

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

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER, Service Agency.

OAH No. 2020060272

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter by telephone and videoconference on July 16, 2020.

Claimant's parents advocated for her at the hearing. Claimant did not participate personally in the hearing.

James F. Elliott represented service agency San Andreas Regional Center.

The matter was submitted for decision on July 16, 2020.

ISSUE

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

FACTUAL FINDINGS

1. Claimant was born in April 2017.
2. Claimant has Ullrich muscular dystrophy, a congenital disorder that affects skeletal muscles and connective tissue. Her treating physicians diagnosed this disorder when claimant was a young infant. Claimant's muscular dystrophy causes severe generalized muscle weakness and joint hypermobility. Because she cannot swallow well, she receives most of her nutrition through a gastrostomy tube. She sees specialist physicians regularly in gastroenterology, cardiology, pulmonology, orthopedics, and neurology; she also receives physical, occupational, and speech therapy.
3. Claimant participated in the Early Start program through SARC and the Santa Clara County Office of Education.
4. Claimant's parents asked SARC to accept claimant as a consumer receiving services from SARC under the Lanterman Act. After evaluation, SARC determined that claimant did not qualify for Lanterman Act services.

5. SARC notified claimant's parents in writing on May 7, 2020, that it did not consider claimant eligible to receive Lanterman Act services from SARC. Claimant's parents timely requested a hearing.

6. Claimant's parents provided reports to SARC from several of claimant's treating physicians, and from a social worker. These letters confirm that claimant has significant physical disability affecting her ability to move independently, to communicate by speaking, and to care for herself. They also confirm that claimant's disability is likely to continue throughout her life. These letters do not state, however, that claimant's muscular dystrophy has caused or is likely to cause cognitive disability; to the contrary, claimant's social worker notes that "[c]ognition is not always affected in this population."

7. Claimant's most recent Individualized Family Service Plan (IFSP) for the Early Start program, from February 2020, notes that she is "within normal range for age" with respect to receptive communication development. She is "below age level" with respect to expressive communication. With respect to cognitive skills that do not depend directly on communication (such as attention, memory, exploration, and problem-solving), claimant is somewhat below age level, but not as far below as she is with respect to expressive communication.

8. Clinical psychologist Azelin Ellis, Psy.D., led SARC's assessment of claimant's potential eligibility under the Lanterman Act for SARC's services, and testified at the hearing. Dr. Ellis testified that claimant's overall cognitive abilities, as assessed through the Early Start program and summarized in claimant's February 2020 IFSP, are not far enough below the normal range for claimant's age to justify describing claimant as intellectually disabled. Dr. Ellis testified further that although claimant will need significant support throughout her life, continuing the support and

treatment described above in Finding 2, that support is not and will not be similar to the support necessary for a person with intellectual disability. Dr. Ellis's opinion is persuasive.

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 she suffers from a qualifying developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a).)

2. Disabilities 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.*)

3. The Lanterman Act does not authorize SARC to serve people with disabilities that are "solely physical in nature." (Welf. & Inst. Code, § 4512, subd. (a).)

4. The matters stated in Findings 2 and 6 through 8 do not demonstrate that claimant has any intellectual disability, or has any disability requiring treatment similar to treatment for an intellectual disability. These matters also do not demonstrate that claimant has cerebral palsy, epilepsy, or autism. Claimant has not demonstrated at this time that she meets the statutory eligibility criteria for Lanterman Act services.

ORDER

Claimant's appeal from SARC's May 7, 2020, decision denying claimant's application for Lanterman Act services is denied.

DATE: July 21, 2020

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.