Notice:

Certain potentially identifying information has been redacted from the decision letter for purposes of its public posting.

PETE CERVINKA
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF DEVELOPMENTAL SERVICES
1215 O Street, Sacramento, CA 95814 • www.dds.ca.gov

GAVIN NEWSOM
GOVERNOR

September 21, 2026

Claimant (Redacted)
(Redacted)
(Redacted)

SUBJECT: OFFICE OF ADMINISTRATIVE HEARINGS (OAH) PROPOSED DECISION- OAH NUMBER 2026060781

On August, 17, 2026, the Department of Developmental Services (Department) received the enclosed Office of Administrative Hearings (OAH) Proposed Decision issued by Administrative Law Judge (ALJ) Jennifer Russell, pursuant to Welfare and Institutions Code section 4712.5, subdivision (e)(1). Pursuant to Welfare and Institutions Code section 4712.5, subdivision (e)(2), within 30 days following receipt of the proposed decision the Director of the Department may adopt the proposed decision as written or decide the matter on the record, including the recording, with or without taking additional evidence. If the director or their designee does not act on the proposed decision within the 30 days, the proposed decision shall be deemed to be adopted by the director. The proposed decision is automatically adopted as of close of business September 16, 2026, and is the Final Decision in this matter.

Each party is bound by this Final 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.

Please find attached a “What to Do After You get A Final Decision” document. Please review all materials provided carefully. Should you have any questions or concerns regarding this letter, please contact the Department’s Office of Community Appeals and Resolutions at (833) 538-3723, or via email at appealrequest@dds.ca.gov.

Sincerely,

Original Signed by
MICHAEL MCNULTY
Branch Chief
Community Appeals and Resolutions

Attachments

cc: Victor Mercado, ELARC

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0037512

OAH No. 2026060781

PROPOSED DECISION

Jennifer M. Russell, Senior Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Alhambra, California on August 10, 2026.

Victor Mercado, Appeals Specialist, represented Eastern Los Angeles Regional Center (ELARC or service agency). Mother, with the assistance of a Spanish language interpreter, represented Claimant, who was not present. Mother and Claimant are not specifically identified to preserve their privacy and maintain confidentiality.

Maria Caňas, Client Service Supervisor, testified on behalf of the service agency. Mother testified on behalf of Claimant. The service agency's Exhibits 1 through 3, 5 through 10, and 15 through 20 were admitted in evidence. The service agency's Exhibits 4, and 21 were marked for identification only. Claimant submitted two packets of documents, which were admitted as Exhibits A and B. A separate document was admitted as Exhibit C.

ISSUE FOR DETERMINATION

Whether the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welf. & Inst. Code, § 4500 et seq., authorizes ELARC to provide increased funding through Claimant's Self Determination Individualized Budget for the purchase of a cellphone with network services and insurance to meet Claimant's communication needs.

FACTUAL FINDINGS

Jurisdictional Matters

1. By Notice of Action (NOA) dated May 27, 2026, ELARC denied "adding funds to [Claimant's] Self Determination budget for the purchase of an iphone." (Exh. 2.) The May 27, 2026 NOA states, "ELARC is denying to add funds to the budget for purchasing an iphone as mother was recently reimbursed for an iPad. It would be a duplication of services, the ipad functions the same as an iphone and provides the services needed that are stated on [Claimant's] PCP [Person Centered Plan]." (Exh. 2.)

2. On June 11, 2026, Mother filed a Fair Hearing Request.

3. All jurisdictional requirements are met.

Background

4. Claimant is a 29-year-old conserved male consumer of ELARC with a qualifying diagnosis of Autism. Claimant additionally presents with a diagnosis of Apraxia of Speech. Claimant is a non-speaking/minimal speaker. Claimant resides with Mother, who serves as his conservator, and his sibling.

5. Claimant participates in the Self Determination Program (SDP). Claimant's SDP Individual Budget, which totals $195,337.36, funds Applied Behavioral Analysis services; Adaptive Skills Training services; In-home Respite Care services; Personal Assistant services; Social Recreational services; cooking classes, and music therapy, among other services, for Claimant.

Claimant's Use of Augmentative and Alternative Communication (AAC) Device

6. Claimant's most recent Individual Program Plan (IPP), dated January 15, 2025, as amended July 8, 2025, establishes Claimant uses an Augmentative and Alternative Communication (AAC) system for communication. Claimant's AAC device is an iPad Air equipped with a Proloquo2go application that turns icons or text into spoken words. Mother purchased the iPad Air for $665.90. ELARC reimbursed Mother for the cost of the iPad Air.

7. Claimant's IPP provides the following regarding claimant's communication needs:

> [Claimant] is non-verbal and uses iPad with Proloquo2go to communicate. [Claimant] is able to express his needs and

> wants using technology, sounds, and noises, and started receiving speech therapy classes. He needs structure and needs to be reminded when to utilize it. When he participates on hikes or walks in the community, he is asked to leave it at home. If he has it, he wishes to play the games on it and not participate in the goals for the day. On days he does grocery shopping he needs it to communicate with others. He does need reminders to use so he is understood especially when he needs to ask where something is. He tends to prefer to utter the word or point when he is not understood and needs to be reminded to use his communication device. His speech is only understood by those who know him well. It has been reported that [Claimant] can communicate his needs and wants with his communication device and Proloquo2go application. He communicates by nodding, thumbs up and down. He can become excited at times and make sounds and noises with no real enunciation of words. He does not . . . initiate conversations with others.

(Exh. 5 [A33].)

8. On Claimant's behalf, Mother maintains Claimant requires an additional AAC device in the form of a cellphone with network services and insurance. Mother testified "both devices are completely necessary." Mother distinguished the iPad from a cellphone asserting the iPad "is a device that is structured . . .[that] does not fulfill the functional communication part for [Claimant]" while a cellphone facilitates

"immediate communication in the community," which includes text messaging and sharing videos. Mother maintained "denying the cellphone limits [Claimant's] communication," "independence and participation in the community," and "ability to communicate fluidly." Mother noted Claimant's iPad "doesn't have a network service" and therefore "can't be used like a phone to make and receive calls and texts or send videos." Mother testified, "[Claimant] does not have functional access to interact with others and have an interaction close to life."

9. Mother additionally maintained the iPad, which Claimant carries in the style of a cross-body bag, is big and bulky. Mother testified, "It is easier for [Claimant] to interact with a cellphone. . . . When [Claimant] is running he can't run with a big device."

10. In support of the request for ELARC to add funds to Claimant's SDP Individual Budget for purchasing a personal cellphone with network services and insurance for Claimant, Mother offered in evidence an undated AAC evaluation of Claimant. The evaluators relied on record review, parent interview, clinical observation, and trial use of AAC tools applying the Functional Communication Profile-Revised, an assessment used by speech-language pathologists and educators to evaluate everyday communication skills, and AAC Connections Language Ladder frameworks, which are designed to guide language progression and scaffolding for nonspeaking individuals. Standardized speech and language testing was not administered because Claimant lacks a standardized means of verbal communication.

11. The resulting AAC Evaluation Report, admitted as Exhibit C, documents Claimant communicates primarily through his iPad-based Proloquo2go application, supplemented by gestures, a limited number of spoken words, and informal texting using a personal cellphone. The evaluators found Claimant possesses functional AAC

access skills, including independent typing, icon navigation, and spelling, that exceed predictions from a prior decade-old 2015 assessment.

12. The evaluators further found Claimant requires consistent prompting and reminders to access and use his AAC device. Without the support of his AAC device, Claimant defaults to gestures, vocalizations, or behavior to communicate. The evaluators report Claimant does not currently have a reliable means of expressing distress or anger through AAC, which they identified as a priority concern. The evaluators further noted that while Claimant independently and successfully uses a personal cellphone to text his sibling, it is unresolved whether Claimant could use the phone to seek help in an unsafe situation.

13. Based on these findings, the evaluators recommend twice-weekly AAC services (one session for direct instruction and one session of functional community-based practice), communication partner training for Mother and Claimant's service providers, review and updating Claimant's Proloquo2Go vocabulary profile, extension of the device's screen-lock timeout, and continued development of Claimant's ability to use a cellphone as communication and safety tool, including texting his location, initiating FaceTime, and requesting help.

ELARC's Position

14. At hearing, Ms. Caňas reviewed Claimant's IPP; a June 1, 2025 Progress Report for Adaptive Skills Training (AST) (Exh. 6.); a June 2, 2025 Speech-Language Pathology Discharge Summary (Exh. 7); and a July 20 2025 Community Integration Progress Report (Exh. 8) to illustrate Claimant's demonstrated use of AAC tools, either an iPad with Proloquo2go or a DynaVox, to communicate with others when out in the

community and to express his needs and wants when involved with meal preparation and other household activities.

15. Ms. Caňas, on behalf of ELARC, maintained Claimant's communication needs are met with his extant AAC device in the form of an iPad and the Proloquo2go application. The request for an additional AAC device in the form of an iPhone is duplicative. Ms. Caňas noted Claimant does not need a cellphone in emergency situations. As documented in his IPP, Claimant requires constant supervision. Mother or service providers, or both Mother and a service provider, are present with Claimant at all times. Claimant would never be alone should an emergency arise. Consequently, Claimant is not expected to require a personal cellphone in an emergency. Ms. Caňas additionally maintained ELARC does not provide funds for internet or network services.

16. ELARC's Purchase of Service Guideline for Assistive Technology requires Claimant to exhaust all possible sources of funding for assistive technology-related services. The Purchase of Service Guideline for Assistive Technology, in part, provides:

> Consumers with documented communication . . . impairments related to a developmental disability may be eligible for regional center funding. Consideration should be given for age appropriate equipment as well as ensuring the equipment enhances rather than inhibits the consumer's natural abilities.
>
> ELARC shall consider funding specialized health (assistive technology related) services once the regional center is provided with the documentation that all possible sources of funding have been exhausted [WIC 4659 (a)(1)(2)] and

> ELARC determines that an appeal by the consumer or family of the denial does not have merit [WIC 4659(d)].[¶] . . . [¶]
>
> In all cases, generic resources shall first be explored including Medi-Cal, private insurance, CHAMPUS, California Assistive Technology System (CATS) 1-800-390-2699 (includes loan programs), Department of Rehabilitation, Independent Living Centers, etc. The Lanterman Act has been revised to further include that ELARC shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, The Civilian Health and Medical Program for Uniform Services, In Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage [WIC 4659(c)].

(Exh. 10.)

17. Ms. Caňas identified the California Lifeline Program as a generic resource available to Claimant. The California Lifeline Program is a state-sponsored assistance program administered by the California Public Utilities Commission that provides discounted communication services, including smartphones with free talk, text, and data plans to households meeting certain eligibility requirements.

18. The evidentiary record does not establish whether Claimant has exhausted any available generic resource for funds to purchase a cellphone with network services and insurance.

LEGAL CONCLUSIONS

The Applicable Law

1. Under the Lanterman Act, regional centers, including ELARC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including ELARC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families effectively meets stated IPP goals. Regional centers, including ELARC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, subd. (a), 4646.5, subd. (a)(4), 4647, subd. (a), and 4648, subd. (a)(8) & (9).)

2. To that end, the Lanterman Act specifically obligates regional centers, including ELARC, to purchase services and supports in conformity with their purchase of service policies approved by the Department. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department reviews regional centers' guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (Welf. & Inst. Code, § 4434, subd. (d).) The guidelines are deserving of deference because they reflect the regional center's expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, guidelines regional centers promulgate, including ELARC, must account for consumers' individual needs when making eligibility determinations for services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-234.) Regional centers, including ELARC, must ensure "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

Burden and Standard of Proof

3. Claimant bears the burden of establishing by a preponderance of the evidence his entitlement to funding to purchase a personal cellphone with accompanying cellphone service and insurance for his use as an AAC device. (*Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161 [disability benefit]; Evid. Code, §500.)

4. Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id*. at 325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J*. (1998) 68 Cal.App.4th 322, 339.)

Discussion

5. The evidentiary record establishes Claimant presents with autism, a developmental disability that qualifies Claimant for Lanterman Act services and supports to remediate Claimant's social communication deficits. Through his SDP Individual Budget, ELARC funded the purchase of an AAC device in the form of an iPad Air with Proloquo2go application to ameliorate Claimant's communication deficits and advance his communication goals set forth in his IPP.

6. The evidentiary record does not establish Claimant presents with communication needs and goals not addressed by his iPad Air with Proloquo2go

application. Consequently, the request for an additional AAC device in the form of an iPhone is duplicative.

7. Importantly, even if the evidentiary record supported a finding Claimant presents with communication deficits requiring an additional AAC device, consistent with the Lanterman Act, ELARC's Purchase of Service Guideline for Assistive Technology requires Claimant to exhaust all possible sources of funding for assistive technology-related services. The evidentiary record does not establish Claimant exhausted all generic resources available to fund an additional AAC in the form of an iPhone.

8. Claimant failed to prove by a preponderance of the evidence his entitlement to additional ELARC funding through his SDP Individual Budget to purchase a personal cellphone with network service and insurance for his use as an AAC device.

ORDER

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL
Senior Administrative Law Judge
Office of Administrative Hearings