BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

and

SAN DIEGO REGIONAL CENTER, Service Agency

DDS No. CS0028668

OAH No. 2025080536

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this consolidated matter[1] by videoconference on September 24, 2025.

Claimants' mother represented claimant and his sibling, who did not appear. As used in this decision, "claimant" shall be used to refer to this claimant only, and

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[1] This matter was consolidated with claimant's sibling's matter, DDS No. CS0028667, OAH No. 2025080540, which involved the same issues.

"claimants" shall refer to claimant and his sibling as much of the evidence introduced pertained to both claimant and his sister.

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

Oral and documentary evidence was received. The record was closed, and these consolidated matters were submitted for decision on September 24, 2025.

ISSUE

Should claimant be allowed to purchase acupuncture services in his Self-Determination Program (SDP) spending plan?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is seven years old and resides at home with his parents and his 10-year-old sister who is also an SDRC consumer. He is eligible for regional center services based on his diagnosis of autism. He and his sister participate in the SDP and sought to continue purchasing acupuncture treatments with their SDP spending plans. They were not seeking to increase their SDP budgets.

2. On July 9, 2025, SDRC issued a Notice of Action to claimant advising him it was terminating acupuncture services in his SDP spending plan in 30 days. SDRC set forth the reasons for its actions, including that it is the payor of last resort, generic resources must be utilized, medically necessary acupuncture services are available for

individuals under age 21 through Medi-Cal, the planning team discussed including acupuncture services in claimant's spending plan to give him time to access generic resources, generic resources had not been accessed, the treatments had not been shown to be medically necessary, claimant's preferred provider did not accept Medi-Cal, and claimant declined to select a Medi-Cal provider. SDRC referenced SDP service code definition 357, acupuncture, and Welfare and Institutions Code section 4685.8, subdivision (d)(3)(B), in support of its position.

3. On July 23, 2025, SDRC received claimants' joint appeal with the arguments in support of their requests. Claimants asserted that SDRC was requiring them to be treated by unqualified providers "in order to be in network with Medi-Cal." The providers were not educated or experienced in working with children with autism, did not know how to provide acupuncture treatments targeting autism symptoms, and would "trigger discomfort and dysregulation" if they were to treat claimants. Claimants asserted it was important to receive acupuncture from a provider who specializes in treating children with autism, is educated and experienced in both pediatrics and autism, and an unqualified provider would worsen claimants' symptoms.

4. On September 10, 2025, OAH issued an order consolidating the two matters and thereafter, this hearing followed.

Self-Determination Program

5. In 2013, the Legislature enacted Welfare and Institutions Code section 4685.8, requiring the Department of Developmental Services (DDS) to implement a statewide SDP to provide individuals and their families with more freedom, control, and responsibility in choosing services and supports to help them meet objectives in their Individual Program Plan (IPP). DDS began pilot programs in certain regional

centers, and oversaw statewide working groups from various regional centers and consumer groups to develop policies and procedures to implement the program.

6. Starting July 1, 2021, the SDP was available to all eligible regional center consumers, who wished to use it. All regional center consumers now have the option to have their services delivered through the SDP model or continue to receive services in the traditional model. With the SDP model, while participants have more choice over which services they receive and who delivers those services, participants also have more responsibility because they must manage their own budget resources with the assistance of a Financial Management Service and support from the regional centers. The regional centers must certify that the cost of the SDP does not exceed the cost if claimant were to remain in the traditional service model.

7. After the budget is certified, the participant and regional center must develop a spending plan identifying the cost of each good, service, and support that will be purchased with regional center funds. Each item in the spending plan must relate to goals in the participant's IPP and be identified by a specific service code from a list of codes DDS publishes. A participant can annually transfer up to 10 percent of the funds in any budget category to other budget categories without regional center approval. Transfers exceeding 10 percent require regional center approval.

Evidence Introduced at Hearing

8. SDRC's SDP Program Manager David Webb-Rex and claimant's mother testified and various documents were introduced. The findings reached herein are based on that evidence.

POSITION STATEMENT

9. SDRC's Position Statement set forth the bases for its denial. In it, SDRC referenced service code definition 357 Acupuncture, which states: "All acupuncture services for children under age 21 are covered in the state plan pursuant to the early and periodic screening, diagnostic and treatment (EPSDT) benefit. Acupuncture services in this waiver are only provided to individuals age 21 and over and only when the limits of services furnished under the state plan are exhausted." Of note, although SDP service definitions were introduced, a copy of service code definition 357 was not.

COMMUNICATIONS REGARDING ACUPUNCTURE SERVICES

10. SDRC Consumer ID Notes, commonly referred to as Title 19 notes, documented discussions between claimants' mother and SDRC, as well as communications between SDRC staff. There were Title 19 notes for claimant and his sibling which contained nearly identical entries regarding acupuncture.

11. February 13, 2024, entries documented the email from claimants' mother requesting acupuncture services to be paid out of claimants' spending plans. The notes referenced that the service coordinator consulted with Mr. Webb-Rex and then emailed claimants' mother advising the family would need to access the EPSDT benefit and provide denial letters to SDRC.

12. February 15, 2024, entries documented that SDRC received denial letters from claimants' mother for acupuncture services. Claimants' mother also reported that claimants do not experience chronic pain. SDRC emailed claimants' mother requesting "justification on how [claimants] benefit from acupuncture services." Of note, the entries about chronic pain contradicted entries in the IPP addendum discussed below.

13. February 22, 2024, entries noted that SDRC received an email from claimants' mother advising that acupuncture services are not available through Medi-Cal or EPSDT and that the family is not able to receive denial letters. A second entry on that date documented a telephone conversation where claimants' mother advised that the family is not able to request acupuncture services from Medi-Cal and EPSDT "due to it being a secondary insurance." SDRC requested claimants' mother send the denial letters from the family's primary insurance.

14. On March 6, 2024, SDRC requested documentation from claimants' mother "on the benefits of acupuncture for both children."

15. On March 7, 2024, claimants' mother advised SDRC that "there is a doctor's referral to receive acupuncture." SDRC requested "any documentation regarding the referral."

16. On March 13, 2024, SDRC called claimants' mother and again requested "documentation indicating that acupuncture services is [*sic*] recommended."

17. March 20, 2024, entries documented the service coordinator's consultation with Mr. Webb-Rex regarding claimants' mother's request for acupuncture to be added to the spending plan. The service coordinator and Mr. Webb-Rex "reviewed the referrals from their pediatrician to request acupuncture that state that acupuncture services are not medically necessary." SDRC then emailed claimants' mother "informing her that after reviewing the most recent documents that state that acupuncture would not be medically necessary and that acupuncture services are covered to alleviate chronic pain, acupuncture services are not something that can be approved in the spending plan." Of note, the only documents introduced at hearing indicating acupuncture services were not medically necessary were the

denials from claimants' insurer, discussed more fully below. No documents from a physician claiming the services were not medically necessary were introduced.

18. On April 4, 2024, SDRC requested "any other documentation citing the medical necessity of acupuncture services and requesting a denial from Medi-Cal/EPSDT regarding acupuncture."

19. On April 10, 2024, SDRC emailed claimants' mother requesting confirmation she had attempted to access Medi-Cal or EPSDT for acupuncture services.

20. April 17, 2024, entries documented that on April 11, 2024, claimants' mother advised SDRC that the specific acupuncturist the family would like to use is not in network with their private or secondary insurance. SDRC requested documentation stating that acupuncture is medically necessary and that the provider is not in network through Medi-Cal. On April 15, 2024, claimants' mother informed SDRC that claimants' "pediatrician submitting a referral for acupuncture shows that their pediatrician believes that acupuncture is medically necessary." She again advised SDRC that the preferred acupuncturist is out of network and does not accept any insurance.

21. April 22, 2024, entries documented a telephone call between the service coordinator, Mr. Webb-Rex and claimants' mother to discuss the acupuncture request. SDRC requested confirmation regarding the family's Medi-Cal benefit and claimants' mother advised that "acupuncture would be covered by Medi-Cal if there is chronic pain and that there are limited providers for acupuncture and that they are not specialized with working with children and autism." SDRC requested confirmation if the family had attempted to access Medi-Cal. Claimants' mother advised that she had "spoken with Medi-Cal over the phone but has not taken [claimants] to a provider for

an evaluation due to none of the providers being specialized with working with children and autism." SDRC requested the "specific preferred provider from Medi-Cal to receive documentation of a form of denial or for letters from the children's healthcare provider recommending acupuncture and with the provider that the family is requesting [*sic*]." SDRC agreed to "allow [acupuncture services] for 1 year (14 months) until the end of June 30, 2025, which is the end of their next budget year." SDRC requested a superbill from the acupuncture provider and "a denial letter from Medi-Cal when requesting them to complete the invoice." SDRC advised claimants' mother that SDRC "is able to include acupuncture services within the spending plan until June 30, 2025; however, the family must continue to explore generic resources and obtain documentation on how the family is not able to access Medi-Cal and that the preferred provider is a necessity." SDRC requested claimants' mother to revise the spending plan and advised that SDRC would be sending IPP addendum summary sheets indicating the addition of acupuncture services in the spending plans.

22. A June 20, 2024, entry in claimant's sister's Title 19 notes indicated that SDRC emailed claimants' mother and advised that it had received a denial from Blue Shield (Medi-Cal) for acupuncture services for claimant but not one for his sister and requested that denial document.

23. A June 26, 2024, entry in claimant's sister Title 19 notes stated that SDRC emailed claimants' mother advising that the most recent denial received from Blue Cross was dated February 6, 2024, and requested confirmation if there was a more recent one. SDRC also requested confirmation if the denial for acupuncture services had been received from Medi-Cal.

24. A June 10, 2025, entry in claimant's Title 19 notes indicated that SDRC emailed claimants' mother "informing her that it was in agreement that acupuncture

services were to end in the current budget year on 07/31/2025 and that it [*sic*] would not be included in the new year spending plan." SDRC advised claimants' mother "that the most recent denial from Blue Cross is dated 02/06/2024 and requested confirmation if there is a more recent denial." SDRC "also requested confirmation if the denial was received from Medi-Cal for acupuncture services."

25. On June 11, 2025, SDRC "requested denials for acupuncture services received by the family from their primary health insurance (Blue Cross) and Medi-Cal."

26. On June 16, 2025, SDRC emailed claimants' mother "informing her that the documents previously provided is [*sic*] not a denial letter that displays an exhaustion of this resource." SDRC advised claimants' mother that "all medically necessary acupuncture is available through the state's EPSDT program." SDRC requested documentation that acupuncture is medically necessary and, even though it is medically necessary, Medi-Cal will not fund it.

27. On June 19, 2025, SDRC again requested documentation that acupuncture is medically necessary and, even if it is, Medi-Cal will not fund it.

28. On July 1, 2025, SDRC advised claimants' mother that a review of the documents provided regarding the insurance denials for acupuncture indicate that claimants' primary insurer, Blue Cross, denied acupuncture due to a "'lack of medical necessity.'" SDRC requested any documentation, including recommendations for acupuncture, from the secondary insurance, Blue Shield, "as the previous letter sent is a confirmation of a grievance filed."

29. A July 7, 2025, entry documented that claimants' mother reported that she received verbal denials from Medi-Cal and that Medi-Cal is refusing to provide a written denial. Regarding acupuncture, she reported "there are no providers with

Medi-Cal that are geared to working with children and specifically, children with autism." SDRC confirmed that the Blue Cross denial letter states that acupuncture "'lacks medical necessity' and that the document provided by Blue Shield is not a denial letter."

2024 IPP ADDENDUMS

30. On April 22, 2024, addendums to claimants' IPPs were made, noting changes since the IPPs were developed on June 30, 2023.

31. Claimant's sister's IPP Addendum, stated that a new service was "identified by [claimant's sister] and their planning team in the Spending Plan, code 357 [acupuncture]. The planning team discussed the Service Code description of code 357 from the [SDP] waiver and it's [*sic*] language regarding all medically necessary Acupuncture Services being available through the EPSDT benefit for individuals under the age of 21."

32. Both claimants' IPP Addendums documented that while each claimant had access to the Medi-Cal benefit in general, the planning team discussed claimants' parents' concerns that the service providers available may not be properly trained to work with claimants' "profile of needs and young age." Claimants' mother shared she had done extensive research into available service providers and was only comfortable with the service provider David Allen, L.Ac., DACM, who was not available in the Medi-Cal system. The addendums documented further:

> The planning team discussed allowing Acupuncture 357 in the spending plan until July 2025, the end of the next budget year and subsequent IPP period, to give the planning team sufficient time to assure all generic resources

are exhausted without delaying needed services - including, but not limited to, the family attempting to have "Superbills" sent to and covered by the Medi-Cal benefit prior to billing the SDP [financial management service], requesting Medi-Cal denials for Superbills, and sending these denials to SDRC. The planning team also discussed requesting the Acupuncture Service provider to send SDRC progress reports to document progress and ongoing medical necessity in the treatment of chronic pain. The planning team discussed that SDRC is the payor of last resort, and that the family needs to continue to access generic services. Should a generic resource become available for Acupuncture services, the planning team should work to have this funding source take the place of the SDP funds as soon as possible.

[¶] . . . [¶]

Addition of Outcome #10: [Claimant] will utilize Acupuncture services for the treatment of chronic pain through 07/31/2025.

33. Outcome 6 in claimant's IPP Addendum indicated that claimant "will benefit from massage therapy to manage pain, sensory sensitivities, and help with spatial/bilateral awareness." Outcome 10 noted that claimant "will utilize Acupuncture services for the treatment of chronic pain."

34. Claimants' mother signed the IPP addendums on April 23, 2024.

INSURANCE DENIALS AND GRIEVANCES

35. A February 6, 2024, letter from Optum identified claimant's health plan as Anthem Blue Cross, the requested provider as David Allen Lac [*sic*], the requested service as "Acupuncture (treatment that places tiny needles into the skin to help control pain) with Dr. David Allen for constipation (problems passing stool) and allergic rhinitis (swelling of the airways in the nose)"; and identified the requesting physician. The letter advised that the requesting physician asked for acupuncture service and it was "being denied by Optum because there is a lack of medical necessity. This decision was based on your medical information." The letter advised that based on Anthem Blue Cross's Guideline Acupuncture CG-ANC-03, acupuncture is needed for nausea or vomiting from surgery, chemotherapy or pregnancy; for back or neck pain or tension headache or migraine lasting for more than 12 weeks despite medication and physical therapy, and claimants did not meet the guideline "based on the records reviewed. Your records show you have sleep and sensory issues (problems with things you see, feel, hear, taste and smell) as well as constipation (problems passing stool) and allergic rhinitis (swelling of the airways in the nose). Therefore, the service is denied. For more information, please call your doctor." The letter explained how to dispute that determination by submitting a grievance.

36. Two Blue Shield letters dated June 14, 2024, to claimants' mother regarding claimant, no letter for claimant's sister was introduced, contained the following:

> Thank you for your patience while we reviewed your grievance (complaint) that we received on May 17, 2024. This was about your dissatisfaction with a bill you received from Healthy Kids for acupuncture services provided to

your child by David Allen LAc, on February 13, 2024, with a billed amount of $250.00.

Based upon our review, we have verified we did not receive a claim from Dr. David Allen at Healthy Kids, and they are an out-of-network provider. We also verified with Dr. David Allen at Healthy Kids that he does not take insurance and your child is a patient.

We have confirmed your primary insurance coverage is not with Blue Shield of California Promise Health Plan, as we are your secondary coverage. Blue Cross Anthem is your primary insurance coverage, and all requests need to go through Blue Cross Anthem for review. We ask you to please contact Blue Cross Anthem for assistance in locating a contracted acupuncture [*sic*] within your area.

As you have requested, we have filed a reimbursement case for the $250.00 charge you paid to Healthy Kids. Please be advised this is not a guaranteed reimbursement as all cases are subject to be reviewed. You will receive a separate letter regarding that case.

HEALTHY KIDS WEBSITE

37. Website printouts from Healthy Kids, Dr. Allen's clinic, contained photographs of Dr. Allen, smiling children, and him providing treatment to children. The website noted that Dr. Allen has been treating children in the San Diego area for 18 years and is "a professor, international educator and writer with a wide array of

experience." Dr. Allen "offers both acupuncture and herbal treatments for the most common (and even the most uncommon) syndromes that children present with. You'll be amazed what acupuncture and Chinese herbs can offer to you and your children."

38. The website noted further: "Appointments don't require needles. Between herbs and other tools, [Dr. Allen] rarely needs to use needles with kids. They happily sit and play with toys while points are stimulated, and they don't even need to sit still. Parents can just relax while we take care of everything. Herbs are very tasty and kids love taking them!" The website identified the following conditions Dr. Allen can treat: respiratory issues, digestive issues, infants, detox, autism (improving speech, focus, emotional intelligence), behavior/academics, Down's Syndrome (increasing IQ, speech, coordination, hearth [*sic*] health), insomnia, bedwetting, eczema, speech (late speech development, stuttering, apraxia), and development (late crawling/walking, late teething, physical growth). Under the heading "What Else?" the website stated: "Acupuncture and Chinese herbs can help kids with pretty much anything! Most parents treat us as their primary care provider, coming here first for advice and treatment."

CALIFORNIA DEPARTMENT OF HEALTH CARE MEDI-CAL DEFINITIONS

39. An excerpt from the California Department of Health Care Services Medi-Cal Provider Manual for Acupuncture titled "Acupuncture Services," updated August 2020 "contained information about acupuncture services and program coverage." Effective July 1, 2016, acupuncture was restored as a Medi-Cal benefit for all eligible beneficiaries. Acupuncture services are reimbursable only when rendered by a provider enrolled in the Medi-Cal program who is eligible to provide Medi-Cal services; limited to treatment performed to prevent, modify or alleviate the perception of severe, persistent chronic pain resulting from a generally recognized medical condition; used

with or without electric stimulation of the needles; and used to treat a condition also covered by other modalities.

40. The section entitled "Billing Acupuncture Services" stated: "An 'Acupuncture Service' is any covered acupuncture procedure or combination of procedures performed on the same day for an eligible individual Medi-Cal recipient by the individual practitioner on one occasion." This section set forth the billing codes that may be used for the services.

41. The document further stated that no prescriptions or authorizations are required for acupuncture services.

SDP WAIVER APPLICATION AND SERVICE DEFINITIONS

42. Medicaid, known as Medi-Cal in California, is a jointly-funded, federal-state health insurance program that includes long-term care benefits. The Medicaid Home and Community-Based services (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.

43. The application for the HCBS waiver contains requirements for acupuncture service providers. The only requirements are that they must be licensed pursuant to Business and Professions Code sections 4935 through 4949. There are no requirements that they specialize in either pediatrics or developmental disabilities.

Business and Professions Code sections 4935 through 4949 set forth the California certification requirements for licensed acupuncturists. Nothing in those code sections requires acupuncturists to specialize in treating pediatric patients or patients with developmental disabilities, receive additional training in treating such patients, or prohibits acupuncturists from treating those patients.

44. The SDP has service definitions for various services offered. Acupuncture Services are defined as follows:

> Acupuncture services are covered to prevent, modify, or alleviate the perception of severe, persistent chronic pain resulting from a generally recognized medical condition. Acupuncture is defined in the Business and Professions Code Section 4927 as "the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion." Acupuncture services (with or without electric stimulation of the needles) are limited to two services in any one calendar month, although additional services can be provided based upon medical necessity. All acupuncture services for children under age 21 are covered in the state plan pursuant to the EPSDT benefit. Acupuncture services in this waiver are only provided to individuals age 21 and over and only when the

limits of services furnished under the approved state plan are exhausted.

DDS DIRECTIVE

45. On July 8, 2024, DDS issued a directive to all regional center directors regarding SDP "Updated Goods and Services." The directive's purpose was to "provide additional guidance regarding goods and services in the SDP" by adding an additional service, not relevant here, to be funded outside the participant's budget. The directive advised that before any good or service could be included in an individual budget or SDP spending plan, "the planning team must first be clear how the good or service addresses an identified need or goal in the IPP." Enclosure A "provides detailed information about how the participant and the planning team can determine if a good or service addresses a need or goal in the IPP." Enclosure A was introduced at hearing, and is discussed below.

46. The 2024 directive also referenced a 2019 directive which stated that "SDP funds can only be used for goods and services that: (1) have been approved by the federal Centers for Medicare and Medicaid services; and (2) are not available through other funding sources (e.g., Medi-Cal, in-Home Supportive Services, schools, etc.)." The 2024 directive further noted that sometimes consumers may require additional goods and services outside of what is funded by the individual budget and referenced Enclosure B which provided guidance for those instances, but that enclosure was not introduced at hearing.

47. Enclosure A, referenced in the 2024 directive, described the IPP, individual budget and spending plan processes. The enclosure referenced steps the participant should consider when developing a spending plan. Step 1 was

consideration of whether the good or service related to the SDP participant's needs and IPP goals. Step 2 involves consideration of whether there is a natural support or generic service that can be used, noting that SDP "participants must use available generic resources first." Step 3 requires consideration of whether the goods and services are allowed under the SDP and Medicaid, noting that SDP is part of a federal government Medicaid waiver which has approved a list of goods and services that may be purchased. SDP participants may only purchase goods and services allowed by that waiver. Step 4 requires consideration of who can be paid to provide services in the spending plan and consideration of the provider's qualifications. Step 5 requires consideration of the use of participant-directed goods and services, which are "services, equipment or goods not otherwise provided through the SDP or through Medi-Cal, that address an identified need in the IPP." Participant-directed goods and services must meet federal waiver requirements. Step 6 involves the spending plan development and review, noting that once the participant develops the spending plan, the regional center reviews it for compliance with state law, "including verification that the identified goods and services are eligible for federal financial participation and are not used to fund goods or services that are available through generic agencies."

ACUPUNCTURE PROVIDERS IN SAN DIEGO COUNTY

48. SDRC introduced a 2020 Blue Shield San Diego County provider directory for the Medicare-Medicaid plan which Mr. Webb-Rex printed out September 19, 2025. No evidence was introduced that SDRC contacted providers listed in the directory to determine if they treat children and/or individuals with autism or if they still accept Medicare/Medicaid. The directory identified several providers in North County, the area of San Diego where claimants live.

49. Claimant's mother contacted Medi-Cal to obtain a list of acupuncture providers covered by her plan. Medi-Cal referred her to ASHLink for the list of acupuncturists on her plan. Medi-Cal advised her that if the provider was not on the ASHLink list, he or she were not an available resource for claimant. The ASHLink list cautioned that its provider list may change "at any time." Claimant's mother contacted every listed authorized provider in North County on ASHLink's list, 26 in total, and learned the following: 12 do not specialize in pediatrics or autism; one does not perform acupuncture on autistic children; one does not work with pediatric or autistic children; one was no longer a Medi-Cal provider; one no longer worked at the identified clinic; and the remaining 10 were located a minimum of 20 to 30 minutes away from claimants' home.

CIGNA COVERED BENEFITS

50. Claimant's mother introduced a Cigna "Summary of Benefits and Coverage" indicating what the plan covers and what the insured pays for covered services. Cigna is claimant's current insurer. That document specifically identified acupuncture as an excluded service that the plan does not cover.

MEDICAL CORRESPONDENCE

51. Documents introduced regarding the medical necessity of in-home speech and occupational therapy services contained evidence of the medical necessity of limiting travel time to service providers. A November 15, 2022, letter from claimant's physician advised that claimant is an established patient under the physician's care who each requires in-home speech and occupational therapies due to medical reasons.

52. A March 27, 2023, letter from claimant's physician advised that claimant was under care and required 60-minute sessions of in-home speech and occasional therapy "due to medical reasons." Spending time traveling to appointments "to accomplish the necessary therapy visits is simply not feasible" and claimant's sister "requires the same type and amount of care which effectively doubles the time needed." The physician noted that with travel, a one-hour therapy appointment "would equate to at least a 2.5 hour round trip endeavor (for each child)." Further:

> [Claimant's sister] arrives home from school around 3:00 pm, which would necessitate travel to a therapy appointment in rush hour traffic, further extending the commute. Returning home for dinner at 5:00 pm would not be possible, and it's notable that consistent routines are imperative for autistic children; frequent deviations from daily routine would have mental, emotional, and physical consequences for them.
>
> Additionally, the [claimants'] family was informed by their medical group that it is expected and reasonable for children to miss school for medical appointments. Unfortunately [claimant's sister] is currently behind academically despite her [Individualized Education Program], [so] missing school twice weekly for therapy appointments would be detrimental to her academics and overall progress.

The physician asked that Anthem Blue Cross's denial of one hour of in-home speech and occupational therapy services for claimants be reconsidered.

53. An August 21, 2023, letter on a medical group's letterhead, signed by claimant's physician assistant, advised that claimant is an established patient at the medical group under the physician assistant's care. The physician assistant wrote further: "Due to medical reasons and motion sickness, [claimant] is unable to travel in a moving car for more than 5 minutes or 2 miles of curved roads."

CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE REVIEW

54. On March 24, 2023, MAXIMUS issued a letter overturning Anthem Blue Cross's denial of authorization and coverage for in-home speech therapy for claimant's sister. The letter noted that a request for Independent Medical Review (IMR) was filed with the California Department of Managed Health Care (CDMHC) regarding Anthem Blue Cross's denial of in-home speech therapy. CDMHC asked MAXIMUS to conduct the IMR. MAXIMUS is contracted with and paid by CDMHC to make IMR decisions, and has no affiliation with any health plans. After reviewing the pertinent records, MAXIMUS made a final determination to overturn Anthem Blue Cross's decision to deny authorization and coverage for in-home speech therapy. MAXIMUS's "medical expert decided that in home speech therapy is medically necessary for [claimant's sister]." MAXIMUS's "decision is final and binding."

55. MAXIMUS noted that one hour of in-home speech therapy had been recommended by claimant's sister's physician "due to medical and transportation reasons." The physician noted that to perform the service outside the home would require a 2.5-hour round-trip endeavor for claimant and his sister who also requires the same type and amount of care. The physician reported that claimant's sister "has begun to make great strides in academic and social learning, and it is advised that she does not miss any part of her school day. Thus, treatment with speech and language therapy in an in-home setting is recommended."

56. MAXIMUS's medical expert who reviewed the matter noted that at issue was whether the requested in-home speech therapy was medically necessary. The medical expert noted that per the American Academy of Pediatrics (AAP), there is a clinical role for the treatment of pediatric patients with autism utilizing medical home care services. Further, studies have found that having medical services provided within the home is associated with lower odds of difficulty getting needed mental health care as well as non-mental specialty care. For claimant's sister, the requested in-home speech therapy services were indicated and consistent with the AAP recommendations. Claimant's sister "has already demonstrated significant gains with speech therapy, but she continues to have goals that need to be addressed with future speech therapy services." Further, claimant's sister's "developing nervous system has extraordinary plasticity and utilization of this plasticity with in-home speech therapy is likely to profoundly improve [her] future academic and social outcome. For these reasons, the requested in-home speech therapy is medically necessary for treatment of [claimant's sister]."

57. On March 29, 2023, the CDMHC sent claimants' mother a letter advising of its adoption of MAXIMUS's IMR and informing her that Anthem Blue Cross must overturn its denial and notify CDMHC of its having done so within five business days. As noted, although these appeals did not pertain to acupuncture services, they did establish the medical necessity of limiting transportation and time out of the home for services.

CLAIMANTS' MOTHER'S LETTER

58. On September 22, 2023, claimant's mother sent a letter to the CDMHC and Anthem Blue Cross requesting that they consider her "own personal limitations when deciding whether or not in-home therapies are necessary for my kids." She wrote

that she is their primary caretaker responsible for coordinating all their appointments and ensuring they are able to get to each of them. She stated that she has medical disabilities that inhibit her ability to drive her children to appointments, including migraines, fibromyalgia, and chronic pain in her back and neck from permanent muscle spasms and scar tissue. These disabilities interfere with her ability to drive longer than 20 minutes because doing so increases her back and neck pain and can cause her chronic migraines to flare up, making it impossible to drive and could leave her and her children stranded outside their home if it were to occur at an out-of-home appointment. This disrupts her husband's work schedule (their sole source of income) as he has to leave work to get them and then figure out how to get her car home. Moreover, when her symptoms occur, she must take medication that prohibits her from driving. Having in-home therapies or therapies at nearby clinics assures that her medical disabilities will not interfere with her children's services. In addition, having therapies far from home means that other therapies/services must be canceled to accommodate for the drive time. She described the progress being made in therapy to regulate her children's behavior and the detrimental effects on both claimant, his sister, and claimant's mother's health that reducing those therapies would cause if she has to drive to other therapies.

WITNESS TESTIMONY

Mr. Webb-Rex

59. Mr. Webb-Rex described SDRC's "good faith" efforts to fund temporary acupuncture services for claimant while he and his sister secured generic services and utilized the Medi-Cal system which they were having trouble accessing. He explained that SDRC does not fund acupuncture, either through the traditional or SDP models. He explained that in California all individuals under age 21 can receive acupuncture

funded by Medi-Cal so this is the generic resource claimant must first use. He believed the Title 19 notes accurately summarized what transpired.

60. Mr. Webb-Rex pointed out that although requested many times, claimant never provided any progress notes from the acupuncture provider. He also noted that the records SDRC reviewed demonstrated that acupuncture was not medically necessary and was being used to treat sleep, sensory, and constipation issues which were not developmental disabilities. Moreover, while acupuncture can be provided for chronic pain due to a developmental disability, claimant did not have that condition. Mr. Webb-Rex agreed that claimant's mother has been extremely cooperative with SDRC, providing requested information, although she did not provide the progress reports.

Claimant's Mother

61. Claimant's mother testified that she has a bachelor's degree in child development and a master's degree in leadership development. She worked for many years in human resources. She has also volunteered the past 13 years as a Court Appointed Special Advocate (CASA), working with foster children with special needs. She described her chronic health issues and the extensive medical advocacy she has had to do on behalf of both herself and her two children.

62. She feels very strongly that it is not appropriate to force autistic children to seek treatment from providers who do not specialize in treating individuals with autism. She described how Dr. Allen uses smaller pediatric acupuncture needles, specially designed to treat children, and about his extensive education and training providing acupuncture services to both children and autistic patients. She described his techniques of working with children, getting down the floor to engage with them

and keep them distracted, and how he has training in treating children with autism. She explained the importance of continuity of care for her children and the importance of maintaining established routines for children with autism.

63. She described how claimant is prone to car sickness and cannot be driven on windy roads or for long durations. As such, she must only drive the straight highways which then puts her in rush hour traffic and increases the drivetime. Claimants' mother explained how Dr. Allen's clinic is close to their home, a five-minute drive, and making her drive to farther locations will result in her children not receiving the other approved services currently being rendered and instructional time, which will only set them back further in their development, as well as upset their routines.

64. She explained that she is not seeking an increase in claimant's budget, acknowledging that she will be taking funds allocated for respite, a service that benefits her, and using those funds for acupuncture. She agreed that she would rather use generic resources so as not to deplete claimant's budget, but does not believe that the generic acupuncture resources are a good alternative because the providers in her area do not specialize in pediatrics or treating patients with autism and/or the amount of driving time would be very detrimental to both her and her children.

65. Claimant's mother noted that the insurance denials were because the preferred acupuncture provider was out of network, the denials were not based on lack of medical necessity. Although this testimony contradicted the February 6, 2024, letter from Optum which denied the request for acupuncture services for claimant due to "lack of medical necessity," claimant's mother testified that denial only listed the symptoms of sleep, sensory, and constipation, but those were just some of the conditions claimant's mother reported to the treating physician. Claimant's mother also reported other symptoms and conditions to the children's physician, which were

also part of the reason acupuncture was being requested. She does not know what the treating physician reported to Optum and, in her experience, the insurer will only identify excluded conditions as the basis for denial without taking included conditions into account. Thus, Optum's denial did not encompass all of her children's conditions that require acupuncture treatment. Moreover, she asserted that this evidence demonstrates that claimant's treating physician did believe acupuncture was medically necessary because she made the referral for acupuncture. In addition, claimant no longer has this insurance plan, so Optum's determination is not relevant.

66. As to the term "grievance" versus "denial," the insurer explained to her that her appeal was considered a grievance because the insurer cannot deny service that did not come through their system and since Dr. Allen was not an approved provider, her appeal regarding his services was considered a grievance.

67. Claimants' mother apologized but because of her medical conditions, which include brain fog and fibromyalgia, she did not remember that SDRC requested progress notes from Dr. Allen. During the past several months she has repeatedly asked her service coordinator what more SDRC required and, if she had been told that progress notes were needed, she would have provided them. Currently, she does not remember that request being made but is happy to provide such documentation.

LEGAL CONCLUSIONS

Purpose of Lanterman Act

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree

of handicap, and at each stage of life." (Welf. & Inst. Code, § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden and Standard of Proof

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) In this case, claimants bear the burden to prove SDRC should allow them to use their SDP spending plan to fund the services they seek.

3. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. It is "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

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 4512 defines services and supports. Subdivision (b) states in part:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .

8. Welfare and Institutions Code section 4646, states in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if

> appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.
>
> (b) The individual program plan 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. . . .

9. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process to ensure adherence with federal and state laws and regulations, and when purchasing services and supports, regional centers must conform to the purchase of service policies, utilize generic resources and other sources of funding, consider the family's responsibility, and consider information regarding the individual's need for service, barrier to access, and other information.

10. Welfare and Institutions Code section 4646.5, subdivision (a), sets forth the requirements of the planning process for the IPP.

11. 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. Subdivision (a)(8) prohibits regional centers from using their funds "to supplant the budget of an agency that has responsibility to serve all members of the general public and is receiving public funds for providing those services." Subdivision (a)(17) prohibits regional centers from purchasing experimental treatments.

12. Welfare and Institutions Code section 4685.8, subdivision (c), sets forth various SDP definitions, including individual budget and spending plan definitions. Subdivision (c)(6), states in part: "The Self-Determination Program shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." Subdivision (d)(3)(B) states: "The participant shall utilize the services and supports available within the [SDP] only when generic services and supports are not available."

Evaluation

13. The Lanterman Act requires services to be "centered on the individual and the family of the individual" and take the needs and preferences of the individual and the family into account. The evidence established that the needs of this claimant and his mother require that they not be in vehicles for long durations and that they require close by acupuncture services so as not to disrupt other services already in place. Moreover, sensory issues were one of the reasons for the acupuncture referrals

and such issues are quite common with individuals with autism. In fact, Outcomes in claimants' IPP Addendum indicated that claimant has chronic pain, pain, sensory sensitivities and spatial/bilateral issues. As such, claimant did establish that acupuncture was medically necessary to treat issues associated with his developmental disability.

Claimant also established that her insurer, Cigna, does not pay for acupuncture services. In addition, while generic resources must be utilized first, the services must also meet the needs of the consumer. Here, claimant's mother contacted the available generic resources, none of which specialize in treating children or children with autism or were located too far away so as to cause disruption in claimant's existing services and routines, as well as risk aggravating claimant's and his mother's conditions. The evidence established that requiring claimant to utilize generic resources would be detrimental to him, as well as detrimental to his mother's health because available providers are not near where claimant lives or do not specialize in treating pediatric or autistic patients.

Since those generic resources are not an option, SDRC, as the payor of last resort, shall allow claimant to pay for acupuncture services in his spending plan. This Order does not increase claimant's SDP budget at this time.

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ORDER

Claimant's appeal of SDRC's denial of his request to use his spending plan to pay for acupuncture services is granted. Claimant shall be allowed to purchase those services in his SDP spending plan. SDRC's denial of his request is overturned.

DATE: October 3, 2025

MARY AGNES MATYSZEWKI
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant, OAH Case No. 2025080536

vs. **DECISION BY THE DIRECTOR**

San Diego Regional Center,

Respondent.

ORDER OF DECISION

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

After a full and independent review of the record in this case, and for the reasons explained below, the attached Proposed Decision is rejected based on the following:

1. Welfare and Institutions Code section 4685.8, subdivision (t), requires services and support providers have applicable state licenses, certifications, or other state required documentation, including documentation of any other qualifications required by the Department of Developmental Services (Department). Individuals who engage in the practice of acupuncture are required to be licensed pursuant to Business and Professions Code sections 4935 through 4949. The record failed to establish that claimant's current acupuncturist, Dr. David Allen at Healthy Kids, was licensed pursuant to sections 4935 through 4949 to provide acupuncture services to claimant.

2. Pursuant to section 1915, subdivision (c), Home and Community Based Services (HCBS) waiver, all medically necessary acupuncture services for children under age 21 are covered in the state plan pursuant to the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT). Non-medically necessary acupuncture services for minors are not on the approved list of goods and services under the HCBS waiver and thus would not be federally reimbursable. Welfare and Institutions Code section 4685.8, subdivisions (d)(3)(G) and (e), requires Self Determination Program (SDP) participants to only purchase services and supports in the participant's SDP budget that are federally reimbursable. The record failed to establish that the acupuncture services provided to claimant (a minor) by Dr. Allen were medically necessary to treat claimant's condition(s). Furthermore,

claimant failed to provide San Diego Regional Center (SDRC) any progress reports from Dr. Allen to document progress and ongoing medical necessity, despite SDRC's multiple requests to do so.

3. Welfare and Institutions Code section 4646.4, subdivision (a)(4), requires consideration of family responsibility to provide similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs. In addition, Welfare and Institutions Code section 4685.8, subdivision (d)(3)(B), requires SDP participants to exhaust generic resources before receiving services under SDP, as regional centers are payors of last resort and are prohibited from paying for services and supports in which generic resources are available. The ALJ's "Evaluation" section on pages 30-31 of the proposed decision is thus stricken, as the ALJ's evaluation fails to properly analyze the family responsibility to transport claimant to an acupuncturist covered by Medi-Cal who work with minors with autism.

This is the final Administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4712.5, subdivision (a)(1), within 15 days of receiving the Decision or appeal the Decision to a court of competent jurisdiction within 180 days of receiving the final Decision.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

ORDER

Claimant's appeal of SDRC's denial of his request to use his spending plan to pay for acupuncture services is denied.

IT IS SO ORDERED on this day: October 27, 2025.

Original signed by:
Katie Hornberger, Deputy Director
Division of Community Assistance and Resolutions