

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2018100267

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 30, 2018, in San Jose, California.

Claimant's mother advocated for him at the hearing. Claimant was not present.

James F. Elliott represented service agency San Andreas Regional Center (SARC).

The matter was submitted on October 30, 2018.

ISSUE

Does claimant have a developmental disability that qualifies him for services from SARC under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)?

FACTUAL FINDINGS

1. Claimant was born in September 2016. In December 2017, he began receiving specialized instruction arranged by SARC and funded through the California Early Intervention Services Act (Early Start services). Claimant continues to receive Early Start services, and his eligibility for these services at the time of the hearing was not in dispute.

2. When SARC first evaluated claimant for the Early Start program in November 2017, he was 14 months old. He showed three to five months' delay in motor skills, self-help skills, and cognitive ability; six to nine months' delay in communication skills; and three to four months' delay in his interest in and ability to relate to other people.

3. SARC evaluated claimant's progress in May 2018, six months after the initial Early Start evaluation. The evidence did not establish precisely how claimant's skills and abilities at 20 months compared to his skills and abilities at 14 months. SARC clinical psychologist Carrie Molho, Ph.D., testified credibly and without contradiction, however, that the 20-month evaluation showed generally that claimant continued to show significant delays in self-help, communication, and relations with others, but not in motor skills or apparent cognitive ability.

4. An assessment by staff members at Spotlight Therapy in September 2018, when claimant was 24 months old, concluded that he demonstrated delays ranging in degree from substantial to profound in self-help, communication, relations with others, motor skills, and cognitive ability. Although this assessment was persuasive in describing developmental delay, it was not persuasive with respect to the degree of delay. For example, the assessment reported that claimant had communication ability similar to a three- or four-month-old infant, but gave as examples of his skills that he could imitate sounds of various common animals, could follow simple directions, would spontaneously comment "uh-oh" about messes, and could respond appropriately to an invitation to "give me five!"

5. In June 2018, Aaron Nayfack, M.D., diagnosed claimant with autism spectrum disorder. SARC has not obtained any other evaluation either agreeing or disagreeing with this diagnosis, and does not presently contest it.

6. Dr. Molho has worked as a staff psychologist at SARC for more than 17 years, and participates regularly in evaluating eligibility both for the Early Start program and for Lanterman Act services. She testified credibly and persuasively that 60 to 70 percent of children who participate in the Early Start program do not go on to be eligible for continuing services under the Lanterman Act, even though many do continue to receive special education services.

7. According to Dr. Molho, Early Start participation itself is often one reason that Early Start participants are not eligible for Lanterman Act services later in childhood. With focused services such as those the Early Start program provides, many children who show developmental delays as infants and toddlers cease to show those delays, or show them less significantly, as they mature. Because of the wide variation among infants and toddlers in developmental paths, as well as because of variation in the Early Start program's impact, psychologists and pediatricians rarely can predict confidently for a child claimant's age that developmental delays will become lifelong substantial disability.

8. Autism spectrum disorder is, according to Dr. Molho, especially amenable to early intervention. In Dr. Molho's professional experience, some older children and adults with autism spectrum disorder are substantially unable to do many ordinary life activities independently, whereas others are not substantially disabled. Although early intervention is not the only explanation for this difference, it is important. In addition, Dr. Molho noted that about 10 percent of children who receive an autism spectrum disorder diagnosis before age three do not meet diagnostic criteria for this disorder at all by age eight.

## LEGAL CONCLUSIONS

1. Claimant would be eligible under the Lanterman Act for SARC's services only if he had a "developmental disability." (Welf. & Inst. Code, § 4501.) Claimant bears

the evidentiary burden in this proceeding of demonstrating his eligibility.

2. Conditions that may make a person eligible for Lanterman Act services include "autism." (Welf. & Inst. Code, § 4512, subd. (a).) As set forth in Finding 5, claimant's current diagnosis is that he has autism spectrum disorder, a qualifying condition.

3. A qualifying condition must be a "substantial disability" for the person, meaning that the condition 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)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The evidence summarized in Findings 3 and 4 shows claimant's developmental delay, but does not establish that claimant's disability is "substantial."

4. Under the Lanterman Act, an eligible person's substantial disability also must be likely to continue "indefinitely." (Welf. & Inst. Code, § 4512, subd. (a).) While the matters stated in Findings 6 through 8 do not establish that the Early Start program will eliminate claimant's current developmental delays, these matters also do not establish that claimant's developmental delays will ripen into indefinite substantial disability.

5. Because the evidence did not establish that claimant's autism spectrum disorder causes him substantial disability that will continue indefinitely, it did not establish that he presently is eligible for services under the Lanterman Act.

## ORDER

Claimant's appeal from SARC's determination that he does not meet the Lanterman Act's statutory eligibility criteria is denied.

DATED:

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JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This decision is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.