

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

Claimant,

and

San Diego Regional Center,

Service Agency.

OAH No. 2018120186

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 29, 2019.

Claimant's parents represented claimant who was present.

Ronald House, Attorney, represented the San Diego Regional Center (SDRC).

The matter was submitted on January 29, 2019.

ISSUE

Claimant appeals her failure to be chosen by the Department of Developmental Services (DDS) as one of the initial 2,500 participants in the Self-Determination Program, commonly referred to as SDP. In a case of first impression, the issues are whether there is a remedy, and if so, can SDRC provide it?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On November 27, 2018, claimant filed a Fair Hearing Request appealing DDS's decision not to include her as one of the initial 2,500 participants in the SDP. On December 18, 2018, Carlos Flores, SDRC's Executive Director, notified claimant that her Fair Hearing Request was being returned "without action" because "the issue which you are appealing was not a result of an action taken by" SDRC. Director Flores cited the applicable Welfare and Institutions Code sections in support of SDRC's position.

2. Thereafter, claimant filed her fair hearing request directly with the Office of Administrative Hearings, and the matter was set for hearing.

THE SELF-DETERMINATION PROGRAM

DDS Website Information

3. The DDS website contains the following introductory information:

Welcome to the Self-Determination Program Home Page!

We are excited about the possibilities and opportunities this program will provide for those who receive regional center services. In October of 2013, Governor Edmund G. Brown Jr. signed into law the Self-Determination Program, which will provide consumers and their families with more freedom, control, and responsibility in choosing services and supports to help them meet objectives in their Individual Program Plan. This site is designed to allow those interested to follow the progress and learn more about Self-Determination as the program moves toward implementation.

4. The DDS website notes that the Self-Determination Program is a new program “that will let participants have more control over selecting their services and supports. One of the ways this can be done is by giving participants (or their parents or legal representatives) a specific budget to purchase the services and supports that they need to make their person-centered plan work better for them. Participants may choose their services and pick which providers deliver those services. Participants are responsible for staying within their annual budget.”

5. A message from former DDS director, Santi J. Rogers, states:

All individuals, regardless of ability, have the right to access the basic elements that make-up a good life, beginning with: family, independence, personal responsibility, and freedom of choice. The Lanterman Developmental Disabilities Services Act builds upon these basic fundamentals so that all individuals have the right to live their lives as they choose.

Similarly, the principles of Self-Determination include:

- Freedom to exercise the same rights as all citizens; to establish, with freely chosen supports, family and friends, where they want to live, with whom they want to live, how their time will be occupied, and who supports them;
- Authority to control a budget in order to purchase services and supports of their choosing;
- Support, including the ability to arrange resources and personnel, which will allow flexibility to live in the community of their choice;

- Responsibility, which includes the opportunity to take responsibility for making decisions in their own lives and accept a valued role in their community; and
- Confirmation, in making decisions in their own lives by designing and operating the service that they rely on.

It is through this “Self-Determination Program” that all individuals are able to access what everyone deserves – “a good life.”

6. The DDS website also notes: “During the first three years of the Self-Determination Program, enrollment is limited to 2,500 people. The Self-Determination Program advisory group developed the following process for people interested in being a part of the program during the first three years.” Information on how to become enrolled in the Self-Determination Program is provided on the website, which includes attending informational meetings, providing required information, and waiting to be selected. Most notably, the website states: “If you are not selected at first, your name will stay on [DDS’s] list in the event space opens in the program. Subsequent participant selections will occur if some of the initial 2,500 participants choose not to enroll or they enroll, then decide not to continue in the [Self-Determination Program]. Timing for future selections will be established at a later date.”

7. The DDS website provides links to videos, informational and advisory sources, training materials, updates regarding progress towards implementation, applicable laws, and a “Frequently Asked Questions” link.

Selection Criteria for the First 2,500 Participants

8. The DDS website provides information on the criteria used to select the initial participants noting that consistent with the applicable statute:

[T]he initial 2,500 participants selected to participate ... were in proportion to the total number of consumers at each regional center and representative of each regional center's ethnic diversity using the categories Asian, Black/African-American, Hispanic, White and Other. The number of participants to be selected from each regional center/ethnicity group was coded into the statistical software used to conduct the random selection. The gender, diagnosis(es) and age of the initial 2,500 participants (inclusive of the 95 currently participating in the self-determination pilot program) are a reflection of those who identified as being interested in the SDP at the time the selection was made.

DDS Updates

9. The October 1, 2018, DDS update advised that "[t]hose who were not selected initially to participate will remain on the list for subsequent selections if some of the initial 2,500 choose not to enroll or discontinue in the program. The Department will continue to collect and add names of those interested in the program for subsequent selections."

10. The November 30, 2018, DDS update stated:

This update is in response to questions received regarding the selection of the initial participants for the Self-Determination Program (SDP). As required by law (Welfare and Institutions Code, Section 4685.8(b)(1)), the number of

participants selected at each regional center was based on the relative percentage of total consumers served by all regional centers. For example, if a regional center served 5% of all consumers, then 125 (5% of 2,500) SDP participants were selected from that regional center. The Department made the selection from amongst those who attended a SDP informational meeting. The informational meeting process was developed in consultation with the Department's self-determination advisory group, as a way to provide oversight of the selection process based on the following demographic factors within each regional center: ethnicity, diagnosis, gender and age. However, with the relatively small number (approximately 9,100) of individuals from which to choose, it was not possible to control for all these factors when making the selection. Ultimately, the selection was done ensuring that those selected represented the overall ethnic diversity of all consumers within each regional center.

CLAIMANT'S PARTICIPATION IN REQUIRED TRAINING

11. In order to be eligible for the Self-Determination Program, consumers and their families must participate in required training. Claimant's family participated in that required training on January 30, 2018, which was put on by SDRC.

12. After performing all required prerequisites, claimant gave permission for her name to be entered on the list for those interested in receiving Self-Determination services. However, she was later notified that she was not selected as one of the initial 2,500 participants. The DDS notification informed those who were not selected that their

name would remain on the list which DDS “will use to select future participants” in the program.

WITNESS TESTIMONY

13. Gabrielle Ohmstede, SDRC’s Program Manager for the Self-Determination Program, testified about the program, the work she has performed, including the trainings SDRC provided, her contacts with DDS about the implementation and selection process, and her compilation of information regarding the SDRC families who participated in the required training, were selected to participate in the initial group of 2,500 consumers, were part of a pilot program 10 years ago when DDS first attempted to create a Self-Determination Program., or opted out of participation. Ms. Ohmstede was asked about the former pilot program, noted the mix results it received, and testified that this is an entirely different program but acknowledged that she cannot predict the future regarding its success. Ms. Ohmstede’s testimony established that SDRC complied with all applicable laws and DDS requirements pertaining to the Self-Determination Program.

14. Claimant’s parents each testified, expressing their concern that their child was not selected as one of the initial 2,500 participants. They noted that their daughter’s limited life expectancy makes waiting three years to be part of the program extremely disconcerting. They also expressed concerns that because the pilot program attempted 10 years ago did not come to fruition, that this program, too, will fail and they will not have the ability to make the service choices that the Self-Determination Program allows. Claimant’s parents also noted that their daughter is eligible for services so participation in the program will not cost SDRC see any additional funds. Claimant’s father further noted that as he and his wife age, it is more difficult to transport their daughter and that this should also be a factor for DDS to consider. While claimant’s parents’ testimony was heartfelt and sincere, and it is clear they want what is best for their daughter, they cited

to no law, and indeed there is none, that authorizes them to appeal DDS's decision regarding the selection of the initial 2,500 participants in the Self-Determination Program.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish the need for the services. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4704 defines "service agency" to be "any developmental center or regional center that receives state funds to provide services to persons with developmental disabilities."

4. Welfare and Institutions Code section 4710 states in part:

(a) Adequate notice shall be sent to the applicant or recipient and the authorized representative, if any, by certified mail at least 30 days prior to any of the following actions:

(1) The agency makes a decision without the mutual consent of the service recipient or authorized representative to reduce, terminate, or change services set forth in an individual program plan.

5. Welfare and Institutions Code section 4710.5 states in part:

(a) Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing.

6. Welfare and Institutions Code section 4685.7 established the Self-Directed Services Program upon approval of a federal waiver, commonly referred to as the Self-Determination Program.

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7. Welfare and Institutions Code section 4685.8 provides:

(a) The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. The statewide Self-Determination Program shall be phased in over three years, and during this phase-in period, shall serve up to 2,500 regional center consumers, inclusive of the remaining participants in the self-determination pilot projects authorized pursuant to Section 13 of Chapter 1043 of the

Statutes of 1998, as amended, and Article 4 (commencing with Section 4669.2) of Chapter 5. Following the phase-in period, the program shall be available on a voluntary basis to all regional center consumers, including residents in developmental centers who are moving to the community, who are eligible for the Self-Determination Program. The program shall be available to individuals who reflect the disability, ethnic, and geographic diversity of the state. The Department of Finance may approve, upon a request from the department and no sooner than 30 days following notification to the Joint Legislative Budget Committee, an increase to the number of consumers served by the Self-Determination Program before the end of the three-year phase-in period.

(b) The department, in establishing the statewide program, shall do both of the following:

(1) For the first three years of the Self-Determination Program, determine, as part of the contracting process described in Sections 4620 and 4629, the number of participants each regional center shall serve in its Self-Determination Program. To ensure that the program is available on an equitable basis to participants in all regional center catchment areas, the number of Self-Determination Program participants in each regional center shall be based on the relative percentage of total consumers served by the

regional centers minus any remaining participants in the self-determination pilot projects authorized pursuant to Section 13 of Chapter 1043 of the Statutes of 1998, as amended, and Article 4 (commencing with Section 4669.2) of Chapter 5 or another equitable basis.

(2) Ensure all of the following:

(A) Oversight of expenditure of self-determined funds and the achievement of participant outcomes over time.

(B) Increased participant control over which services and supports best meet his or her needs and the IPP objectives. A participant's unique support system may include the purchase of existing service offerings from service providers or local businesses, hiring his or her own support workers, or negotiating unique service arrangements with local community resources.

(C) Comprehensive person-centered planning, including an individual budget and services that are outcome based.

(D) Consumer and family training to ensure understanding of the principles of self-determination, the planning process, and the management of budgets, services, and staff.

(E) Choice of independent facilitators who can assist with the person-centered planning process and choice of financial management services providers vendored by regional

centers who can assist with payments and provide employee-related services.

(F) Innovation that will more effectively allow participants to achieve their goals.

(c) For purposes of this section, the following definitions apply:

(1) "Financial management services" means services or functions that assist the participant to manage and direct the distribution of funds contained in the individual budget, and ensure that the participant has the financial resources to implement his or her IPP throughout the year. These may include bill paying services and activities that facilitate the employment of service and support workers by the participant, including, but not limited to, fiscal accounting, tax withholding, compliance with relevant state and federal employment laws, assisting the participant in verifying provider qualifications, including criminal background checks, and expenditure reports. The financial management services provider shall meet the requirements of Sections 58884, 58886, and 58887 of Title 17 of the California Code of Regulations and other specific qualifications established by the department. The costs of financial management services shall be paid by the participant out of his or her individual budget, except for the cost of obtaining the criminal background check specified in subdivision (w).

(2) "Independent facilitator" means a person, selected and directed by the participant, who is not otherwise providing services to the participant pursuant to his or her IPP and is not employed by a person providing services to the participant. The independent facilitator may assist the participant in making informed decisions about the individual budget, and in locating, accessing, and coordinating services and supports consistent with the participant's IPP. He or she is available to assist in identifying immediate and long-term needs, developing options to meet those needs, leading, participating, or advocating on behalf of the participant in the person-centered planning process and development of the IPP, and obtaining identified services and supports. The cost of the independent facilitator, if any, shall be paid by the participant out of his or her individual budget. An independent facilitator shall receive training in the principles of self-determination, the person-centered planning process, and the other responsibilities described in this paragraph at his or her own cost.

(3) "Individual budget" means the amount of regional center purchase of service funding available to the participant for the purchase of services and supports necessary to implement the IPP. The individual budget shall be determined using a fair, equitable, and transparent methodology.

(4) "IPP" means individual program plan, as described in Section 4646.

(5) "Participant" means an individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, who has been deemed eligible for, and has voluntarily agreed to participate in, the Self-Determination Program.

(6) "Self-determination" means a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in his or her IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. 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.

(d) Participation in the Self-Determination Program is fully voluntary. A participant may choose to participate in, and may choose to leave, the Self-Determination Program at any time. A regional center shall not require or prohibit participation in the Self-Determination Program as a condition of eligibility for, or the delivery of, services and supports otherwise available under this division. Participation

in the Self-Determination Program shall be available to any regional center consumer who meets the following eligibility requirements:

(1) The participant has a developmental disability, as defined in Section 4512, and is receiving services pursuant to this division.

(2) The consumer does not live in a licensed long-term health care facility, as defined in paragraph (44) of subdivision (a) of Section 54302 of Title 17 of the California Code of Regulations. An individual, and when appropriate his or her parent, legal guardian or conservator, or authorized representative, who is not eligible to participate in the Self-Determination Program pursuant to this paragraph may request that the regional center provide person-centered planning services in order to make arrangements for transition to the Self-Determination Program, provided that he or she is reasonably expected to transition to the community within 90 days. In that case, the regional center shall initiate person-centered planning services within 60 days of that request.

(3) The participant agrees to all of the following terms and conditions:

(A) The participant shall receive an orientation to the Self-Determination Program prior to enrollment, which includes

the principles of self-determination, the role of the independent facilitator and the financial management services provider, person-centered planning, and development of a budget.

(B) The participant shall utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.

(C) The participant shall only purchase services and supports necessary to implement his or her IPP and shall comply with any and all other terms and conditions for participation in the Self-Determination Program described in this section.

(D) The participant shall manage Self-Determination Program services and supports within his or her individual budget.

(E) The participant shall utilize the services of a financial management services provider of his or her own choosing and who is vendored by a regional center.

(F) The participant may utilize the services of an independent facilitator of his or her own choosing for the purpose of providing services and functions as described in paragraph (2) of subdivision (c). If the participant elects not to use an independent facilitator, he or she may use his or her regional center service coordinator to provide the services and functions described in paragraph (2) of subdivision (c).

(e) A participant who is not Medi-Cal eligible may participate in the Self-Determination Program and receive self-determination services and supports if all other program eligibility requirements are met and the services and supports are otherwise eligible for federal financial participation.

(f) An individual receiving services and supports under a self-determination pilot project authorized pursuant to Section 13 of Chapter 1043 of the Statutes of 1998, as amended, or pursuant to Article 4 (commencing with Section 4669.2) of Chapter 5, may elect to continue to receive self-determination services and supports pursuant to this section or the regional center shall provide for the participant's transition from the self-determination pilot program to other services and supports. This transition shall include the development of a new IPP that reflects the services and supports necessary to meet the individual's needs. The regional center shall ensure that there is no gap in services and supports during the transition period.

(g) The additional federal financial participation funds generated by the former participants of the self-determination pilot projects authorized pursuant to Section 13 of Chapter 1043 of the Statutes of 1998, as amended, or pursuant to Article 4 (commencing with Section 4669.2) of Chapter 5, shall be used to maximize the ability of Self-

Determination Program participants to direct their own lives and to ensure the department and regional centers successfully implement the program as follows:

(1) First, to offset the cost to the department for the criminal background check conducted pursuant to subdivision (w) and other administrative costs incurred by the department in implementing the Self-Determination Program.

(2) With the remaining funds, the department, in consultation with stakeholders, including a statewide self-determination advisory workgroup, shall prioritize the use of the funds to meet the needs of participants and to implement the program, including costs associated with all of the following:

(A) Independent facilitators to assist with a participant's initial person-centered planning meeting.

(B) Development of the participant's initial individual budget.

(C) Joint training of consumers, family members, regional center staff, and members of the local volunteer advisory committee established pursuant to paragraph (1) of subdivision (x).

(D) Regional center operations for caseload ratio enhancement.

(E) To offset the costs to the regional centers in implementing the Self-Determination Program.

(h) If at any time during participation in the Self-Determination Program a regional center determines that a participant is no longer eligible to continue in, or a participant voluntarily chooses to exit, the Self-Determination Program, the regional center shall provide for the participant's transition from the Self-Determination Program to other services and supports. This transition shall include the development of a new IPP that reflects the services and supports necessary to meet the individual's needs. The regional center shall ensure that there is no gap in services and supports during the transition period.

(i) An individual determined to be ineligible for or who voluntarily exits the Self-Determination Program shall be permitted to return to the Self-Determination Program upon meeting all applicable eligibility criteria and upon approval of the participant's planning team, as described in subdivision (j) of Section 4512. An individual who has voluntarily exited the Self-Determination Program shall not return to the program for at least 12 months. During the first three years of the program, the individual's right to return to the program is conditioned on his or her regional center not having reached the participant cap imposed by paragraph (1) of subdivision (b).

(j) An individual who participates in the Self-Determination Program may elect to continue to receive self-determination services and supports if he or she transfers to another regional center catchment area, provided that he or she remains eligible for the Self-Determination Program pursuant to subdivision (d). The balance of the participant's individual budget shall be reallocated to the regional center to which he or she transfers.

(k) The IPP team shall utilize the person-centered planning process to develop the IPP for a participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant-selected services and supports. The IPP team shall determine the individual budget to ensure the budget assists the participant to achieve the outcomes set forth in his or her IPP and ensures his or her health and safety. The completed individual budget shall be attached to the IPP.

(l) The participant shall implement his or her IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5. A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

(m) A participant shall have all the rights established in Sections 4646 to 4646.6, inclusive, and Chapter 7 (commencing with Section 4700).

(n) (1) Except as provided in paragraph (4), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A) (i) Except as specified in clause (ii), for a participant who is a current consumer of the regional center, his or her individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant.

(ii) An adjustment may be made to the amount specified in clause (i) if both of the following occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have

occurred regardless of the individual's participation in the Self-Determination Program.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator or the financial management services.

(B) For a participant who is either newly eligible for regional center services or who does not have 12 months of purchase service expenditures, his or her individual budget shall be calculated as follows:

(i) The IPP team shall identify the services and supports needed by the participant and available resources, as required by Section 4646.

(ii) The regional center shall calculate the cost of providing the services and supports to be purchased by the regional center by using the average cost paid by the regional center for each service or support unless the regional center determines that the consumer has a unique need that requires a higher or lower cost. The regional center shall certify on the individual budget document that this amount would have been expended using regional center purchase of service funds regardless of the individual's participation in the Self-Determination Program.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator or the financial management services.

(2) The amount of the individual budget shall be available to the participant each year for the purchase of program services and supports. An individual budget shall be calculated no more than once in a 12-month period, unless revised to reflect a change in circumstances, needs, or resources of the participant using the process specified in clause (ii) of subparagraph (A) of paragraph (1).

(3) The individual budget shall be assigned to uniform budget categories developed by the department in consultation with stakeholders and distributed according to the timing of the anticipated expenditures in the IPP and in a manner that ensures that the participant has the financial resources to implement his or her IPP throughout the year.

(4) The department, in consultation with stakeholders, may develop alternative methodologies for individual budgets that are computed in a fair, transparent, and equitable manner and are based on consumer characteristics and needs, and that include a method for adjusting individual budgets to address a participant's change in circumstances or needs.

(o) Annually, participants may transfer up to 10 percent of the funds originally distributed to any budget category set forth in paragraph (3) of subdivision (n) to another budget category or categories. Transfers in excess of 10 percent of the original amount allocated to any budget category may be made upon the approval of the regional center or the participant's IPP team.

(p) Consistent with the implementation date of the IPP, the IPP team shall annually ascertain from the participant whether there are any circumstances or needs that require a change to the annual individual budget. Based on that review, the IPP team shall calculate a new individual budget consistent with the methodology identified in subdivision (n).

(q) (1) On or before December 31, 2014, the department shall apply for federal Medicaid funding for the Self-Determination Program by doing one or more of the following:

(A) Applying for a state plan amendment.

(B) Applying for an amendment to a current home- and community-based waiver for individuals with developmental disabilities.

(C) Applying for a new waiver.

(D) Seeking to maximize federal financial participation through other means.

(2) To the extent feasible, the state plan amendment, waiver, or other federal request described in paragraph (1) shall incorporate the eligibility requirements, benefits, and operational requirements set forth in this section. Except for the provisions of subdivisions (k), (m), (p), and this subdivision, the department may modify eligibility requirements, benefits, and operational requirements as needed to secure approval of federal funding.

(3) Contingent upon approval of federal funding, the Self-Determination Program shall be established.

(r) (1) The department, as it determines necessary, may adopt regulations to implement the procedures set forth in this section. Any regulations shall be adopted in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Notwithstanding paragraph (1) and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and only to the extent that all necessary federal approvals are obtained, the department, without taking any further regulatory action, shall implement, interpret, or make specific this section by means of program

directives or similar instructions until the time regulations are adopted. It is the intent of the Legislature that the department be allowed this temporary authority as necessary to implement program changes only until completion of the regulatory process.

(s) The department, in consultation with stakeholders, shall develop informational materials about the Self-Determination Program. The department shall ensure that regional centers are trained in the principles of self-determination, the mechanics of the Self-Determination Program, and the rights of consumers and families as candidates for, and participants in, the Self-Determination Program.

(t) Each regional center shall be responsible for implementing the Self-Determination Program as a term of its contract under Section 4629. As part of implementing the program, the regional center shall do both of the following:

(1) Contract with local consumer or family-run organizations and consult with the local volunteer advisory committee established pursuant to paragraph (1) of subdivision (x) to conduct outreach through local meetings or forums to consumers and their families to provide information about the Self-Determination Program and to help ensure that the program is available to a diverse group of participants, with special outreach to underserved communities.

(2) Collaborate with the local consumer or family-run organizations identified in paragraph (1) to jointly conduct training about the Self-Determination Program. The regional center shall consult with the local volunteer advisory committee established pursuant to paragraph (1) of subdivision (x) in planning for the training, and the local volunteer advisory committee may designate members to represent the advisory committee at the training.

(u) The financial management services provider shall provide the participant and the regional center service coordinator with a monthly individual budget statement that describes the amount of funds allocated by budget category, the amount spent in the previous 30-day period, and the amount of funding that remains available under the participant's individual budget.

(v) Only the financial management services provider is required to apply for vendorization in accordance with Subchapter 2 (commencing with Section 54300) of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations for the Self-Determination Program. All other service and support providers shall not be on the federal debarment list and shall have applicable state licenses, certifications, or other state required documentation, including documentation of any other qualifications required by the department, but are exempt from the vendorization

requirements set forth in Title 17 of the California Code of Regulations when serving participants in the Self-Determination Program.

(w) To protect the health and safety of participants in the Self-Determination Program, the department shall require a criminal background check in accordance with all of the following:

(1) The department shall issue a program directive that identifies nonvendored providers of services and supports who shall obtain a criminal background check pursuant to this subdivision. At a minimum, these staff shall include both of the following:

(A) Individuals who provide direct personal care services to a participant.

(B) Other nonvendored providers of services and supports for whom a criminal background check is requested by a participant or the participant's financial management service.

(2) Subject to the procedures and requirements of this subdivision, the department shall administer criminal background checks consistent with the department's authority and the process described in Sections 4689.2 to 4689.6, inclusive.

(3) The department shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice of nonvended providers of services and supports, as specified in paragraph (1), for purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(4) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the department.

(5) The Department of Justice shall provide a state or federal response to the department pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(6) The department shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in paragraph (1).

(7) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this subdivision.

(8) The fingerprints of any provider of services and supports who is required to obtain a criminal background check shall be submitted to the Department of Justice prior to employment. The costs of the fingerprints and the financial management service's administrative cost authorized by the department shall be paid by the services and supports provider or his or her employing agency. Any administrative costs incurred by the department pursuant to this subdivision shall be offset by the funds specified in subdivision (g).

(9) If the criminal record information report shows a criminal history, the department shall take the steps specified in Section 4689.2. The department may prohibit a provider of services and supports from becoming employed, or continuing to be employed, based on the criminal background check, as authorized in Section 4689.6. The provider of services and supports who has been denied employment shall have the rights set forth in Section 4689.6.

(10) The department may utilize a current department-issued criminal record clearance to enable a provider to serve more than one participant, as long as the criminal record clearance has been processed through the department and no

subsequent arrest notifications have been received relative to the cleared applicant.

(11) Consistent with subdivision (h) of Section 4689.2, the participant or financial management service that denies or terminates employment based on written notification from the department shall not incur civil liability or unemployment insurance liability.

(x) To ensure the effective implementation of the Self-Determination Program and facilitate the sharing of best practices and training materials commencing with the implementation of the Self-Determination Program, local and statewide advisory committees shall be established as follows:

(1) Each regional center shall establish a local volunteer advisory committee to provide oversight of the Self-Determination Program. The regional center and the State Council on Developmental Disabilities shall each appoint one-half of the membership of the committee. The committee shall consist of the regional center clients' rights advocate, consumers, family members, and other advocates, and community leaders. A majority of the committee shall be consumers and their family members. The committee shall reflect the multicultural diversity and geographic profile of the catchment area. The committee shall review the development and ongoing progress of the Self-

Determination Program, including whether the program advances the principles of self-determination and is operating consistent with the requirements of this section, and may make ongoing recommendations for improvement to the regional center and the department.

(2) The State Council on Developmental Disabilities shall form a volunteer committee, to be known as the Statewide Self-Determination Advisory Committee, comprised of the chairs of the 21 local advisory committees or their designees. The council shall convene the Statewide Self-Determination Advisory Committee twice annually, or more frequently in the sole discretion of the council. The Statewide Self-Determination Advisory Committee shall meet by teleconference or other means established by the council to identify self-determination best practices, effective consumer and family training materials, implementation concerns, systemic issues, ways to enhance the program, and recommendations regarding the most effective method for participants to learn of individuals who are available to provide services and supports. The council shall synthesize information received from the Statewide Self-Determination Advisory Committee, local advisory committees, and other sources, share the information with consumers, families, regional centers, and the department, and make recommendations, as appropriate, to increase the program's

effectiveness in furthering the principles of self-determination.

(y) Commencing January 10, 2017, the department shall annually provide the following information to the appropriate policy and fiscal committees of the Legislature:

(1) Number and characteristics of participants, by regional center, including the number of participants who entered the program upon movement from a developmental center.

(2) Types and amount of services and supports purchased under the Self-Determination Program, by regional center.

(3) Range and average of individual budgets, by regional center, including adjustments to the budget to address the adjustments permitted in clause (ii) of subparagraph (A) of paragraph (1) of subdivision (n).

(4) The number and outcome of appeals concerning individual budgets, by regional center.

(5) The number and outcome of fair hearing appeals, by regional center.

(6) The number of participants who voluntarily withdraw from the Self-Determination Program and a summary of the reasons why, by regional center.

(7) The number of participants who are subsequently determined to no longer be eligible for the Self-Determination Program and a summary of the reasons why, by regional center.

(z) (1) The State Council on Developmental Disabilities, in collaboration with the protection and advocacy agency identified in Section 4900 and the federally funded University Centers for Excellence in Developmental Disabilities Education, Research, and Service, may work with regional centers to survey participants regarding participant satisfaction under the Self-Determination Program and, when data is available, the traditional service delivery system, including the proportion of participants who report that their choices and decisions are respected and supported and who report that they are able to recruit and hire qualified service providers, and to identify barriers to participation and recommendations for improvement.

(2) The council, in collaboration with the protection and advocacy agency identified in Section 4900 and the federally funded University Centers for Excellence in Developmental Disabilities Education, Research, and Service, shall issue a report to the Legislature, in compliance with Section 9795 of the Government Code, no later than three years following the approval of the federal funding on the status of the Self-Determination Program authorized by this section, and

provide recommendations to enhance the effectiveness of the program. This review shall include the program's effectiveness in furthering the principles of self-determination, including all of the following:

(A) Freedom, which includes the ability of adults with developmental disabilities to exercise the same rights as all citizens to establish, with freely chosen supporters, family and friends, where they want to live, with whom they want to live, how their time will be occupied, and who supports them; and for families to have the freedom to receive unbiased assistance of their own choosing when developing a plan and to select all personnel and supports to further the life goals of a minor child.

(B) Authority, which includes the ability of a person with a disability, or family, to control a certain sum of dollars in order to purchase services and supports of their choosing.

(C) Support, which includes the ability to arrange resources and personnel, both formal and informal, that will assist a person with a disability to live a life in his or her community that is rich in community participation and contributions.

(D) Responsibility, which includes the ability of participants to take responsibility for decisions in their own lives and to be accountable for the use of public dollars, and to accept a valued role in their community through, for example,

competitive employment, organizational affiliations, spiritual development, and general caring of others in their community.

(E) Confirmation, which includes confirmation of the critical role of participants and their families in making decisions in their own lives and designing and operating the system that they rely on.

EVALUATION

8. DDS established a Self-Determination Program and selected 2,500 participants to participate in a three-year pilot program. Although claimant did all that was required to be eligible for selection, she was not chosen to be one of the initial 2,500 participants. Nothing in the Lanterman Act provides authority to appeal that decision and claimant cited to no law in support of her position. Further, the evidence did not establish that SDRC took any action from which claimant can appeal. Accordingly, her claim is denied and her appeal of DDS's decision not to include her as one of the initial 2,500 participants shall be dismissed.

ORDER

Claimant's appeal from the Department of Developmental Services' decision not to include her as one of the initial 2,500 participants in the Self-Determination Program is denied.

DATED: February 8, 2019

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.