

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER, Service Agency.

OAH No. 2020070189

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on August 17, 2020, by videoconference.

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

Claimant was represented by his mother. Claimant was not present at hearing.

The record closed and the matter was submitted on August 17, 2020.

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

Introduction

1. Claimant is three years old and lives with his mother and older sister.
2. Claimant received services from the Santa Clara County Early Start Program, which is run by SARC and the Santa Clara County Office of Education. The Early Start Program provides services for children up to age three who are at an increased risk for a developmental disability. As part of this program, claimant was monitored for signs of any developmental disability.
3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) provides ongoing lifetime assistance from regional centers to individuals with five types of developmental disabilities: intellectual disability, cerebral palsy, epilepsy, autism, and the "fifth category" of conditions closely related to intellectual disability or that require similar treatment. (Welf. & Inst. Code, § 4512, subd. (a).)¹ For each of the above, the condition must begin before the age of 18, must be permanent, and must be a substantial disability for the person. "Substantial disability" means the person has significant functional limitations, as appropriate to the person's age, in three or more areas of major life activity. (§ 4512, subd. (l)(1).)
4. On May 26, 2020, SARC issued a determination that claimant was not eligible for continuing regional center services under the Lanterman Act, based on the

¹ Statutory references are to the Welfare and Institutions Code, unless stated otherwise.

SARC clinical team finding no evidence claimant has a substantial developmental disability.

5. Claimant contends he is eligible for regional center services. A fair hearing request was submitted on June 24, 2020, and this proceeding followed.

6. SARC does not agree with a diagnosis of autism for claimant, and even if claimant has a valid diagnosis of autism, SARC contends that the evidence does not show claimant has a substantial disability. SARC's position is that, although claimant does have special needs, he is not functionally impaired to the degree that would make him eligible for lifetime regional center services.

Intake and Services Through Early Start Program

7. Claimant was reportedly given a diagnosis of autism spectrum disorder (ASD) (Level 1) by Kaiser Permanente psychologist Mary Poon, Psy.D., in July 2019, at age two. Those records were not provided at hearing and are not in evidence.

8. In October 2019, claimant was referred to the regional center by his mother for concerns of ASD.

9. Claimant entered the Early Start Program on November 15, 2019, at age 31 months. The Early Start intake team disagreed with a diagnosis of autism and assigned claimant an educational category of SLI (speech-language impairment).

10. Claimant was assessed by occupational therapist Crystal Gines, M.S., OTR/L, and speech-language pathologist Katherine Pollard-Pollak, M.A., CCC-SLP. The assessment included a parent interview and questionnaire, observation of claimant, and administration of a developmental assessment inventory. An Individualized Family Service Plan (IFSP) was issued on November 26, 2019, stating the results of claimant's

assessment and the services recommended, and the assessment team met with claimant's mother that day to discuss the findings.

Claimant's mother had an uneventful prenatal period, and claimant was born at full term. He is a healthy child with no significant illnesses or injuries. The primary concern of claimant's mother was claimant's communication skills — he did not always use words to communicate his wants or needs, did not imitate words, and sometimes walked away when asked to repeat or say a word. Claimant's mother also reported that he had tantrums when asked to transition between activities, and limited safety awareness with a tendency to run away from her when out in the community.

The Early Start assessment team found that claimant had developmental delays in several areas compared to other children of his age: communication (receptive and expressive language), social/emotional, and adaptive/self-care. It was recommended that claimant receive service coordination from SARC, one hour weekly of specialized instruction at home by a SARC early intervention specialist, and one hour weekly of speech therapy at a clinic by a speech pathologist (through his insurance).

11. On December 9, 2019, a transition planning meeting was held with claimant's mother, SARC service coordinator Gissella Morante, L.C.S.W., and Evergreen School District representative Mary Granados. The difference between Early Start Program services and ongoing regional center services was discussed, as well as the process for transitioning from Early Start services to special education services through the school district. It was also noted that claimant was starting Applied Behavior Analysis (ABA) services through his insurance in December 2019.

12. On January 9, 2020, Morante referred claimant to Evergreen School District to determine whether he was eligible for preschool special education services.

SARC Eligibility Determination for Services Under Lanterman Act

13. On January 9, 2020, the SACR Early Start Unit completed a form discussing their recommendations as to whether claimant was eligible for continuing regional center services after age three.

Morante wrote that claimant's current delays were "receptive communication (58% below age level), expressive communication (61% below age level), adult interaction (39% below age level), peer interaction (no basal obtained), and self-care (45% below age level)." She noted that the Early Start intake team did not agree with the autism diagnosis and assigned claimant the educational category of SLI, and that claimant was to receive weekly speech therapy and specialized instruction until his third birthday.

SARC clinical psychologist Carrie Molho, Ph.D., wrote that: "It appears that child has a language delay that may account for any delays. There is not data to review in order to make a good enough decision. Child's development should be monitored. But, he is not eligible."

14. Claimant's third birthday was in April 2020.

15. On May 26, 2020, the SARC clinical team (consisting of a psychologist, service coordinator, and district manager) agreed that claimant was not eligible for ongoing regional center services.

Claimant's Additional Evidence

16. Claimant's mother testified at hearing and provided additional reports.

17. Claimant does not speak many words at a time, usually only one word at a time, or sometimes two words. He gets angry easily, and it takes him a long time to learn things.

18. Behavior therapy and speech therapy have been very helpful for claimant, and his mother wants to ensure that he gets needed services while he is young. Since the COVID-19 pandemic began, claimant has been receiving therapy by telehealth rather than in person, and his behavior has regressed.

19. Since December 2019, claimant has been receiving ABA services from Thrive Therapy and Social Center. An Applied Behavior Analysis Progress Report² discussed claimant's adaptive functioning assessment, reported on progress toward claimant's goals, and made recommendations. The Vineland Adaptive Scales, third edition (Vineland-3) was used to assess claimant's developmental functioning, and showed an "adequate" score for communication, daily living skills, coping skills, and motor skills. His expressive communication and fine motor skills were assessed as "moderately low." Claimant's overall adaptive behavior composite score was 98, just below the average of 100. The center also used the Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP) to assess claimant, which showed deficits in the areas of following complex listener instructions and following group instructions. The VB-MAPP Barriers assessment showed some problems with social skills and obsessive-compulsive habits. The VB-MAPP Transition assessment showed

² The date listed at the end of the report is April 14, 2020, but this appears to be an error, because the report discusses treatment progress up to early August 2020.

that claimant had deficits in independent self-help skills which should be addressed before he can join a “least-restrictive” group setting.

Since beginning ABA services in December 2019, claimant made progress on some of his treatment goals, but other goals were placed on hold due to the pandemic shelter-in-place restrictions. For example, claimant met goals as of July 2020 in expressive communication, and showed some progress in pragmatic communication goals before the shelter-in-place restrictions.

The providers found that intensive ABA services are appropriate for claimant. The providers noted that direct service hours are currently unavailable due to the pandemic, but will be available once restrictions are lifted. They found claimant would receive some benefit from telehealth ABA services.

20. Since August 2019, claimant has been receiving one hour a week of speech therapy at Thrive Therapy and Social Center, from Cecilia Dang, M.S., CCC-SLP. Since April 2020, those services have been provided by telehealth due to the pandemic. A speech therapy progress report was issued on August 5, 2020. Claimant was described as a smart and playful child, who is socially motivated and learns language concepts quickly within naturalistic play. He was benefiting from speech and language therapy, and had met four out of four goals since January 2020. New proposed goals were set, and claimant was recommended to continue speech therapy.

21. Claimant’s mother explained at hearing that the school district has not yet finished assessing claimant’s eligibility for special education services. One home visit was made, but the second visit was canceled due to the pandemic.

22. On June 15, 2020, the Department of Developmental Services issued a directive to regional centers, recognizing that the pandemic may delay the transition

to local school special education services at age three. For children who received Early Start services through regional centers and reached their third birthday during the COVID-19 State of Emergency, the requirements ending early intervention services at age three are waived. Claimant appears to be eligible to continue receiving Early Start services during the pandemic. However, this is a different question than whether he is eligible to receive lifetime regional center services under the Lanterman Act.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for people with developmental disabilities under the Lanterman Act. (§ 4500, et seq.) The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services, and to enable people with developmental disabilities to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to

the person's age, in three or more of the following areas of major life activity: receptive and expressive language, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a).) The last two major life activities are generally not taken into account when assessing very young children such as claimant.

3. It is claimant's burden to prove that he has a developmental disability, as that term is defined in the Lanterman Act.

4. Claimant has not met his burden of establishing that he is eligible for regional center services at this time. It appears that claimant has been diagnosed with ASD by his medical providers, although that medical evidence is not part of the record in this matter. (Factual Finding 7.) Regardless, even if claimant does have ASD, there is insufficient evidence at this time that he is substantially disabled due to significant functional limitations in at least three of the seven realms of major life activity. The evidence shows that claimant has delays in some areas. The assessment by the Early Start intake team found he had delays in receptive and expressive communication, adult and peer interaction, and self-care. (Factual Finding 13.) But, those delays are not severe enough to be considered a substantial disability under the Lanterman Act. The most recent assessment of claimant's functional abilities and adaptive behavior found adequate skills in most areas, and moderately low skills in only two areas. (Factual Finding 19.) Claimant has not demonstrated a substantial impairment in three or more major life activities, as measured against what would be appropriate for a child his age. Accordingly, claimant's appeal must be denied.

ORDER

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

DATE:

HOLLY M. BALDWIN

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.