

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

**In the Matter of:**

**CLAIMANT, and**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency**

**OAH No. 2019060272**

**DECISION**

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 18, 2019, in Los Angeles, California.

Karmell Walker, Fair Hearing Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant was represented by his foster mother. Titles are used to protect confidentiality.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 18, 2019.

## **ISSUE PRESENTED**

Claimant has been diagnosed with Autism Spectrum Disorder (ASD). Whether Claimant substantially disabled by his ASD and, therefore, eligible for services from the Service Agency.

## **EVIDENCE RELIED UPON**

SCLARC's exhibits 1-11; and testimony of Dr. Laurie McKnight Brown, SCLARC psychologist, and Claimant's foster mother.

## **FACTUAL FINDINGS**

1. Claimant is a three-year, three-month-old male consumer of the Service Agency who has been diagnosed with ASD. Before age three he received services under the Early Start Program due to developmental delays. Such services generally end at a child's third birthday.

2. After age three, possible services from SCLARC would fall under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act).<sup>1</sup> ASD is a developmental disability for which services may be available under the Lanterman Act. A second

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

requirement to receive services is that the consumer must be substantially disabled due to the eligible developmental disability. This is determined by reference to seven areas of major life activity, discussed in more detail below.

3. In March 2019, the Service Agency sent a letter to inform foster mother of its determination that Claimant is not substantially disabled by his ASD.<sup>2</sup> Foster mother submitted a Fair Hearing Request, which resulted in the July 18, 2019 hearing.

4. To gather information, the Service Agency referred Claimant for evaluation by Consulting Collective, who assigned Auriella Mason, Psy.D. Dr. Mason evaluated Claimant on March 9 and 14, 2019. Among other things, Dr. Mason administered several tests, gathered information from his foster mother and observed Claimant. Dr. Mason wrote a report. (Exhibit 3.)

5. At the hearing, Dr. Laurie McKnight Brown, SCLARC's lead psychologist, reviewed and interpreted the report. Dr. Brown has a Ph.D. in psychology, with an emphasis in clinical psychology. She is familiar with the tests administered by Dr. Mason.

6. Dr. Brown testified credibly about the seven areas of major life activity that are evaluated to determine if someone is substantially disabled by a developmental disability. These areas are listed in a statute and a regulation discussed in the Legal Conclusions below. The seven areas are: (1) self-care; (2) receptive and

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<sup>2</sup> The letter is dated March 9, 2019, which is clearly a mistake. The first sentence of the letter states that the decision to deny eligibility was made on March 16, 2019. (Exhibit 2.)

expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. Dr. Brown noted that, because of Claimant's young age, major life activity areas (6) and (7) do not apply. At least three of the remaining major life activity areas must be found for a consumer to be "substantially disabled" and, therefore, eligible for services under the Lanterman Act.

7. Dr. Brown relied on the results of the Adaptive Behavior Assessment System, Third Edition (ABAS-3). Dr. Mason found that, on the Practical Domain, Claimant's standard score was 83; on the Conceptual Domain, Claimant's Standard Score was 86; and on the Social Domain, Claimant's Standard Score was 82. All three scores are described as Below Average.

8. Dr. Brown explained that the following major life activity areas of substantial disability relate to the following Domains of the ABAS-3: self-care is measured within the Practical Domain; receptive and expressive language and learning are measured within the Conceptual Domain; and self-direction is measured within the Social Domain.

9. Dr. Brown explained further that, based on the scoring system used for the ABAS-3, to meet the level of a substantial disability, the person tested must receive a standard score of 70 or lower, described as Low or Extremely Low. Because all of Claimant's standard scores were above 80, he did not meet the requirement of being substantially disabled by his ASD in the of major life activity areas of self-care, receptive and expressive language, learning, or self-direction. On the subject of Claimant's mobility, Dr. Brown referred to the portion of Dr. Mason's report on motor skills, which were described as average.

10. In the Fair Hearing Request (exhibit 1), foster mother wrote that Claimant scores below average on his testing, his brothers and mother have developmental delays and mental illness, he struggles with daily tasks, and he needs more help than is offered by his school district.

11. At the hearing, foster mother expressed legitimate concerns about Claimant's family history, his disability and challenging behaviors, issues of services that were delayed or not provided in the past, and his need for services. She repeated information from the Fair Hearing Request and added that Claimant's speech is declining and he has unusual sensitivities to touch. Claimant has no concern for danger, such as darting away or into the street or approaching strangers. He does not realize the consequences of his actions. Claimant cannot follow simple directions. Foster mother stated that he struggles every day. There were problems with services under the Early Start program. Speech therapy sessions were delayed or missed because the therapist had trouble scheduling and attending sessions. Although an assessment determined that Claimant was entitled to behavioral services, the approval came just three days before his third birthday and the services were never provided.

12. Foster mother has applied for services from Claimant's school district, and speech therapy has been approved, although at the level of only 20 minutes per week, when Early Start had approved two hours per week. Foster mother will explore more services from the school district and speech therapy, behavioral services and other services funded by Claimant's health insurer.

## LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s denial of eligibility for Claimant. Jurisdiction in this case was thus established. (Factual Findings 1-3.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to become eligible for services has the burden to demonstrate that the services should be provided, because the party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his request for eligibility. (Factual Findings 1-12.)

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Code, § 4501.) These services and supports are provided by the state’s regional centers. (Code§ 4620, subd. (a).)

4. In order to be eligible for regional center services, a person must have a qualifying developmental disability. As applicable to this case, Code section 4512, subdivision (a), defines “developmental disability” as “a disability which originates before an individual attains age 18, continues, or can be expected to continue,

indefinitely, and constitutes a substantial disability for that individual. . . . This [includes] autism.”

5. To prove the existence of a developmental disability within the meaning of Code section 4512, a claimant must show that he has a “substantial disability.” Pursuant to Code section 4512, subdivision (l):

“Substantial disability” means the existence of 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:

(1) Self-care. [¶] (2) Receptive and expressive language. [¶]  
(3) Learning. [¶] (4) Mobility. [¶] (5) Self-direction. [¶] (6)  
Capacity for independent living. [¶] (7) Economic self-sufficiency.

6. Very similar language is found in California Code of Regulations, title 17 (Regulation), section 54001. Any difference between Code section 4512, subdivision (l) and the Regulation are not relevant to this matter.

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7. Claimant has several challenging behaviors and other symptoms of his ASD. However, as set forth in Dr. Mason's report and the test results, and as explained by Dr. Brown, Claimant has not met the legal requirements to establish that his ASD is substantially disabling based on the evidence available at this time.

## **ORDER**

Claimant's appeal of the Service Agency's decision to deny his eligibility for services is denied.

DATE:

DAVID B. ROSENMAN

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.