

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

In the Matter of:

CLAIMANT,

v.

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS No. CS0010478

OAH No. 2023110235

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 7, 2023, by videoconference.

Claimant's mother appeared for him at the hearing.

Executive Director's designee James Elliott appeared for service agency San Andreas Regional Center (SARC).

The matter was submitted for decision on December 7, 2023.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from SARC?

FACTUAL FINDINGS

1. Claimant was born in November 2018. He lives in Salinas with his mother and elder siblings.

2. In December 2020, claimant began receiving in-home behavioral therapy services. SARC arranged these services for claimant through the Early Start program for children younger than three years old (Gov. Code, § 95000 et seq.).

3. As claimant approached three years old, SARC staff members held service review and transition planning meetings with claimant's mother. She told them that claimant had autism spectrum disorder, but provided no documentation to support her report.

4. Based on claimant's mother's reports and on claimant's therapy providers' observations, SARC staff members determined that claimant experienced significant limitations in communication and learning. In November 2021, SARC deemed claimant provisionally eligible under the Lanterman Act for continuing services from SARC.

5. Claimant received additional behavioral therapy services that SARC arranged over the next two years. His and his family's participation was sporadic. The therapy providers emphasized in a February 2023 report to SARC about claimant's

progress that he had experienced “extended gaps in service provision” because his family had cancelled appointments and ignored communications from the therapy providers. They noted that these gaps likely made their service less effective than it would have been if claimant had received consistent professional behavioral therapy with family reinforcement.

6. Claimant did not enroll in any school until fall 2023. His mother testified that she has taken him to a primary care pediatrician and to a “doctor” in Monterey,¹ but that claimant has not received any other diagnostic or treatment services from any physical or mental health providers.

7. Claimant’s mother describes him as being constantly active. He has no safety sense and will run away in public if his mother does not restrain him. He is poorly toilet-trained and engages regularly in noisy tantrums when dissatisfied. Claimant is intensely interested in animals and animal toys, and very sensitive to loud or harsh sounds.

8. Upon further review when claimant approached five years old, SARC staff members considered his experience in the Early Start program and during his period of provisional Lanterman Act eligibility, as well as their ongoing communications with

¹ A physician assistant from a practice in Monterey sent a letter to SARC in July 2023 stating that claimant had “been seen at our office for evaluation and treatment of his mental health” and that claimant “is currently diagnosed with” autism spectrum disorder and attention deficit hyperactivity disorder. Claimant’s mother gave SARC no additional documents to support these assertions, and no treatment records.

claimant's mother and therapists about his diagnoses and treatment. Psychologist Ashley Berry, Psy.D., noted on SARC's eligibility evaluation:

Treatment services, overall, have been inconsistent and he has not been exposed to a formal/pre-academic setting. Per the November ABA report, his biggest issues relate to behavior/mood. Information provided does not substantiate significant delays in at least three areas for Lanterman. Not eligible.

9. Claimant alleges that he qualifies under the Lanterman Act for services from SARC because he has autism spectrum disorder, and because this disorder constitutes a substantial disability for him that will be lifelong.

10. SARC contends that the evidence available in November 2023 does not show that claimant has autism spectrum disorder. In addition, SARC contends that this evidence does not show that claimant experiences significant functional limitations, as compared to other children of similar age. Finally, SARC contends that this evidence does not show that any significant functional limitations claimant experiences from an eligible developmental disability under the Lanterman Act are likely to continue for his whole life.

LEGAL CONCLUSIONS

1. To establish eligibility for SARC's services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that (1) he suffers from a developmental disability and (2) he is substantially disabled by that developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a).)

2. Conditions that qualify under the Lanterman Act as “developmental disabilities” include “intellectual disability, cerebral palsy, epilepsy, and autism.” (Welf. & Inst. Code, § 4512, subd. (a).) They 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.” (*Id.*) In any case, the “developmental disability” must originate before the person turns 18, and must be lifelong. (*Id.*)

3. A qualifying disability must be “substantial,” meaning that it causes “significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self-direction. (F) Capacity for independent living. (G) Economic self-sufficiency.” (Welf. & Inst. Code, § 4512, subds. (a), (1); see also Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) For a child as young as claimant, only the first five of these seven activities are relevant.

4. Although claimant’s mother’s testimony suggests that claimant displays unusual and difficult behavior that is consistent with autism spectrum disorder, claimant’s mother presented no diagnosis of autism spectrum disorder from a qualified physician or psychologist. The evidence available to SARC in November 2023 does not establish that claimant has one of the Lanterman Act’s qualifying developmental disabilities.

ORDER

Claimant's appeal is denied. As of his fifth birthday, in November 2023, claimant had not established his eligibility under the Lanterman Act for services from SARC.

DATE:

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.