible in our family home and participate in community recreation activities.

Attached photos show the issues we face when I do not have qualified staff support. Based on the potential for injury please expedite my request for a rate that pays my staff and reimburses me for payroll, transportation and sick leave.

I would appreciate re-consideration of the H&S waiver rate I've requested since last year.

62. One photograph claimant's mother attached to her email showed claimant bleeding from his lip and neck with the caption: "Unqualified prior aide who cut [claimant] while shaving him." Another photograph showed bruises, bleeding, and cuts on claimant's mother's arm with the caption; "Upset at being cut he attacked me." A third photograph showed bruising on claimant's arms and was captioned: "Marks from self injurious [*s/c*] behavior - biting arms." At hearing, claimant's mother showed bruising on her upper right arm caused by claimant.

63. On May 30, 2025, DDS emailed claimant's mother that she should "continue to work with SDRC in developing service supports." Claimant's mother thanked DDS and responded that she would do so.

## **CORRESPONDENCE REGARDING DDS'S 2025 H&S WAIVER DENIAL**

64. In other May 2025 emails with SDRC, claimant's mother inquired if the DDS rate reform applied to her, to which SDRC advised her that it did and sent her the necessary forms and link. SDRC also advised her that the rate reform would not affect her H&S waiver rate.

65. Other emails discussed having claimant's mother be listed in the service provider directory, service codes 093 and 062, and applicable rates. At hearing, SDRC asserted that service code 093 is not part of the service provider directory, so claimant's mother not being in it does not affect claimant's services. No evidence refuted that assertion.

66. In a June 1, 2025 email, claimant's mother provided a YouTube video of a DDS presentation on HCBS waivers "to cover the new PTO rates." Claimant's mother stated that in the video, DDS explains that "an additional \$16 should be added to the \$40 rate for my PA vendor code 093 1:1 [PA]."

67. In a June 2, 2025, email, SDRC confirmed with claimant's mother that in previous exchanges it had provided information regarding service code 093 and rates, which were outlined in an attached chart. SDRC advised that claimant's H&S waiver expired on May 31, 2025, therefore SDRC "will move forward with processing your 1:1 rate under the 093 service code at \$24.82 per hour and a 1:1 overtime rate at \$29.62 per hour." SDRC also inquired if claimant's mother "would like to continue to discuss the option to become vendorized under another service code."

68. Other June 2025 emails documented claimant's mother's request to SDRC for the forms it sent DDS when it requested a rate increase and that her new rate was too low to maintain staff to meet claimant's "intensive needs." She asked for an

update on her request for a higher rate and noted that claimant's "IPP remains unsigned by me until his services are adequate to meet his intensive needs."

69. In other emails, claimant's mother accused SDRC of giving her false information regarding its approved rates and parent vendor expiration. She wrote that unless SDRC could "provide the regulation from DDS that requires a vendor to use a [Fiscal Management Service (FMS)] for transportation reimbursement," she would add that to her OAH appeal.

70. On June 5, 2025, claimant's mother sent an email to SDRC's Executive Director advising that she "had several misleading erroneous statements from SDRC regarding [claimant's] service needs." When she transferred from GGRC, her PA rates were cut from \$49 per hour which compensated the PAs for wages, mileage, and PTO, to \$34 per hour, and after appealing, she was informed her rate would be lowered to \$24 per hour. She claimed that "[s]ince last July, SDRC has relayed several inaccurate details regarding [claimant's] services." She was also told SDRC did not have her Parent Coordinated PA service code 093 and it was being phased out in July. She was also told she would have to use an FMS for transportation reimbursement. She asserted that SDRC had not reassessed claimant for his HCBS-DD waiver and told her he would have to apply for it. She wrote that SDRC was not giving her the rate for service code 093, and would only compensate her as a personal assistant, but she was a parent vendor for personal assistance service code 093 "which shows \$40" per hour. Claimant has "intensive complex needs that require a higher rate. He has 13 hours per day of 1:1 assistance." She wrote that she had "attempted to diplomatically resolve the issues of [claimant's] care since last July without success. I am filing for hearing with the OAH."

71. On August 6, 2025, SDRC sent DDS a letter requesting an H&S waiver extension pending the outcome of claimant's appeals. In the letter, SDRC also

responded to DDS's reasons for its denial, providing additional information to DDS. SDRC stated that it has had no response to that request.

72. August 2025 emails between DDS and SDRC documented DDS's requests for additional information regarding SDRC's H&S waiver request.

73. Mr. Perez testified that given that DDS now recognizes service code 093 is federally reimbursable, SDRC may submit an H&S waiver request for that code and provide the required information. Service code 093 is not a reason to deny the request.

74. Mr. Perez referenced the current rate model which showed that the SDRC hourly rate for service code 093 is \$24.82. The SDRC hourly rate for service code 062 is \$37.27 which, unlike the 093 rate schedule, does include calculations for mileage, staff supervision, and overhead.

75. In addition to the reasons set forth in its denial, DDS also noted in its position statement, and as Mr. Perez explained, increasing claimant's PAs' rates would create wage compression issues for other SDRC consumers and disadvantage providers serving similar consumers at much lower rates.

76. Claimant's mother testified she has not been reimbursed for services since May 2025. She has been paying the PAs herself, borrowing money and using her savings. She is unable to submit any bills for reimbursement as she has no access when she logs in to the system. SDRC explained that because the H&S waiver expired, this may have caused her to be locked out, but she should be able to access the system to get reimbursed at the DDS-approved rate. SDRC was unsure why this was occurring and it may be an error in the system.

77. The ALJ asked SDRC to assist claimant's mother with this issue so she is reimbursed for approved services at the DDS rate pending her appeal, and SDRC agreed to do so. The parties were advised that claimant's mother accepting this rate does not waive her appeal request that she receive a higher rate.

### **COMPARABLE SERVICES**

78. One basis for DDS's denial was because comparable services had not been explored. SDRC explained that claimant's mother is not interested in services other than PA services.

79. Claimant's mother testified that other services, such as day programs or using public transportation, do not work for claimant and that only the PA services she has in place work. She described past bad experiences and issues she has had with hiring qualified PAs. In support of her position that she gets to select her services, claimant's mother cited to provisions of the law that allow families and consumers to choose their services and make decisions.

80. There was no showing the incidents claimant's mother described occurred in SDRC's catchment area and claimant's mother acknowledged she has not advertised for PAs in San Diego at the lower rate.

### **EMAILS REGARDING NEW SERVICE CODE**

81. June 2025 emails between DDS and SDRC documented that DDS advised that service code 093 was not an appropriate service code, so DDS was requesting SDRC "vendor under an appropriate service code before submitting a new [H&S waiver] request." DDS advised that it would "not consider whether to approve any retroactive payment until we see the revised request and know the requested wage, as



well as the end date for service code 093 and the corresponding start date for the new service code.”

82. SDRC advised claimant’s mother of DDS’s position, stating it was “trying to extend your current H&S waiver with the hope of giving you additional time to vendor under a different service code. As you can see the message throughout this entire process has been very consistent that 093 is no longer feasible.” SDRC advised that the “other option” was to become a PA vendor under service code 062, and if claimant agreed to pursue that option SDRC could request an extension of the current waiver while it worked to increase claimant’s PA rate via the H&S process.

83. In response thereto, claimant’s mother sent an email to SDRC thanking it for “the opportunity to resolve the vendor issue” but writing: “Technically though, I am not a Personal Assistant, I am a Parent Coordinator of Personal Assistants. I hire them, train them, pay them, supervise them, handle payroll and contracts, etc. There is no other vendor code that fits our situation. 093 is listed as a legitimate vendor on DDS rates and codes. [Claimant] cannot self determine, does not qualify for SLS or ILS. SDP adds further administrative burden to my job.”

84. SDRC responded that it was not trying to eliminate claimant’s mother’s vendor status, as she was still an active vendor under 093. Her H&S waiver under 093 was denied by DDS, so SDRC would be using the standard rate set by DDS of \$24.82 per hour. SDRC noted that an option remained that claimant’s mother become a PA vendor under service code 062. If she did, SDRC could request an extension of the current waiver while it worked to increase her PA rate via the H&S waiver process.

85. Claimant’s mother replied that her H&S waiver request was denied, but her vendor status 093 was not revoked. She did not see how the two were connected

and advised that she wanted to appeal DDS's decision. She asked if DDS had been informed in the H&S waiver request that claimant had a HCBS-DD waiver that had yet to be renewed by SDRC.

86. As noted above, DDS no longer takes the position that service code 093 is not federally reimbursable and SDRC may re-submit an H&S waiver request for claimant with that service code, but must provide the requested information.

87. On June 18, 2025, DDS emailed claimant's mother that the HCBS waiver makes claimant eligible for federal matching funds and that the regional center service provided must be federally reimbursable. Service code 093 is not federally reimbursable, but many other services are and SDRC could vendor her under another service code or use another agency as the employer of record. DDS advised that it would "no longer approve this waiver under service code 093 [and this] information was provided to SDRC well advance of the most recent [H&S] request."

88. Claimant's mother responded to DDS asking if there was "a directive or something in writing from DDS that was sent out to inform consumers and vendors? The rate lists all include 093 in 2025 lists."

89. DDS responded to claimant's mother stating that the "published list of services included in [DDS's] rate reform [which DDS believed she was referencing] is different from the contract with [Medicaid] which does not include parent-directed personal attendance." DDS noted further that while service code 093 was "still included in the rate study at a **standardized rate**, the cost of the service and any H&S waiver funds would be 100% state-funded. Service Code 062, for example, is almost identical but is eligible for federal funding." (Bold in original.) Again, as noted, DDS no longer takes this position regarding service code 093.

90. SDRC sent claimant's mother emails inquiring as to her decision regarding service code 062. On June 25, 2025, claimant's mother inquired if a possible solution was for her to keep her 093 vendorization at \$24.60 per hour for her hours and her administrative costs, add 062 PA vendorization at \$40 per hour and transportation through either an FMS or at 062 PA vendorization at \$45 per hour for the PAs, which would meet claimant's needs.

91. In a June 26, 2025, email to DDS and SDRC, claimant's mother noted that she began communicating with GGRC and SDRC in May 2024 about her move and arrived in San Diego in July 2024. She thanked the agencies for their assistance and support, noted claimant's numerous disabilities, and how because of her "diligence and devotion he has progressed beyond his contemporaries and it would be a tragedy to see him regress." She noted her disagreement with the rate reduction as San Diego has among the highest rate of inflation in the nation. Claimant "services were disrupted and revoked for a month and the rate reduced to below what is sustainable for his PAs here in San Diego who I am paying between \$35. and \$40./hr." Claimant's prior rate at GGRC included mileage reimbursement and PTO which has been "revoked" by SDRC when the vendorization expired on May 31, 2025. Claimant's mother noted that at the current rate of \$24 per hour, she would lose staff and had sent photographs of the damage claimant causes when not treated appropriately. Other outstanding issues included the renewal of claimant's HCBS-DD waiver, reimbursement for transportation, and accurate completion of his IPP. Claimant's mother then cited excerpts from various DDS publications in support of her position.

92. On July 1, 2025, SDRC advised claimant it met with DDS regarding the options she set forth in her June 25, 2025, email. In rejecting her options, SDRC wrote: "Unfortunately this would be considered 'double dipping' as you are requesting to use

both service code options at the same time that provide similar service needs.” SDRC wrote further that it was authorized to assist with her transportation needs “when and if you transition to Personal Assistance (062) at the current rate of \$37.27.” SDRC had an internal mileage reimbursement program for respite providers which covers 1,200 miles per month at \$0.70 per mile, which was the federal mileage rate. SDRC could add the mileage reimbursement to the 062 rate immediately while it worked on increasing the \$37.27 rate via an H&S waiver. SDRC again referenced DDS’s determination that service code 093 cannot be elevated via an H&S waiver because it was not federally reimbursable. If claimant’s mother remained under service code 093, the base rate would continue to be \$24.82.

93. Claimant’s mother replied advising that she disagreed with the assessment that she would be double dipping and was quite offended. She noted that her PAs are performing completely different tasks than she performs. She asked with whom SDRC had consulted at DDS. She also attached excerpts from what appeared to be FAQs regarding service code 093. Of note, the FAQs simply explained that if a parent is vendored under service code 093 and “meets the qualifications and follows the application process for multiple services, they can be vendored” for different services. This was not inconsistent with what SDRC was offering claimant.

94. Ms. Goulding testified that SDRC cannot vendor claimant as both service code 062 and 093 as that would constitute funding duplicative services because both service codes fund PAs. Claimant’s mother disputed this, asserting under 093 she coordinates the service and under 062 she provides the service, but Ms. Goulding responded that under both service codes, claimant’s mother can provide the service and as the parent vendor, she assigns the staff.

95. Other emails in July 2025 documented SDRC advising claimant's mother that she needed to submit new application documents for new vendorization because she would be issued a new vendor number under the 062 service code, and the documents previously submitted were specific to the 093 vendorization. Claimant's mother replied that she was resending "the exact same paperwork" she filled out and faxed months ago. She also stated that unless SDRC was "terminating my 093, I expect to retain that vendorization." SDRC again advised that claimant's mother would be getting vendor code 062, which claimant's mother replied that while she appreciated SDRC processing her 062 vendor application, "[w]ithout due process you cannot rescind my 093 vendorization" and she would address the matter at hearing.

96. Other July 2025 emails documented the parties' discussions regarding providing claimant's program design to SDRC.

97. Still other July 2025 emails documented several matters that claimant's mother asserted were incorrectly recorded in claimant's documents, her request for aid paid pending, her disagreement with the service codes, and her inquiry as to whether SDRC had signed claimant's "edited IPP."

98. In an August 2025 email, claimant's mother asked who had deleted claimant's incident report from his prior HCBS-DD waiver with GGRC. In other emails, claimant's mother complained about her CSC, requested a new CSC be assigned, and SDRC advised it would honor her request but her current CSC would be involved with the appeal. SDRC also advised her that it did not have many CSCs with the amount of experience she was requesting and suggested waiting until after the OAH appeal. Claimant's mother responded that she wanted to resolve the transportation issue before hearing, to which SDRC replied it had not denied that service, but she was

required to use an FMS which she did not want to do. SDRC issued an NOA and would defer to the OAH appeal for that issue, as well.

### **SDRC NOA REGARDING TRANSPORTATION ISSUE**

99. SDRC's July 22, 2025, NOA advised claimant's mother it was not denying her request for travel reimbursement but the mechanism by which SDRC provides reimbursement under Parent Directed Services was through an FMS which claimant's mother stated she did not want to use.

### **CLAIMANT'S IPPs**

100. Claimant's March 17, 2023, IPP, completed when claimant was at GGRC, contained information regarding claimant and the services and supports he received.

101. A draft IPP after claimant relocated to SDRC's catchment area, was dated August 20, 2024. The document contained edits and was unsigned.

102. An August 21, 2024, IPP Summary Sheet identified claimant's outcomes and services to be listed in his IPP. The document was signed by claimant's mother and by SDRC.

103. Consumer I.D. Case Notes, also referred to as Title 19 notes, documented numerous discussions between SDRC and claimant's mother regarding claimant's IPP, her requested revisions to it, and exchanges of various drafts of the IPP.

104. The July 16, 2025, IPP introduced at hearing is the most recent IPP but has not been finalized as it is still in the SDRC approval process given claimant's mother's requested edits. Mr. Zuniga testified that "at some point" SDRC needs to put an IPP in a final written form, it cannot keep making repeated edits, although

consumers can still appeal matters contained therein. Ms. Tewalt testified she has approved the version going through the approval process and was not sure if all of claimant's mother's requested edits were in it.

105. Claimant's mother objected to this, asserting she was not included in the IPP process, but Ms. Tewalt testified claimant's mother was part of the IPP planning team meeting, had sent several edits which were incorporated in the various versions, the current written version was based on that process, and the document was simply undergoing the internal SDRC review that takes place when IPPs are written. Claimant's mother was advised she was entitled to review that version, which was Exhibit WW, and could make any objections to it. Claimant's mother indicated she would need "days and days" to review it and let SDRC know her response.

106. The July 16, 2025, IPP documented that the first face to face IPP meeting was held on August 21, 2024, but since then, the IPP had been through multiple revisions. The IPP set out claimant's current situation, his supports and needs, the services SDRC was funding, and the H&S waiver history. SDRC was "in a position to offer \$24 an hour at the standard rate for Service Code 093 with a signed [IPP]." The IPP also referenced the fair hearing issues regarding the H&S waiver, transportation reimbursement, and HCBS-DD waiver.

107. The 2025 IPP noted that claimant was cheerful, active, and one who thrives on structure and consistency. Per claimant's mother, he requires supervision at all times "with highly trained, experienced and [ABA] staff that are aware of his specific needs and behaviors. ABA techniques are employed to support his continuing development towards greater independence." Claimant enjoys many physical activities and is "best supported by staff who are patient and cooperative with him opening up to learning new skills and to offer him praise." Claimant "has come a long way in his

current functioning levels. Due to 20 years of hard work, therapies, and support he is eager to please and quite cooperative. [Claimant] continues to improve all of his independent living skills, communication skills, and community integration with support." Claimant's aides assist him and prevent him from engaging in self-injurious activities or aggressive behaviors and work with him on ABA methods.

108. Claimant was noted to have obsessive compulsive type behavior that can make him agitated. He can be startled by loud, abrupt, high-frequency sounds and conversations, and will engage in self-injurious and aggressive behavior when not "cared for properly by educated capable staff." He needs "specially trained assistance for medical appointments," although he currently did not have a primary care physician who specialized in special needs patients. "Other services that are beneficial for [claimant's] medical/behavioral needs include ABA, Personal Assistants, Speech therapy, Occupational therapy, Music Therapy, and a neurologist." Claimant's mother was continuing to pursue services through claimant's health care insurance. Once the inter-regional center transfer was complete, SDRC completed the HCBS-DD waiver.

109. The 2025 IPP further noted that claimant currently has 13 hours of PA services per day, managing domestic duties, providing protective supervision, administering medications, implementing behavioral strategies, providing transportation, and helping with personal care. Claimant "requires an ABA based program at home to continue his progress with communication, social engagement and behavior management. PAs are required to be present during the ABA program from 10am to 2pm. [Claimant] requires sensory integration techniques throughout the day to help him self-regulate." Claimant's medical insurer denied claimant's request to provide BCBA caregiver training to the PAs. Interventions to address claimant's



behaviors were referenced and claimant's "severe behavior incidents" can occur once or twice a year.

110. Claimant's mother requested claimant receive 1:1 experienced and ABA trained PAs 24 hours per day and requested 13 hours per day of PA funding at a rate of \$45 per hour. SDRC "will support the funding of [PAs] with either the assistance of the [H&S waiver] or standard rate. The rate for [PAs] is currently being discussed through fair hearings. As of the writing of this IPP there is no Purchase of Service for Parent Coordinated [PA] active. It is SDRC's understanding, that [claimant's mother] would like to wait for the [H&S waiver] rate to be resolved via Fair Hearing."

111. The 2025 IPP documented that SDRC will work with the family to support claimant's transportation options. Claimant's mother was requesting travel reimbursement from the time claimant transferred to SDRC and the options had been discussed. The best option for claimant would be a transportation voucher which SDRC only offers through an FMS. Claimant's mother does not want to go through FMS and wants the reimbursement to come directly from SDRC, and SDRC's transportation department is working to find other options without using an FMS. Since the H&S waiver was denied, including transportation in that rate was not an option.

112. Claimant's mother testified that at GGRC, transportation was included in her rate as this was the simplest way to pay for the service. Rather than having to incur the costs of an FMS, she would like to have that service included in her PA rate or directly paid to her. SDRC explained that it cannot do that and that because claimant's mother is the parent vendor, FMS is the best option. However, SDRC's transportation manager is reviewing claimant's mother's request to see if there are other options.

113. The 2025 IPP was written in the new Standardized IPP format. Claimant's mother asserted SDRC improperly used the old format, but Mr. Zuniga explained the new format was not used at SDRC until January 1, 2025, and, because the IPP was originally written in 2024, the older format was first used. In support of her position, claimant's mother introduced a June 20, 2024, DDS directive regarding "Standardized [IPP] Template and Procedures." The directive advised that 2023 changes to the law required the establishment of a standardized IPP template and standardized procedures by June 30, 2024. The purpose of the directive was to distribute the established IPP template and other information to regional centers which "shall implement the standardized IPP template and procedures no later than January 1, 2025." Thus, SDRC implementing the new template effective January 1, 2025, complied with DDS's directive. Moreover, no evidence demonstrating the older format affected claimant's services was introduced.

114. The 2025 IPP signature page indicated it was signed by claimant's mother and SDRC on July 18, 2025. As discussed at hearing, these signatures were obtained before the final version of the IPP was reviewed by claimant's mother.

### **CLAIMANT'S PERSON CENTERED PLAN**

115. Claimant's June 2025 Person Centered Plan contained information regarding claimant, including his strengths and needs. The "Great things about [claimant]" section noted that claimant is "an active, fit, handsome and cheerful young man. Due to 20 years of hard work and therapies, he is eager to please and quite cooperative for someone with his level autism." He likes to be helpful, is very coordinated and continues to learn new skills. He has a great palate and a healthy diet. He likes affection and tickles. He is "fun to be with." He "works hard and needs to be challenged in order to grow. Because he has been such a trooper, he can attend a

dozen public community recreation activities and he is welcome there. Precaution needs to be taken to preserve his access." His receptive language skills are much higher than his expressive language skills. His articulation continues to improve. He requires "constant supervision by well educated and behaviorally trained staff who understand his needs. Maintaining his progress is essential." Consistency and structure are important, he "understands more of what we say than we think. He needs to be talked to with respect." "Patience is critical for him. Give him a chance to be successful and praise him for his cooperation and successes."

116. In the section of the plan titled "How to best Support [claimant]," it was noted that claimant needs "well educated and skilled personal assistants who are either knowledgeable of [ABA] or capable of being trained," reinforcement of positive behaviors while unwanted behaviors must be treated in a way so he does not use them, caregivers must be sensitive to claimant's sensory issues, claimant needs help with his speech, needs prompts for tasks, has sensitivity to sounds, and requires 24 hour supervision. Claimant requires transportation, medication administration, his domestic needs be provided, and assistance with minor chores. "Teaching [claimant] new skills or introducing him to new activities requires behavioral professionals employing ABA methods to ensure success and avoid challenging behaviors. [Claimant] needs to have specially trained assistance for medical appointments." Claimant is prone to tearing up and shredding his clothes so his caregivers must monitor this behavior. He needs to be monitored when using the bathroom. Throughout the document, repeated references were made to ABA based techniques as being required to address claimant's needs and provide supports.

## **BEHAVIOR REPORTS AND GOALS**

117. A November 28, 2022, Specialized Therapeutic Services: Intensive Behavior Support Services Request from Maxum Healthcare Services, identified claimant's aggression (claimant engages in biting and grabbing others), self-injurious behavior (claimant bites himself, biting his hands and arms), property destruction (claimant puts inappropriate items or large amounts of toilet paper into the toilet causing it to malfunction), and masturbatory behavior (claimant rubs his private area in public/common areas) as claimant's "challenging behaviors targeted for decrease." Claimant needs assistance with most activities of daily living.

118. An undated "Behavior Cheat Sheet" identified target behaviors to decrease, target behaviors to increase, antecedent strategies, consequence strategies, and emergency protocol.

119. A July 11 2025, Goal and Action Plan set forth claimant's goals. Several documents identified mastery criteria of various skills claimant attempted.

## **PROGRAM DESIGN**

120. A "Vendor 062, Personal Assistance Services (PAS) Program Design" for claimant contained the plan's purpose, a description of services to be provided, claimant's desired activities, his goals, his diagnoses, the employee requirements, and other pertinent information. The section marked "Education and Vocational Goals" noted that claimant is homeschooled 24 hours per week with personal assistants, needs in-home speech therapy for his apraxia, needs in-home occupational therapy for his sensory processing, and his staff needs a BCBA for training. Staff would receive ongoing ABA training from claimant's mother and they need to be "smart, educated, able to multitask, patient, and fit." Included among the "Staffing Eligibility

Requirements” it was noted that staff must have a minimum of a Bachelor of Arts degree, be young and fit with a lot of endurance, be strong, brave, reliable, kind and organized, have a basic understanding of psychology, and have a good sense of humor. Claimant’s love of the outdoors and engaging in preferred activities was listed.

## **WORK AGREEMENTS AND RESUMES**

121. Claimant submitted Work Agreements she has with the PAs she employees, and resumes. The agreements listed the duties and responsibilities of each party to the contract and the resumes noted the employees’ education and experience. Claimant’s mother testified that one employee has since left.

122. Claimant’s mother is not certified as an RBT or CNA, nor does she have an ABA certification. She testified she has conducted research, read literature, is college-educated, and received numerous trainings, so is well versed in ABA methods. She teaches ABA techniques to her staff.

## **PA’S TESTIMONY**

123. PA Orlando testified that she is in tune to claimant’s behaviors and needs. He makes certain sounds that one must recognize to prevent escalations and to address his needs. She described the many ways she interacts with claimant so as to allow him to safely participate in community events and ensure his requests are handled appropriately. Claimant is very active and requires constant supervision.

124. PA Orlando testified that a lower hourly rate would make it very difficult to remain working with claimant since PAs could seek employment with individuals with lower needs who require less supervision.

125. PA Orlando described all the trainings and discussions she has with claimant's mother, the daily printouts of information claimant's mother provides, and the research PA Orlando performs when she observes issues regarding claimant. She has CPR and first aid training and has been trained in ABA methods by claimant's mother. She is not RBT or CNA certified.

126. PA Orlando presented as a very kind, caring PA.

### **PHOTOGRAPHS, INCIDENTS, AND ACTIVITIES**

127. Photographs of claimant showed him enjoying numerous activities of daily living and recreational activities. Other photographs documented the injuries he sustained due to his self-injurious behaviors.

128. A September 22, 2024, email from claimant's mother to the YMCA apologized that claimant bit an individual at the pool, writing that the aide was not sufficiently trained and such an event had never happened before. Claimant's mother requested that the YMCA convey her apologies to the individual who was bitten.

129. A community outing document listed claimant's activities.

130. An August 18, 2025, email from claimant's mother to the YMCA advised of an incident that occurred that day. Claimant was waiting his turn for the spa and did not understand why he was not being allowed in the spa as one spa was closed. His aide took him into the bathroom to help calm him down but had "to wait in line for people who are not disabled to vacate the family dressing rooms." Claimant's aid is female and "this has been an ongoing problem." When they finally entered the changing room, claimant sat down on the disabled shower chair and it collapsed, cutting him in several places on his back and ankles. Claimant "was understandably

upset and cried on his way out.” Claimant’s mother attached photographs of claimant’s injuries, the broken chair, and noted claimant “was so upset he bit his arms as well.” The YMCA responded seeking more information and explaining why spas are closed. Claimant’s mother responded, answering the YMCA’s questions and inquiring if the second spa could be opened and if more could be done to ensure that non-disabled people do not use the disabled changing room. Claimant’s mother provided a copy of the email exchanges to SDRC on August 22, 2025.

131. Claimant’s mother and PA Orlando both explained that one of the reasons it is important to have well trained staff is so that claimant does not lose his ability to attend community settings as some places may refuse to let him be present given concerns for others’ safety. In fact, one place advised that one more incident will result in him not being allowed to attend. Should that occur, it will be very upsetting to claimant as the place is one of his primary community settings.

### **CONSUMER PRICE INDICES AND INFLATION DOCUMENTS**

132. An excerpt from a 2024 Consumer Price Index (CPI) that reflected metro areas in the United States demonstrated that San Diego had the highest price index. A 2025 CPI again noted San Diego’s high consumer prices.

133. News reports documented that San Diego County rents increased in 2025 by 4.1 percent, with city rates increasing by 9.3 percent, after previously decreasing. Other articles documented the high cost of living in San Diego County.

134. At an August 22, 2024, meeting with claimant’s mother, SDRC and GGRC, the high cost of housing in both the Bay Area and San Diego County were discussed.

## **VENDOR APPLICATION FORMS, PAYROLL RECORDS, AND OVERDUE BILLS**

135. In a July 1, 2025, vendor application disclosure form, claimant's mother marked the box indicating she is a sole proprietor.

136. In the July 1, 2025, vendor application form, claimant's mother identified the type of service she provided as: "personal assistance by personal assistants hired, trained and supervised by owner."

137. On July 1, 2025, claimant's mother signed the Service Provider Portal agreement.

138. Payroll records documented the wages paid to claimants PAs.

139. July 2025 emails between SDRC, claimant's mother, and a community services provider documented overdue reimbursement for claimant's approved gym membership and that claimant's mother had been paying for that service out-of-pocket while SDRC was obtaining renewed authorizations.

## **DOJ STATEMENT**

140. Claimant's mother submitted a February 25, 2020, Department of Justice Statement setting forth its position on enforcing the integration mandate in the Americans with Disabilities Act.

## **ADDITIONAL DDS DIRECTIVES**

141. December 16, 2024, directive from DDS contained information regarding rate reform implementation for transportation services. The directive applied to all vendors of the following services: transportation companies, service code 875; transportation-additional component, service code 880; transportation assistant,



service code 882; and transportation broker, service code 883. The directive required regional centers and the service provider to complete a Rate Reform Service Acknowledgment Form by March 31, 2025, and provided the rates for each service. A vendor of the primary service could provide transportation-additional component services if those services were provided by the employees of the primary service agency and the providers met the requirements set forth California Code of Regulations, title 17, section 54342, subdivision (a)(80). (This regulation allows service code 880 to be used if the vendor is vendored separately from the primary service, provides services by employees of the primary service agency, and provides the regional center with proof of adequate insurance.)

142. A June 18, 2025, DDS directive regarding H&S waivers provided instructions to regional centers on submitting "new or renewal" H&S waivers. DDS cited to the applicable laws and advised that when regional centers seek H&S waivers, they should provide the following information: a thorough review of the vendors' request, consideration of generic resources, consideration of all appropriate service codes to meet the individual's needs, and alternative vendors or services to meet the needs in lieu of an H&S waiver. DDS advised regional centers that H&S waivers are "not meant to address issues with general business operations, financial hardship, issues with rate models, or difficulty in hiring staff. The [H&S] waiver must specifically address risks to an individual's health or safety." Regional centers must provide adequate documentation to establish the need for the waiver. DDS may deny the H&S waiver request, delay approval, or request additional information to establish a health or safety need. DDS may reduce or modify the requested H&S waiver rate if justification for all parts of a request is not substantiated. The directive identified the documentation that regional centers must provide to DDS and the procedures for submitting the request.

## **AID PAID PENDING FAQ AND TESTIMONY**

143. An aid paid pending fact sheet explained how the program works. In order to qualify, a consumer must appeal an NOA within 30 days or no later than the date the regional center stated the services would end as noted in the NOA.

144. Mr. Zuniga testified that because SDRC was not terminating a service or reducing service hours, instead the rate was being reduced because the H&S waiver expired, it determined an NOA was not needed, so aid paid pending did not apply.

145. Claimant's mother asserted that reducing her rate did reduce her service because she could not hire providers at the lower rate, resulting in there being no PA services for claimant.

## **DOCUMENTS REGARDING EMPLOYMENT, FACILITY, AND DDS ISSUES**

146. Various documents claimant introduced describe the shortages finding healthcare workers and difficulties hiring behavioral health workers.

147. A thesis presented to the faculty of San Diego State University discussed irregularities in residential care facilities for the elderly in San Diego and Imperial counties.

148. A Google document noted problems with the Alternative Residential Model System for Community Care Facilities in providing ranges of care levels for individuals with developmental disabilities.

149. Facebook chats and a 2023 report documented participants' thoughts regarding SDP and issues with SDP.

## **LEGAL CONCLUSIONS**

### **Purpose of the Lanterman Act**

1. The purpose of the Lanterman Developmental Disabilities Services 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, footnote 5.) In this case, claimant bears the burden to prove the issues he asserted.

3. The standard by which a 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.)

## **The Lanterman Act, DDS, and Regional Centers**

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.

7. Welfare and Institutions Code section 4502.1 sets forth the consumer's and families' rights and requires regional centers to respect the choices they make.

8. Welfare and Institutions Code section 4512 defines services and supports.

9. DDS is the state agency responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

10. Welfare and Institutions Code section 4434 requires DDS to ensure that regional centers operate in compliance with applicable laws and provide services and supports to consumers in compliance with the Lanterman Act.

11. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.2.

12. Welfare and Institutions Code section 4643.5 states in part:

(c) Whenever a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer's individual program plan (IPP) shall be authorized and secured, if available, pending the development of a new IPP for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new IPP within 30 days. Prior to approval of the new IPP, the regional center shall provide alternative services and supports that best meet the IPP objectives in the least restrictive setting. The department shall develop guidelines that describe the responsibilities of regional centers in ensuring a smooth transition of services and supports from one regional center to another, including, but not limited to, pretransferring planning and a dispute resolution process to resolve disagreements between regional centers regarding their responsibilities related to the transfer of case management services.

13. Welfare and Institutions Code section 4644 authorizes regional centers to provide preventative services but those "services shall, inasmuch as feasible, be provided by appropriate generic agencies . . . . In no case, shall regional center funds be used for supplant funds budgeted by any agency which has a responsibility to provide prevention services to the general public."

14. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with

developmental disabilities and take into account the needs and preferences of the individual and the family. The IPP is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan. The provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

15. Welfare and Institutions Code section 4646.4 sets forth the internal process for creating IPPs. Subdivision (a)(1) requires regional centers to conform with their purchase of service policies.

16. Welfare and Institutions Code section 4646.5, subdivision (a)(1), requires the IPP planning process to include gathering information and conducting assessments. Subdivision (5) requires that process to also include the services to be obtained by generic resources, generic service agencies, and natural supports.

17. Welfare and Institutions Code section 4647 sets forth what service coordination must include.

18. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Regional centers may reimburse vendors who have rates of payment for vendored or contracted services established by the department. DDS is

required to adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization. Subdivision (a)(6)(D) requires regional centers to consider the cost of providing services or supports of comparable quality by different providers and select the least costly available provider of comparable service who can accomplish the consumer's needs identified in the IPP. When determining the least costly provider, regional centers shall consider the availability of federal financial participation. The consumer will not be required to use the least costly provider if doing so would result in the consumer receiving more restrictive or less integrated services or supports.

19. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

20. Welfare and Institutions Code sections 4681.6, 4648.4, subdivision (b), 4681.5, 4684.55, 4689.8, 4691.6, and 4691.9, authorize DDS to approve waivers to rate freezes for the purpose of mitigating health or safety risks to consumers. Included among the services requiring DDS approval for a higher rate are: supported living services, transportation, including travel reimbursement, socialization training programs, behavior intervention training, community integration training programs, community activities support services, mobile day programs, creative art programs, supplemental day services program supports, adaptive skills trainers, and independent living specialists.

21. Welfare and Institutions Code section 4690 authorizes DDS to "establish, maintain, and revise, as necessary, an equitable process for setting rates" and it "may promulgate regulations" to do so. DDS may require vendors to submit program, cost, or other information, as necessary. DDS shall take into account the rates paid by other

agencies and jurisdictions for comparable services in order to assure that regional center rates are at competitive levels and rates may not be less than those established for comparable services under the Medi-Cal program.

22. Welfare and Institution Code section 4706, subdivision (a), provides, that “all issues” concerning the rights of persons with developmental disabilities to receive services shall be decided under this chapter.

23. Welfare and Institutions Code section 4710 sets forth the notice requirements for regional centers if they decide to reduce, terminate, or change services set forth in an IPP or if they determine the consumer is no longer eligible for regional center services.

24. Welfare and Institutions Code section 4710.5, subdivision (a), permits a recipient of services, or the authorized representative, who is dissatisfied with a decision or action of the regional center to file an appeal and be afforded an opportunity for an informal meeting, a mediation, and a fair hearing.

25. Welfare and Institutions Code section 4715 authorizes aid paid pending if an appeal is received within 30 days of the NOA but no later than the effective date of the proposed action. This is commonly referred to as “aid paid pending.”

## **Applicable State and Federal Regulations**

26. California Code of Regulations, title 17, section 54342, subdivision (a), states:

The following service codes shall be assigned the following types of services:



[¶] . . . [¶]

(80) Transportation -- Additional Component -- Service Code 880. A regional center shall classify a vendor as a provider of transportation services -- additional component if the vendor:

(A) Is vendored separately from the primary service. The vendoring regional center may waive separate vendorization as a transportation services--additional component if the vendor is a community-based day program vendor, who conducts its curriculum solely in natural environments, and the regional center determines that it would be more cost effective to include the cost of transporting consumers, which occurs between the first and last training site as specified in Section 57434(a)(3)(N). The cost of transporting consumers shall be considered more cost effective if the cost of including the transportation service in determining the rate of reimbursement for the community-based day program is less than the cost of providing the transportation service pursuant to separate vendorization as a provider of transportation services -- additional component;

(B) Provides services by employees of the primary service agency; and

(C) Provides the regional center with proof of adequate insurance as designated by the vendoring regional center in accordance with the Welfare and Institutions Code, Section 4648.3.

27. California Code of Regulations, title 17, section 54370, authorizes regional centers to terminate vendors from providing services if they do not comply with the vendorization requirements. Subdivision (c) requires regional centers to give 30 day notice of termination to vendors, and sets forth the vendors' appeal rights.

28. California Code of Regulations, title 17, section 58886, permits regional centers to offer Participant-Directed Services so consumers can procure their own services, including PA and transportation services. If the consumer decides to use Participant-Directed Services, the regional center shall provide the consumer with information regarding the consumer's responsibilities, information about the requirements regarding the use of an FMS, and assist the consumer in choosing an FMS. The consumer may not be the FMS.

29. Code of Federal Regulations, section 441.301, subdivision (c)(2)(ix), requires an HCBS-DD waiver to include a finalized, agreed to, Person-Centered Service Plan that reflects the individual's services and supports that meet his or her needs.

## **Applicable Case Law**

30. In *Williams v. Macomber* (1990) 226 Cal.App.3d 225, reh'g denied and opinion modified (1991), a regional center had denied the requested service because of its policy not to fund in-home daycare so parents could work. The ALJ upheld the regional center's decision, but the court of appeal found that the regional center's rationale constituted an insufficient basis for denying the requested services.

The court determined that the regional center's reliance on a fixed policy was inconsistent with the Lanterman Act's stated purpose of providing services on an individual basis. (*Id.* at p. 232.) Next, the court found that the services requested were among those which the Lanterman Act was designed to provide in appropriate circumstances. (*Id.* at p. 233.) Third, the court found the regional center had failed to determine whether the requested services were necessary to permit claimant to remain in her home. (*Ibid.*) The court did not find that the regional center must provide the requested daycare services, only that its application of an inflexible policy denying the services was contrary to the Lanterman Act. Whether claimant was entitled to those services depended upon a consideration of all relevant circumstances. (*Ibid.*) Although there was reference to the fact that the regional center had asserted that the service request did not meet its purchase of service guidelines, there was no discussion of Welfare and Institutions Code section 4646.4 in the decision.

31. In *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, Harbor Regional Center (HRC) appealed the trial court's determination that OAH had jurisdiction to order HRC to fund a vendor's pay rate that exceeded the maximum pay rate established by DDS. The court of appeal concluded that OAH had jurisdiction to hear the matter and affirmed the judgment.

HRC did not dispute the underlying facts concerning the consumer's condition or the services required. Instead, HRC argued that OAH exceeded its jurisdiction and abused its discretion because the issue involved a vendor pay rate and (1) only DDS had the power to determine vendor pay rates, (2) only vendors could bring pay rate appeals, and (3) only the DDS director could decide those appeals. (*Id.* at pp. 302-303.) The court conducted a lengthy analysis of the Lanterman Act and the DDS regulations, including those that authorized DDS to set rates for its vendors. (*Id.* at pp.

308-309.) The court determined that regional centers were responsible for providing each developmentally disabled person with appropriate services, that DDS was “basically limited to promoting the cost-effectiveness of the operations of the regional centers,” and that DDS’s authority “did not extend to controlling the manner in which regional centers provide services or operate their programs.” (*Id.* at pp. 306-307.)

In rejecting HRC’s contention that OAH lacked jurisdiction to hear this matter, the court held that the Lanterman Act gave the consumer the right to appeal “all issues concerning” the consumer’s right to receive services and the right to appeal “any decision or action” that the consumer believed was not in the consumer’s best interests. (*Id.* at p. 311.) The court noted, “In short, the broad language of the [Lanterman Act] provisions prescribing a claimant’s fair hearing rights encompass” claims like the one raised in the HRC proceeding, particularly in light of the Legislature’s mandates to: be flexible and creative in meeting a family’s unique and individual needs (Welf. & Inst. Code, § 4685, subd. (b)(2)); give high priority to developing and expanding services to assist families caring for children at home (Welf. & Inst. Code, § 4685, subd. (c)(1)); and consider “every possible way” to help families keep their disabled children at home (Welf. & Inst. Code, § 4685, subd. (c)(2)). (*Id.* at p. 312.)

The court found that if a higher pay rate is needed to provide the care called for by an individualized plan, a regional center’s refusal to approve that higher rate goes directly to whether adequate services are being provided. (*Id.* at p. 314.) The court concluded that OAH had jurisdiction to hear the dispute and did not abuse its discretion. (*Id.* at pp. 316-317.) It further found that each of HRC’s arguments was based on its contention that the Lanterman Act’s rate setting provisions, and DDS’s

rate appeal regulations, precluded the consumer from seeking the temporary pay raise; a position the court rejected. (*Id.* at p. 317.)

## **Evaluation**

32. While it is true that the Lanterman Act gives consumers and their families certain rights, and requires regional centers to respect the choices they make, the Lanterman Act also places restrictions on the services that regional services may fund. Regional centers must look to generic resources. Regional centers must comply with their purchase of services agreements. Regional centers must comply with DDS Directives. Regional centers must comply with applicable laws, both state and federal. Regional centers must be cost-effective. Regional centers must fund services according to the needs outlined in the IPP. Regional centers are prohibited from purchasing services that are not evidence-based or are experimental. Regional centers may only fund services that Medicare and Medicaid determine can be funded. Regional centers may not pay vendors rates that exceed DDS rates. With those laws in mind, the following findings are made as to each issue raised:

### **ISSUE No. 1**

33. Claimant did not establish by a preponderance of the evidence that the rate for PA services be increased beyond the DDS approved rate.

Claimant's most recent IPP did not identify any significant behavior or safety issues that would require a higher rate. No evidence demonstrated his PAs must have RBT or CNA training/certificates necessitating a higher hourly rate. Claimant's program design and person centered plan also did not support claimant's position. In fact, the documents revealed a very capable individual who does not require the level of care

claimant seeks. Even in her September 22, 2024, email to the YMCA, claimant's mother wrote that such an incident had never happened before.

Claimant's behavior assessment was from 2022, and no more recent ones were provided. A set of photographs showed one incident when claimant injured his mother when he was improperly shaved and one photograph of self-inflicted bruises. The August 18, 2025, incident at the YMCA occurred when a shower chair broke, injuring claimant and he bit his arms because he was upset. His aid was with him when the injury occurred and it happened because a chair broke, not because of claimant's behaviors. Although he did engage in self-injurious behavior because of this incident, there was no showing that a PA receiving a higher hourly rate would have prevented this injury. Moreover, none of these incidents were sufficient to demonstrate an H&S waiver was necessary, especially in the face of all the other evidence introduced which did not show claimant required a higher level of care that would be paid above the standard rate so as to justify an H&S waiver.

Although claimant's mother desires a higher level of service for claimant, this is not the same things as demonstrating the type of health or safety needs required for DDS to issue an H&S waiver. Here, there simply was no showing that claimant's needs rose to the level that an H&S waiver should be granted. The evidence supported DDS's denial of SDRC's H&S waiver request. Regional centers may not fund rates above the DDS approved rate absent that waiver. Accordingly, SDRC may not fund the higher rate claimant requests.

## **ISSUE No. 2**

34. Claimant did establish by a preponderance of the evidence that SDRC failed to furnish DDS with information it requested for the rate increase including

providing a renewed HCBS waiver, but claimant did not establish that doing so would have federally funded the requested waiver rate increase.

DDS advised both GGRC and SDRC that its H&S waiver approvals were temporary and conditional. Should a new H&S waiver request be made, DDS required information showing the basis for a higher rate, and updates on the efforts to vendor a comparable service in SDRC's catchment area. Although SDRC did not provide this information with its May 2025 H&S waiver request, it provided DDS with all the information that it had, including information why the higher rate was being sought and the resumes of claimant's staff. DDS determined that information was insufficient to grant an H&S waiver. As to the issue of comparable resources, SDRC advised DDS in its August 6, 2025, request, that claimant's mother was not interested in any other services other than PA services. It was not established that SDRC's actions resulted in the DDS denial. Moreover, an HCBS waiver simply gives regional centers a federal source of funding, having it does not guarantee DDS will approve an H&S waiver, and as shown here, DDS's denial had nothing to do with claimant's HCBS waiver.

### **ISSUE No. 3**

35. Claimant did not establish by a preponderance of the evidence that SDRC failed to complete the transfer from GGRC to SDRC.

Claimant's transfer was complete as of August 1, 2024. SDRC held its first face to face IPP meeting with claimant on August 21, 2024. SDRC engaged in several discussions thereafter regarding revisions to the IPP, as well as corresponding via numerous emails with claimant's mother regarding the matters at issue herein. The reasons for the shared caseload with GGRC were both clear and reasonable and no evidence demonstrated SDRC failed to complete the transfer.

#### **ISSUE No. 4**

36. Claimant did not establish by a preponderance of the evidence that SDRC reduced the PA rate, service code 093, without issuing claimant an NOA.

DDS granted claimant a temporary and conditional rate increase that expired on May 31, 2025. Accordingly, as of that date, claimant was not entitled to a higher rate and the reduction to the lower rate was because of that expiration. The reduction was not due to any action taken by SDRC. Thus, no NOA was required.

#### **ISSUE No. 5**

37. Claimant did not establish by a preponderance of the evidence that SDRC failed to provide aid paid pending until the PA issue was resolved.

For the reasons stated above, because the service rate reduction was due to the expiration of the DDS H&S waiver approval, an NOA was not required. As such, the provisions that trigger aid paid pending did not apply.

#### **ISSUE No. 6**

38. Claimant did not establish by a preponderance of the evidence that DDS failed to renew the HCBS waiver in April 2025, resulting in the termination of PA funding in May 2025.

Claimant's HCBS waiver was added to SDRC on August 1, 2024, and terminated from GGRC on April 30, 2025. It was renewed effective August 1, 2025. The renewal has nothing to do with whether DDS grants an H&S waiver. HCBS waiver enrollment is simply a means by which regional centers receive federal reimbursement for some services they fund. Although an article referenced concerns the HCBS Final Rule would



create disparities and restrict access to services, there was no showing that this rule had any impact on claimant or the decisions DDS or SDRC made. This matter centered on the rates for services and whether claimant had a health or safety need that required him to receive a higher rate. As found above, he does not.

### **ISSUE No. 7**

39. Claimant did not establish by a preponderance of the evidence that SDRC failed to complete claimant's IPP accurately according to DDS mandates.

Although the first IPP meeting with SDRC occurred in August 2024, and the IPP was not signed until July 2025, and appears to yet be final, there have been numerous communications between the parties regarding revisions to the IPP and the services claimant was requesting, most of which are the subject of this hearing. Moreover, after the many communications, SDRC appropriately waited until a hearing decision was issued for this issue to be addressed given claimant's multiple appeals and requests.

### **ISSUE No. 8**

40. Claimant did not establish by a preponderance of the evidence that SDRC refused to honor claimant's parent's PA service code 093 vendorization.

DDS's H&S waiver expired which reduced the PA rate. Although DDS advised SDRC it would not agree to service code 093 because it was not federally reimbursable, SDRC still offered that code to claimant's mother and submitted the waiver request with that code. Claimant's mother remains vendored at SDRC at service code 093. As found above, she is not entitled to the higher 093 rate she seeks as DDS's denial of SDRC's H&S waiver request was supported by the evidence.

## **ISSUE No. 9**

41. Claimant did not establish by a preponderance of the evidence that SDRC failed to provide transportation reimbursement to claimant.

SDRC has not denied claimant's request for transportation reimbursement. SDRC uses FMS for transportation reimbursement, per the regulations. Claimant has chosen not to use an FMS. SDRC has explored, but has yet to determine, if there are any alternative means to fund claimant's request without an FMS, but there do not appear to be any such options. As of this hearing, if claimant wants transportation reimbursement, he must comply with the procedure for obtaining it by using an FMS.

## **ORDER**

The appeals claimant filed in DDS No. CS0027325/OAH No. 2025060169, DDS No. CS0028575/OAH No. 2025070896, and DDS No. CS0028603/OAH No. 2025070883 are denied. Those three matters are dismissed.

Upon proof of those services being provided, SDRC shall reimburse claimant, at the DDS rate, for all approved services that have not been reimbursed since claimant transferred to SDRC's catchment area.

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This Order does not preclude SDRC and claimant from exploring other services that may assist claimant and/or address his needs.

DATE: August 28, 2025

MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 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.

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**SAN DIEGO REGIONAL CENTER, Service Agency,**

**and**

**DEPARTMENT OF DEVELOPMENTAL SERVICES, Interested  
Party**

**DDS Nos. CS0027325, CS0028575 & CS0028603**

**OAH Nos. 2025060169, 2025070896 & 2025070883**

**ORDER ON APPLICATION FOR RECONSIDERATION**

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a decision in these matters on August 28, 2025. On September 12, 2025, OAH received a letter directed to the hearing ALJ, with various documents filed later in the day and over the weekend.

The letter will be deemed an application for reconsideration under Welfare and Institutions Code section 4713, subdivision (b), and timely submitted accordingly. OAH provided appropriate notice of the application to San Diego Regional Center (SDRC) and the Department of Developmental Services (DDS). The undersigned

hearing officer did not hear the matter or write the decision for which reconsideration is requested.

A party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). Here, claimant seeks reconsideration to "factor in my arguments to the DDS position [statement]."

On September 18, 2025, SDRC filed a written statement opposing the application. In its response SDRC states that "the evidence the Claimant has submitted for reconsideration was already submitted along with testimony at Hearing and a ruling was obtained."

## **ANALYSIS**

Claimant failed to identify any mistake of fact or law or a clerical error in the decision. For these reasons, the application for reconsideration must be denied.

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## **ORDER**

The application for reconsideration is DENIED.

DATE: September 19, 2025

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings