

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

**In the Matter of:**

**CLAIMANT**

**v.**

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

**OAH No. 2022080668**

**DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on September 7, 2022, by videoconference.

Claimant's parents appeared representing claimant. Claimant was not present.

Executive Director's designee James Elliott appeared for service agency San Andreas Regional Center (SARC).

The matter was submitted for decision on September 7, 2022.

**ISSUE**

Is claimant fully eligible, not provisionally eligible, for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act)?

## **FACTUAL FINDINGS**

1. Claimant was born in November 2018. He is almost four years old and lives with his parents.

2. Claimant's parents observed regression in claimant's speech development and social skills when he was about two years old (in late 2020). The COVID-19 pandemic interfered with claimant's parents' ability to obtain a developmental evaluation for claimant, but they contacted SARC on referral from claimant's pediatrician in September 2021.

3. SARC staff members evaluated claimant and concluded that he showed developmental delay in social, communication, and cognitive skills. SARC accepted claimant into the Early Start<sup>1</sup> program in October 2021.

4. Because claimant was already almost 36 months old in October 2021, planning for his transition out of the Early Start program began immediately. Claimant's local public school district evaluated claimant's potential need for special education services, concluding that claimant had speech and language impairment and likely also autism spectrum disorder. Claimant's parents participated in planning meetings with district representatives that resulted in an Individualized Education Plan (IEP) for claimant.

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<sup>1</sup> The Early Start program is for infants and children younger than 36 months who are at risk for developmental delay or disability. (Gov. Code, § 95000 et seq.)

5. In addition, SARC staff members evaluated whether claimant was eligible for ongoing services from SARC under the Lanterman Act. Although no formal diagnostic evaluation for claimant was available at that time, the assessment team concluded that he showed substantial developmental delays, by comparison to most three-year-old children, in communication, self-direction, and self-care. They determined that as of claimant's third birthday, in November 2021, he was provisionally eligible for Lanterman Act services from SARC.

6. SARC staff members worked with claimant's parents in late 2021 and early 2022 to develop an Individual Program Plan (IPP) for claimant. The IPP describes several needs and potential services, including respite for claimant's parents and participation by a SARC staff member in claimant's IEP planning and reviews.

7. In January 2022, an evaluation team at the Stanford Children's Health Sunnyvale Development and Behavior Clinic diagnosed claimant with autism spectrum disorder. The diagnostic report emphasizes claimant's developmental delays in communication and socialization, and his sensory processing differences, as the bases for this diagnosis.

8. In late 2021, claimant began attending a special education preschool through his local public school district. He continued to attend that preschool program at the time of the hearing.

9. In early 2022, claimant began receiving occupational therapy, speech therapy, Applied Behavioral Analysis (ABA) therapy, and a play-based therapy called DIR FloorTime. He continued all these therapy programs at the time of the hearing.

10. For reasons the evidence did not explain, no SARC staff member informed claimant's parents in writing until July 2022 that SARC had deemed him

provisionally eligible for services. Claimant's parents made a timely request for a hearing to determine whether SARC should have deemed, or now should deem, claimant to be fully eligible for Lanterman Act services rather than provisionally eligible.

11. Claimant's parents and therapists believe that the therapies claimant has received so far (summarized in Finding 9) have improved his receptive communication and some of his behavioral challenges. His parents intend to continue these therapies, and to add others that may become appropriate to claimant's age and needs. They fear, however, that claimant will remain substantially disabled by autism spectrum disorder despite these efforts. Claimant's parents note specifically that claimant's expressive communication skills remain very weak, that he is extremely active and at times uncontrollable, and that he seems reckless even in comparison to other children his age because he either fails to feel pain or disregards it.

12. Claimant's parents' concerns about claimant's development are reasonable. At the same time, these matters do not establish conclusively, either as of claimant's third birthday or as of the hearing date, that claimant's substantial disability is likely to continue for the rest of his life. When claimant approaches five years old, considerably more information will be available about him, reflecting a longer treatment record and evidence from multiple professionals including therapists, educators, and health care providers. This information will permit fuller and more certain evaluation of whether claimant's disability is likely to remain substantial for the rest of his life.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including SARC. (*Id.*, § 4620.)

2. Claimant bears the burden of establishing that he qualifies under the Lanterman Act for regional center services.

3. A “developmental disability” potentially qualifying a person for services under the Lanterman Act is “intellectual disability, cerebral palsy, epilepsy, [or] autism,” or any other condition “closely related to intellectual disability or [requiring] treatment similar to that required for individuals with an intellectual disability.” (Welf. & Inst. Code, § 4512, subd. (a)(1); see Cal. Code Regs., tit. 17, § 54000, subd. (a).) The matters stated in Finding 7 confirm that claimant has a developmental disability, autism spectrum disorder, potentially qualifying him for Lanterman Act services.

4. A qualifying disability must be “substantial,” meaning that it causes “significant functional limitations in three or more of the following areas of major life activity . . . : (A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self-direction. (F) Capacity for independent living. (G) Economic self-sufficiency.” (Welf. & Inst. Code, § 4512, subds. (a)(1), (f)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The matters stated in Findings 3 and 5 confirm that in October and November 2021, claimant experienced substantial impairment, as compared to children of similar age, in three major life activities. The matters stated in Finding 11 confirm that this substantial impairment continued at the time of the hearing. Finally,

the matters stated in Findings 4 and 7 confirm that this substantial impairment resulted in late 2021, and still results, from autism spectrum disorder.

5. Rather than being temporary, substantial disability qualifying a person for Lanterman Act services must be, or must be reasonably likely to be, lifelong. (Welf. & Inst. Code, § 4512, subd. (a)(1) [a developmental disability “continues, or can be expected to continue, indefinitely”]; Cal. Code Regs., tit. 17, § 54000, subd. (b)(2).) The matters stated in Findings 2 through 9 and 11 do not establish whether claimant’s substantial disability was likely in November 2021, or at the time of the hearing, to be lifelong.

6. The Lanterman Act deems three- and four-year-old children “provisionally eligible for regional center services” if available evidence suggests but does not establish conclusively that they meet all requirements for full eligibility. (Welf. & Inst. Code, § 4512, subd. (a)(2).) In particular, the Lanterman Act authorizes a regional center to make a three-year-old child who currently experiences substantial disability provisionally eligible for regional center services if information about the child’s developmental history is inadequate to demonstrate whether the child’s disability will continue to be substantial as the child matures. The matters stated in Findings 2 through 5 and in Legal Conclusions 3 through 5 justify SARC’s determination as of claimant’s third birthday that claimant is provisionally eligible for SARC services.

7. The Lanterman Act entitles a provisionally eligible child to the same regional center services as a fully eligible child, until the provisionally eligible child becomes five years old. (Welf. & Inst. Code, § 4512, subd. (a)(5).) During this period, if the child’s needs or circumstances change, the regional center and the child’s parent(s)

or guardian(s) may add, eliminate, or change regional center services, by amending the child's IPP. (Welf. & Inst. Code, §§ 4646, 4646.5, subd. (b).)

8. Shortly before a provisionally eligible child's fifth birthday, to determine whether to continue Lanterman Act services to that child beyond age five, the regional center serving that child must reassess whether the child meets the eligibility criteria stated in Welfare and Institutions Code section 4512, subdivision (a)(1). (Welf. & Inst. Code, § 4512, subd. (a)(4).) This reassessment must consider all available information about the child's development, including information about how the child has (or has not) responded to medical, social, and educational interventions during the period of provisional eligibility. (*Id.*, § 4643.)

9. The matters stated in Findings 7 through 10 and 12 describe information sources on which SARC must rely when SARC reassesses claimant. The matters stated in Finding 1 do not establish, however, that claimant is yet old enough that SARC must reassess him.

10. On this record, SARC has not violated the Lanterman Act by deeming claimant provisionally eligible for services, and will not violate the Lanterman Act by waiting to reassess claimant's eligibility until claimant approaches five years old.

## **ORDER**

1. Claimant's appeal from SARC's November 2021 determination that claimant demonstrated provisional eligibility, but not full eligibility, for services under the Lanterman Act is denied.

2. Claimant remains provisionally eligible for Lanterman Act services. SARC shall continue providing services to claimant in accordance with his IPP, as claimant's family and SARC may amend that IPP from time to time.

3. SARC shall reassess claimant for Lanterman Act eligibility at the time and in the manner required by Welfare and Institutions Code section 4512, subdivision (a)(4).

DATE:

JULIET E. COX

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.