

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

**In the Matter of:**

**CLAIMANT**

**v.**

**SAN ANDREAS REGIONAL CENTER, Service Agency.**

**OAH No. 2022040631**

**DECISION**

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on October 13, 2022, by videoconference.

Claimant appeared on her own behalf.

James Elliott represented the San Andreas Regional Center (SARC).

**ISSUE**

Is claimant eligible for regional center services based on pervasive developmental delay not otherwise specified and/or autism spectrum disorder?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is 40 years old. She seeks regional center eligibility based on a diagnosis of pervasive developmental delay, not otherwise specified (PDD-NOS) and/or autism spectrum disorder (ASD).

2. In May 2020, the Regional Center of the East Bay (RCEB) determined that claimant was presumptively eligible for regional center services, pursuant to a Department of Developmental Services Directive in effect during the pandemic. Claimant was notified that she would be subsequently reassessed for a definitive determination on eligibility. RCEB assigned a case manager to claimant and agreed to provide services pursuant to a presumptive eligibility individualized program plan.

3. Claimant moved from the East Bay to Monterey, in SARC's service area.

4. In January 2022, SARC psychologist Faith Langlois-Dul, Psy.D., and intake service coordinator Anna Padilla-Rocha conducted an intake interview of claimant over videoconference for the purposes of assessing eligibility. Dr. Langlois-Dul also reviewed claimant's medical and psychological records. She issued a report concluding that claimant is not eligible for regional center services.

5. On March 18, 2022, SARC sent claimant a letter notifying her that she was not eligible for regional center services based on a finding that she is not substantially disabled in three or more areas of adaptive functioning. SARC issued a Notice of Proposed Action to claimant that same day.

6. Claimant timely submitted a Fair Hearing Request, and this hearing followed.

## **Claimant's Background**

7. Claimant described an unhappy and unsupportive upbringing characterized by abuse, neglect, and family conflict.

8. Claimant repeated kindergarten. She was placed in a special day class in seventh grade. She was hospitalized a number of times as an adolescent. Hospital records from this time reflect numerous diagnoses, including: Mixed Developmental Disorder, Mixed Specific Developmental Disability, Pervasive Developmental Disorder not otherwise specified, Major Depressive Disorder, Anorexia Nervosa, Intermittent Explosive Disorder, Posttraumatic Stress Disorder, Obsessive Compulsive Disorder, Borderline Personality Disorder traits, Mixed Personality Disorder with Organic and Borderline Features, Brief Psychotic Episode, Psychosis not otherwise specified, Atypical Psychosis, Mixed Learning Disability, and rule out Bipolar I Disorder.

9. Claimant was placed in a group home at age 15 and stayed there until she emancipated. She attended school through the county department of mental health. Claimant found the group home she lived in punitive rather than beneficial and believes she did not get the help she needed.

10. Claimant married at a young age and is now divorced.

11. Claimant earned an associate degree from Berkeley City College in multimedia arts with a focus in digital imaging. She has had some small freelance projects in this field, but has been frustrated by her inability to secure lucrative employment. Claimant has worked in a variety of other jobs, but reports that her

inability to get along with people has interfered with her employment success. Claimant is currently employed as a receptionist at a car dealership.

12. Claimant reported challenges securing a stable living environment. She reported having significant conflict with prior housemates, including her mother. She seeks regional center services primarily for assistance securing low-cost housing.

13. Claimant reported that she has had bad experiences seeking services from organizations such as the National Alliance on Mental Illness, because these organizations require attendance at group meetings which she thinks are not helpful. When she declines to attend the meetings, she is found to be “uncooperative” and ineligible for services.

14. Claimant’s therapist, Kim Sherman, L.C.S.W., wrote a letter in support of claimant’s appeal. Sherman has been providing weekly therapy to claimant since July 2021. Sherman wrote that claimant has had challenges keeping jobs and earning enough to be self-sufficient. She also noted that claimant mostly lived with her family or her husband in adulthood, and that she was not solely responsible for daily living responsibilities until moving into her own place at age 38. Sherman added that respondent has not lived independently for a sustained period, and that her interpersonal conflicts have upset her living stability. Sherman wrote that it has been hard for claimant to meet her basic living expenses with her entry-level employment positions. Sherman also noted that claimant received supports in college to help her succeed. Sherman believes that claimant has a need for long-term support services.

## **Pervasive Developmental Disorder Not Otherwise Specified**

15. PDD-NOS was eliminated as a diagnosis in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which was published in 2013. The DSM-5 provides that:

Individuals with a well-established DSM-IV diagnosis of autistic disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified should be given the diagnosis of autism spectrum disorder. Individuals who have marked deficits in social communication, but whose symptoms do not otherwise meet criteria for autism spectrum disorder, should be evaluated for social (pragmatic) communication disorder.

16. Because claimant was diagnosed with PDD-NOS prior to its elimination from the DSM-5, her diagnosis is appropriately considered an ASD diagnosis.

## **SARC Eligibility Determination**

17. Dr. Langlois-Dul interviewed claimant on January 18, 2022. Dr. Langlois-Dul assessed claimant's adaptive functioning based on the interview, her observations of claimant, and the ABAS-III self-assessment tool.

18. Based on claimant's self-report, claimant does not have a substantial disability in mobility or self-care. She is fully independent in these realms.

19. In the realm of learning, Dr. Langlois-Dul noted that claimant earned an associate degree and that no intellectual deficits were identified when claimant was

formally assessed during high school. Dr. Langlois-Dul concluded that claimant does not have a substantial disability in learning.

20. Dr. Langlois-Dul noted that claimant has strong receptive and expressive language skills and does not have a substantial disability in this realm.

21. Dr. Langlois-Dul concluded that claimant does have a substantial disability in the realm of self-direction, noting a history of aggressive behavior, emotional volatility, poor time management, and impulsive and emotional decision-making.

22. Dr. Langlois-Dul concluded that claimant does not have a substantial disability in economic self-sufficiency, noting that she works, manages her finances independently, pays her rent and credit card bills, and purchases her own groceries.

23. Dr. Langlois-Dul concluded that claimant does not have a substantial disability in her capacity for independent living, noting that claimant prepares her meals, does her laundry, manages her medications, attends medical appointments independently, schedules her appointments, has a driver's license, and uses public transportation.

24. Dr. Langlois-Dul's report regarding claimant's adaptive functioning is persuasive. The evidence does not establish that claimant is substantially disabled by ASD.

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (Act). (Welf. & Inst. Code, § 4500

et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

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.” The term “developmental disability” includes autism. (Welf. & Inst. Code, § 4512, subd. (a).) Handicapping conditions that consist solely of psychiatric disorders, learning disabilities, or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

3. Pursuant to 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.”

4. Regional center services are limited to individuals who meet the eligibility requirements established by law. It is claimant’s burden to prove that she has a developmental disability, as that term is defined in the Act.

5. Claimant was diagnosed with PDD-NOS as a teenager. Accordingly, she has a presumptive ASD diagnosis.

6. Claimant has a substantial disability in self-direction. (Factual Finding 21). Claimant does not have a substantial disability in any other area of major life activity. (Factual Findings 18-20 and 22-24.)

7. Claimant has not met her burden of establishing that she is substantially disabled by a developmental disability within the meaning of the Act, notwithstanding her presumptive ASD diagnosis and the many challenges she experiences. Claimant is not eligible for regional center services. Accordingly, her appeal is denied.

## **ORDER**

Claimant's appeal is denied.

DATE:

KAREN REICHMANN

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.