

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

DDS No. CS0038300

OAH No. 2026070572

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 26, 2026.

Claimant's mother (Mother) represented claimant.

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

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 26, 2026.

ISSUE

Does claimant meet the criteria for regional center eligibility beyond the previously granted provisional eligibility?

SUMMARY

After receiving early intervention services, claimant has shown much improvement. At the present time, the evidence does not show that claimant has a substantial disability that qualifies for regional center services.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is five years old. She was qualified to receive services through age three in the Early Start program in 2023 and was given provisional eligibility to continue regional center services from age three to age five.

2. In May 2026, after claimant turned five years old, the regional center conducted a required eligibility evaluation to determine if claimant is eligible for regional center services beyond age five. The multi-disciplinary team determined claimant did not meet the criteria for regional center services.

3. The service agency notified Mother by letter dated June 11, 2026, that it determined claimant is not eligible for regional center services. Mother filed an appeal on July 8, 2026. This hearing followed.

Testimony of Paul Hobson, Ph.D.

4. Paul Hobson, Ph.D., is a clinical psychologist working with the service agency as part of the eligibility review team. Dr. Hobson reviewed information in claimant's regional center file. Although he did not participate in the original eligibility team determination, he agreed with the result.

5. At the age of 27 months, claimant was evaluated and showed greater than 50 percent delay in communication abilities, emotions and feelings, and self-help skills, 33 percent delay in coping behavior and relationship to persons, and 25 percent delay in fine motor skills. She therefore qualified for early intervention services including applied behavioral analysis (ABA) services, speech, and occupational therapy.

6. Krystle Frazier-Philo, Ed.D., performed a psychological evaluation on May 2, 2024, when claimant was almost three years old. Dr. Frazier-Philo's report indicates claimant was referred by insurance to assess the need for ABA services. The evaluation found claimant rarely engaged in eye contact and did not use it to initiate or maintain social interaction, and repetitive behaviors. The evaluator diagnosed autism spectrum disorder, level 2 and concluded claimant would benefit from ABA services to reduce maladaptive behavior, frustration tolerance, and communication skills, and also would benefit from speech therapy.

7. Dr. Hobson testified that Dr. Frazier-Philo's report did not use standardized measures for autism spectrum disorder; the evaluator relied exclusively on observations and parent reports. There was no language testing. He therefore did not give this evaluation a lot of weight in his review.

8. On May 17, 2024, the Special Education Local Program Area (SELPA) conducted an assessment. Testing showed that, at age two years and 10 months,

claimant's verbal memory and learning potential was in the range of four years. The testing showed claimant in the average range for daily living skills and language. The school district found claimant not eligible for special education services. Dr. Hobson testified that the special education qualifying criteria are less rigorous than the criteria for regional center eligibility.

9. The regional center referred claimant for an early evaluation at age three. On June 4, 2024, Michela Ene, Ph.D., conducted a psychological evaluation. Dr. Ene used standardized intelligence testing (Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition), standardized adaptive behaviors testing (Vineland Adaptive Behavior Scales, Third Edition), and standardized testing for autism spectrum disorder (Childhood Autism Rating Scale, 2nd Edition, and Social Responsiveness Scale, 2nd Edition).

10. Dr. Ene's evaluation found claimant showed average intellectual and verbal functioning, moderately low in communication, daily living skills, and socialization, and adequate in motor skills. She showed mild to moderate symptoms of autism spectrum disorder and severe autism "red flags" based on parent report of social communication and interaction. Dr. Ene diagnosed autism spectrum disorder – level 1. She recommended continued ABA therapy, speech and occupational therapy. Dr. Hobson testified that he agreed with these results based on his own review of the record. However, Dr. Hobson testified based on his record review that claimant did not demonstrate significant functional limitations in three or more major life activities for her age. He testified claimant therefore did not qualify for regional center services.

Mother's Testimony

11. Mother testified that the family was experiencing homelessness when claimant was originally tested. The family now has a residence. Claimant's father was recently diagnosed with autism and some of claimant's siblings have been diagnosed with autism spectrum disorder level 1, some with level 2, and some with intellectual disability.

12. Claimant received ABA and speech therapy which helped claimant make a lot of improvements. Mother's concern was that the same metric be used to evaluate claimant that was used to evaluate her other children. Her other children went through the same evaluation process, but claimant is the only one of her children to be found provisionally eligible.

13. Mother believes parent observations of their children should be considered in the evaluation. She is still concerned about claimant's speech, however the school district did not agree that claimant needed speech therapy.

LEGAL CONCLUSIONS

Legal Authority

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) 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. The purpose of the Lanterman Act is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the

pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The Department of Developmental Services (department) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as 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." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

5. California Code of Regulations, title 17, section 54000, provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation¹, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning

¹ Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psychosocial deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. California Code of Regulations, title 17, section 54001, provides:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the

following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Evaluation

8. A preponderance of the evidence did not show that claimant is eligible for regional center services under any qualifying category. There was no evidence to suggest, nor was it claimed, that claimant is eligible under the categories of epilepsy, cerebral palsy, intellectual disability, or the fifth category.

9. While the psychological assessments show that claimant's diagnosis is autism spectrum disorder, level 1, a qualifying diagnosis, the evidence does not show that claimant's condition causes significant functional limitations in three or more of the major life activities for her age. To meet eligibility criteria, the law requires both a qualifying diagnosis and significant functional limitations.

10. As she grows, claimant may exhibit more significant limitations and would be entitled to apply for a re-evaluation. However, at the present time, it appears the early intervention services claimant received have helped, and she is not exhibiting major impairments in function that would require interdisciplinary planning and coordination of special or generic services funded by regional center to assist her in achieving maximum potential.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services at this time.

DATE: September 8, 2026

ALAN R. ALVORD

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.