

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**SAN ANDREAS REGIONAL CENTER,**

**Service Agency**

**OAH No. 2019061179**

**DECISION**

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on August 23, 2019, in San Jose, CA.

Claimant represented himself at hearing.

Mike Keeley, MS, LFMT, Director of Consumer Services, represented service agency San Andreas Regional Center (SARC or regional center or service agency).

The matter was submitted for decision on August 23, 2019.

## **ISSUE**

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)<sup>1</sup> because he has autism spectrum disorder?

## **FACTUAL FINDINGS**

### **Introduction**

1. Claimant is a 25-year-old male who has been diagnosed with Autism Spectrum Disorder (ASD), Attention Deficit and Hyperactivity Disorder, and Asperger's syndrome. He lives with his parents.

2. SARC is one of 21 regional centers in California to serve people with developmental disabilities and their families. SARC provides service coordination and individualized planning to assist consumers and their families in accessing services and supports to meet the individuals' needs. Service planning may include resources in the community or services funded by the regional center, including respite for parents and caregivers, day activity/work programs for adults, and residential and community living options for individuals.

3. Claimant was referred to SARC by his primary physician, Tan Nguyen, M.D., and a neurologist at Palo Alto Medical Foundation, to determine his eligibility for

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<sup>1</sup> All citations are to the Welfare and Institutions Code.

regional center services and for neuropsychological diagnostic testing. According to Claimant, he was required to apply for services with SARC as a prerequisite for receiving additional services at Palo Alto Medical Foundation.

4. On May 16, 2019, SARC issued a Notice of Proposed Action denying Claimant's application for eligibility for services because a clinical review had determined that Claimant does not demonstrate the presence of a developmental disability and/or substantial handicap in three or more of the seven major life domains as required under the Lanterman Act. SARC also provided Claimant with referrals to community based resources that relate to neuropsychological assessment and evaluation as follows: Northern California Neuropsychology Forum [www.ncnf.org](http://www.ncnf.org); Neuropsychology Education Assessment and Treatment in Los Altos, and Santa Clara County Psychological Association [www.sccpa.org](http://www.sccpa.org). Claimant requested a fair hearing.

5. SARC does not dispute that Claimant meets the criteria for ASD under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), section 299.00. However, SARC disputes whether Claimant is substantially disabled to qualify for services. SARC also confirmed at hearing that it does not perform neuropsychological testing of individuals.

### **Claimant does not have a substantial disability**

6. Pursuant to the Lanterman Act, section 4512, subdivision (l), the term "substantial disability" is defined as "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."

7. On March 18, 2019, Claimant had an intake social assessment with SARC's intake service coordinator Nancy Lee and psychologist Faith Langlois-Dul, Psy.D. During the assessment, Claimant had good eye contact and was dressed appropriately, but he had one shoe untied. He participated throughout the assessment and took notes.

8. As a result of the assessment, Claimant's current functioning was determined, as follows:

A. Motor domain/mobility: Claimant can walk unaided and has no gross or fine motor issues, although his print writing is poor.

B. Communication domain/receptive and expressive language: Claimant can usually verbally express his wants and needs. He spoke clearly, but at a rapid rate with occasional stuttering. When responding to questions, he spoke quickly and frequently gave long and convoluted answers. His receptive language skills were good throughout the meeting.

C. Social domain/emotional: Claimant described himself as extroverted but cautious and said he had been socially withdrawn for a few years. He was bullied in the first grade. He had a friend in high school who also has ASD, and they kept in contact until Claimant moved away. He enjoys reading fiction and researching history topics. Claimant does not engage in negative behaviors such as showing aggression, being self-injurious, destroying property or having temper tantrums.

D. Cognitive domain: Claimant can read and write. Past cognitive testing placed him in the normal cognitive range.

E. Independent living domain/self-help skills: Claimant can dress, feed, take his medication, use a bus for transportation, and toilet himself independently. He needs reminders to brush his teeth and hair. He can cook a variety of foods and follow a recipe. He can perform household tasks with occasional reminders from his parents. He can stay at home alone overnight and go out into the community by himself. When asked what he would do if there is a fire in the house, he did not mention calling 911. He has never lived independently. Claimant reports that he has fair money management skills and he pays his cell phone bill.

F. Vocational domain: Claimant has held a variety of jobs in the past in retail and warehouse work, but only for a few months at a time. Currently, he is working for a temporary agency.

9. Claimant and his parents also completed the Adaptive Behavior Assessment System – Third Edition (ABAS-III), with the following results:

General Adaptive Composite on self-report 88 (below average)

Conceptual Composite 89 (below average)

Social Composite 79 (average)

Practical Composite 93 (average)

General Adaptive Composite on parent report 1 (extremely low)

Communication 6-7 (below average)

Functional Academics 9 (average)

Self-direction 5 (low)

Leisure	5 (low)
Social	3 (low)
Community Use	9 (average)
Home Living	5 (low)
Health and Safety	1 (extremely low)
Self-Care	1 (extremely low)

10. After reviewing the available records and based on her observations and interview of Claimant, Dr. Langlois-Dul wrote an eligibility determination report. She concluded that Claimant meets the DSM-V criteria for ASD and he has substantial challenges in the area of self-direction. However, he does not have a substantial disability in three of the seven designated areas of adaptive functioning. He does not have a substantial deficit in mobility, learning, self-care, receptive and expressive language, or capacity for independent living. Claimant has had past binge spending and some late payments, which he later learned to manage, and he does not have a substantial deficit in economic self-sufficiency. Dr. Langlois-Dul opined that Claimant is not eligible for regional center services.

11. Although Claimant stated that he suffers from general cognitive inabilities which sometimes manifest as fatigue, he agreed that he is not substantially disabled in three of the seven diagnostic criteria. He agreed that he has no problems with mobility. Regarding self-care, he stated that he occasionally neglects his personal hygiene, but he can take care of toileting and other needs. He has no problem perceiving language. He has an ATM card and can manage his transportation needs.

Although he agreed that he was not substantially disabled in three diagnostic criteria, Claimant stated that he occasionally experiences difficulties, but not to the degree where he cannot do things on his own. He agreed that he is substantially impaired in self-direction, especially in making deadlines. Regarding learning, he stated that he may have to exert more effort than others, but he has the capability to learn and attends community college.

12. Ultimately, the evidence did not establish that Claimant has met enough criteria to support a determination of a substantially disabling condition at this time to meet the definition of a developmental disability to be eligible for SARC services.

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities and 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." (§ 4501.)

2. A developmental disability is 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." (§ 4512, subd. (a).)

3. Claimant has the burden of proving, by a preponderance of the evidence, that he has a developmental disability as defined under the Lanterman Act that makes him eligible for regional center services. (Evid. Code, § 115.)

4. The evidence established that Claimant has ASD with deficits in self-direction; however, he is not substantially disabled in three adaptive skill areas. Therefore, he is not eligible for regional center services. Consequently, his appeal must be denied. Claimant has other conditions which are not covered under the Lanterman Act, but may qualify him for services through other entities.

### **ORDER**

The appeal of Claimant is denied.

DATE:

REGINA BROWN

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.