

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2021070139

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 13, 2021, in Los Angeles, California.

Claimant was represented by his mother. The names of Claimant and his family members are omitted to protect their privacy.

Jessica Franey, Esq. Waterson Huth & Associates, represented Frank D. Lanterman Regional Center (FDLRC).

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Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 13, 2021.

ISSUE

Whether Claimant is eligible or provisionally eligible for services and supports from FDLRC under the Lanterman Developmental Disabilities Services Act.

EVIDENCE RELIED UPON

Documents: FDLRC exhibits 1 through 13. Testimony: Wilfredo Lazarte; Monica Mauriz; William Crosson; Denise Rockwell, Ph.D.

FACTUAL FINDINGS

Background and Procedural History

1. FDLRC determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.)¹

2. Claimant is a three-year-old boy who lives with his parents and younger siblings. In April 2021, when Claimant was two years old, his pediatrician referred him

¹ Undesignated statutory references are to the Welfare and Institutions Code.

for assessment of speech concerns and delays to the South Central Los Angeles Regional Center, which in turn referred Claimant to FDLRC.

3. FDLRC assessed Claimant and determined he was eligible for speech therapy and occupational therapy services under the Early Start program. The Early Start program was established by the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) for infants and toddlers who are born with, or at risk for, developmental delays. The Early Start program is not a part of the Lanterman Act, which has different eligibility criteria.

4. Claimant began receiving Early Start program services on May 25, 2021, just a few months before his third birthday. On June 4, 2021, FDLRC wrote to Claimant's mother that when Claimant turned three years old on July 1, 2021, he would reach the age limit for Early Start program services and would no longer be eligible to receive them. Further, FDLRC stated that a review of Claimant's most recent evaluations indicated he did not meet the criteria for services and supports to persons three years of age or older under the Lanterman Act. Therefore, Claimant's services from FDLRC would end on July 1, 2021.

5. Claimant's mother submitted a timely Fair Hearing Request to appeal FDLRC's decision. In August 2021, she waived the 50-day time limit for holding a hearing on the appeal and the 80-day time limit for a final administrative decision. (§§ 4712, subd. (a), 4712.5, subd. (a).) Claimant's mother and FDLRC had a telephonic informal meeting about the Fair Hearing Request, and the regional center referred Claimant for a psychological assessment in September 2021. The psychologist, Denise Rockwell, Ph.D., diagnosed Claimant with a language disorder, which is not one of the disorders defined as a developmental disability under the Lanterman Act.

6. On October 4, 2021, FDLRC's Multidisciplinary Eligibility Committee reviewed the psychological assessment and other records and determined Claimant was not eligible for services and supports under the Lanterman Act. The committee found that Claimant did not have a developmental disability or meet the criteria for provisional eligibility for services and supports for children who are three or four years old. FDLRC notified Claimant's mother of the committee's determinations on October 5, 2021. Claimant has continued to receive speech therapy and occupational therapy services from FDLRC while this appeal has been pending.

Hearing

FDLRC'S CASE

7. FDLRC presented records of Claimant's assessments, his medical history, and his mother's communications with FDLRC, along with testimony from four witnesses. First, Wilfredo Lazarte, Claimant's Early Intervention Unit Service Coordinator, described Claimant's assessments and acceptance into the Early Start program. Mr. Lazarte testified that Claimant's eligibility for that program was based on communication and speech delays, not on one of the disorders defined as a developmental disability under the Lanterman Act.

8. Second, Monica Mauriz, the Regional Manager of FDLRC's Early Intervention Unit, testified about her involvement with FDLRC's eligibility determination for Claimant. Ms. Mauriz co-wrote the letter dated June 4, 2021, notifying Claimant's mother that Claimant would be ineligible for services and supports under the Lanterman Act after his third birthday on July 1, 2021. Ms. Mauriz testified that some of Claimant's assessments were performed after his third birthday because FDLRC's first contact with him was just before he turned three years old.

9. Third, William Crosson, the Regional Manager for FDLRC, testified about his telephonic informal meetings with Claimant’s mother regarding the Fair Hearing Request. Mr. Crosson testified he arranged for Claimant’s psychological assessment in September 2021, the results of which indicated Claimant was not eligible or provisionally eligible for Lanterman Act services and supports.

10. Fourth, Dr. Rockwell, a developmental psychologist, testified about the psychological assessment of Claimant that she performed. The assessment included a review of records, behavioral observations, a parent interview, and administration of components of the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI-IV); components of the Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2) Module 1; the Childhood Autism Rating Scale, Second Edition Standard Version (CARS 2-ST); and the Vineland Adaptive Behavior Scales III (VABS-III) Parent/Caregiver Form. On the WPPSI-IV, Claimant’s full-scale IQ was 87, which is in the low average range when compared to other children his age. On the CARS 2-ST, Claimant’s raw score was 20, which is within the “minimal to no symptoms” severity group for autism spectrum disorder. (Exhibit 6.) The results of the ADOS-2 could not be scored based on standardized criteria due to social distancing and facial covering requirements for in-person visits at the time of the assessment. But qualitatively, Claimant displayed a range of facial expressions and was observed to share enjoyment with others, although his eye contact was inconsistent. Claimant also initiated play activities with Dr. Rockwell and tolerated her proximity throughout the assessment.

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11. On the VABS-III, Claimant's overall level of adaptive functioning was close to the normative mean, and his scores on the communication domain of the assessment did not indicate significant language impairment. But during the assessment, Dr. Rockwell observed that Claimant's speech was very difficult to understand and often needed to be supplemented by gestures to understand his social intention. These observations and the parent interview indicated a substantial expressive language delay despite the results of the VABS-III.

12. Dr. Rockwell diagnosed Claimant with a language disorder and determined he did not meet the diagnostic criteria for autism spectrum disorder or intellectual disability. She recommended reevaluation if Claimant's symptoms worsened or if new symptoms emerged.

Claimant's Case

13. Claimant did not present any witness testimony or documents at the hearing.

Analysis of Evidence

14. FDLRC's evidence that Claimant does not qualify for services and supports under the Lanterman Act is persuasive and unrebutted. Dr. Rockwell's psychological assessment is thorough and well-supported, and Claimant has not presented a diagnosis from another qualified professional to rebut Dr. Rockwell's diagnosis of a language disorder. While claimant has significant functional limitations in receptive and expressive language, that is not enough to establish he has a developmental disability or is provisionally eligible for Lanterman Act services and supports. A language disorder is not a developmental disability as defined in the Lanterman Act, and provisional eligibility requires Claimant to have significant

functional limitations in areas of major life activity beyond just receptive and expressive language. Claimant did not present evidence proving he has significant functional limitations in other areas, and FDLRC's evidence suggests he does not.

LEGAL CONCLUSIONS

General Legal Standards

1. The Lanterman Act provides services and supports to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) Under section 4512, subdivision (a)(1), "[d]evelopmental disability' means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature."

2. Additionally, effective July 16, 2021, a child who is three or four years old who is not otherwise eligible for services "shall be provisionally eligible for regional center services if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity, as determined by a regional center and as appropriate to the age of the child: [¶] (i) Self-care. [¶] (ii) Receptive and expressive language. [¶] (iii) Learning. [¶] (iv) Mobility. [¶] (v) Self-direction." (§ 4512, subd. (a)(2)(A).) To be provisionally eligible, a

child is not required to have one of the developmental disabilities listed in section 4512, subdivision (a)(1). (§ 4512, subd. (a)(2)(B).).

3. FDLRC determined Claimant does not have a developmental disability and is not provisionally eligible for services and supports under the Lanterman Act. Claimant has properly exercised his right to an administrative fair hearing to challenge those determinations. (See §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (E.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; see also *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1136 [denying eligibility where an applicant's expert opinion evidence did not "sufficiently refute" the regional center's expert opinion evidence].) This burden requires proof by a preponderance of the evidence because no law or statute (including the Lanterman Act) provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Analysis

4. The evidence does not prove Claimant has a developmental disability as defined in the Lanterman Act. There is no evidence that Claimant has cerebral palsy or epilepsy, and Claimant's Full-Scale IQ is in the low average range, which indicates he does not have an intellectual disability. Claimant also tested within the "minimal to no symptoms" severity group for autism spectrum disorder. (Exhibit 6.) Based on her assessment, Dr. Rockwell diagnosed Claimant with a language disorder, not with an

intellectual disability or autism spectrum disorder. There is no evidence that any other professional has made a different diagnosis.

5. In addition, the evidence does not prove Claimant has a "fifth category" developmental disability, that is, a "disabling condition[] . . . closely related to intellectual disability or . . . requir[ing] treatment similar to that required for individuals with an intellectual disability. . . ." (§ 4512, subd. (a); see *Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1486-1487.) A language disorder is not closely related to an intellectual disability, and no evidence indicates that Claimant's language disorder requires treatment similar to that required for individuals with an intellectual disability.

6. Finally, the evidence does not prove Claimant meets the criteria for provisional eligibility for regional center services and supports under section 4512, subdivision (a)(2). Claimant has significant functional limitations in receptive and expressive language, but that is not enough to prove he is provisionally eligible for Lanterman Act services and supports. Provisional eligibility requires significant functional limitations in at least two of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; and (v) self-direction. (§ 4512, subd. (a)(2)(A).). Claimant has significant functional limitations in only one area, not in two or more.

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7. Therefore, the evidence does not prove Claimant is eligible or provisionally eligible for Lanterman Act services and supports from FDLRC, and an order denying Claimant's appeal is warranted.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS HELLER
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 90 days of receiving notice of the final decision.