

**BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022080811**

**DECISION**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 18, 2022.

Claimant was represented by his foster parents. The names of Claimant and his family members are omitted to protect their privacy.

Jorge Morales, Appeals Specialist, represented Eastern Los Angeles Regional Center (ELARC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 18, 2022.

## **ISSUE**

Whether Claimant is eligible or provisionally eligible for services and supports from ELARC under the Lanterman Developmental Disabilities Services Act.

## **EVIDENCE RELIED UPON**

Documents: ELARC exhibits 1 through 13; Claimant's exhibit A. Testimony: Jorge Morales; Claimant's foster father.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. ELARC determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq. [undesignated statutory references are to this code].)

2. Claimant is a three-year-old boy who lives with his foster parents. In November 2019, Claimant began receiving weekly early intervention services from ELARC under the Early Start program due to concerns regarding his overall development. The Early Start program was established by the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) for infants and toddlers who are born with, or at risk for, developmental delays. The program is not a part of the Lanterman Act, which has different eligibility criteria.

3. In March 2020, ELARC placed Claimant's early intervention services on hold due to the COVID-19 pandemic. In August 2020, Claimant was diagnosed with cerebral palsy with right spastic hemiplegia, and he was prescribed a leg brace for his right leg. ELARC resumed weekly early intervention services for Claimant in September 2021.

4. On April 13, 2022, Heike Ballmaier, Psy.D., performed a videoconference psychological evaluation of Claimant at ELARC's request. ELARC asked Dr. Ballmaier to assess Claimant's cognitive and adaptive functioning and to rule out autism spectrum disorder for purposes of determining his eligibility for Lanterman Act services and supports after he aged out of the Early Start program.

5. Claimant scored in the low average range on the cognitive subtest of the Developmental Profile-4, and he scored in the low average to average range in adaptive abilities on that test. Claimant scored in the average range on the functional pre-academic section of the Adaptive Behavior Assessment System, Third Edition. Dr. Ballmaier's testing and observations did not support a diagnosis of intellectual disability or autism spectrum disorder. However, Dr. Ballmaier diagnosed Claimant with a "Language Disorder (Provisional)," because Claimant "appears to demonstrate some difficulties in the use of language due to deficits in the comprehension and production of vocabulary, sentence structure, and communication" that were not age appropriate. (Exhibit 4.) Dr. Ballmaier reported that "[f]urther testing in the future is necessary to determine the presence of a full language disorder or other developmental delays or deficits if concerns persist or worsen over time." (*Ibid.*)

6. Claimant turned three years old on May 2, 2022, which is the age limit for early intervention services under the Early Start program. On May 18, 2022, ELARC completed a "High Risk Infant Closure Summary" for Claimant's exit from that

program. The summary stated that Claimant's average cognitive abilities and low average to average adaptive abilities meant he was not eligible or provisionally eligible for services and supports under the Lanterman Act.

7. On August 3, 2022, ELARC wrote to Claimant's foster mother that Claimant had reached the age limit for early intervention services on his third birthday, and he was therefore no longer eligible to receive those services. ELARC also stated that a multidisciplinary review team "has determined there is no evidence of developmental disability, therefore, [Claimant] will also not be eligible for Regional Center services in accordance with the Lanterman Act." (Exhibit 1.) Accordingly, ELARC would no longer be providing any services and supports to Claimant.

8. On August 15, 2022, ELARC received a fair hearing request from Claimant's foster mother appealing ELARC's decision to stop providing services and supports to Claimant.

## **Hearing**

9. Morales presented records of Claimant's medical and psychological assessments and argued they do not show Claimant is eligible or provisionally eligible for Lanterman Act services and supports. According to Morales, Claimant's cerebral palsy is not substantially disabling and therefore does not establish Claimant's eligibility or provisional eligibility. ELARC determined that Claimant's cerebral palsy is being managed adequately, and Claimant's receipt of early intervention services does not equate with eligibility under the Lanterman Act. While Morales acknowledged that more assessments of Claimant are needed, ELARC believes Claimant is ineligible for Lanterman Act services and supports based on the existing assessments.

10. Claimant's foster father testified that Claimant's cerebral palsy affects him physically and emotionally. When he is running or active for long periods, his right leg starts dragging, which causes him to fall. Claimant gets frustrated by his mobility issues, and he has frequent and extended temper tantrums. His speech can also be difficult to understand.

11. Claimant's foster parents also presented a recent physical therapy assessment stating that Claimant "is beginning to demonstrate [left lower extremity] preference with functional activities such as stairs and transitions" due to his cerebral palsy. (Exhibit A.) In addition, "[t]hrough functional activities, [Claimant] appears to present with asymmetry with [right lower extremity] weakness, decreased [right] stance stability, and overall decreased balance." (*Ibid.*) The physical therapist recommended twice-weekly therapy for Claimant for eight weeks to address these issues.

## **Analysis of Evidence**

12. ELARC does not dispute that Claimant has cerebral palsy. Furthermore, the weight of the evidence supports a finding that Claimant has significant functional limitations in his mobility and in his receptive and expressive language. As to mobility, Claimant uses a leg brace due to his cerebral palsy, and he is beginning to show signs of left lower extremity preference and right lower extremity weakness. As to receptive and expressive language, Dr. Ballmaier's assessment states that Claimant displays deficits in language comprehension and communication and has a provisional diagnosis of a language disorder.

13. ELARC's determination that Claimant is not eligible or provisionally eligible for Lanterman Act services and supports seems to be based largely on Dr. Ballmaier's report, which diagnoses Claimant with just a provisional language disorder.

But this overlooks Claimant's cerebral palsy diagnosis and associated mobility issues. Considering that diagnosis and the mobility issues along with Dr. Ballmaier's report supports a conclusion that Claimant is at least provisionally eligible for Lanterman Act services and supports, as described below.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. The Lanterman Act provides services and supports to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) "'Developmental disability' means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall 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, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a)(1).)

2. A developmental disability must be a "substantial disability" in order for an individual to qualify for Lanterman Act services and supports. (§ 4512, subd. (a)(1).) "'Substantial disability' means 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: [¶] (A) Self-care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." (§ 4512, subd. (f)(1).)

3. Additionally, effective July 16, 2021, a child who is three or four years old who is not otherwise eligible for services "shall be provisionally eligible for regional center services if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity, as determined by a regional center and as appropriate to the age of the child: [¶] (i) Self-care. [¶] (ii) Receptive and expressive language. [¶] (iii) Learning. [¶] (iv) Mobility. [¶] (v) Self-direction." (§ 4512, subd. (a)(2)(A).) To be provisionally eligible, a child is not required to have one of the developmental disabilities listed in section 4512, subdivision (a)(1). (§ 4512, subd. (a)(2)(B).)

4. ELARC determined Claimant is not eligible or provisionally eligible for services and supports under the Lanterman Act. Claimant has properly exercised his right to an administrative fair hearing to challenge that determination. (See §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (E.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; see also *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1136 [denying eligibility where an applicant's expert opinion evidence did not "sufficiently refute" the regional center's expert opinion evidence].) This burden of proof requires proof by a preponderance of the evidence because no law or statute (including the Lanterman Act) provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.'" [Citation.] (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Analysis**

5. The evidence proves that Claimant meets the criteria for provisional eligibility for Lanterman Act services and supports. Claimant is three years old, a qualifying age for provisional eligibility. His cerebral palsy is a disorder not solely physical in nature that is included in the definition of a developmental disability under the Lanterman Act. Claimant also has significant functional limitations in at least two of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; and (v) self-direction. (§ 4512, subd. (a)(2)(A).). Claimant has significant functional limitations in his mobility and in his receptive and expressive language. These facts support the conclusion that he is at least provisionally eligible for Lanterman Act services and supports from ELARC.

6. The fair hearing request also concerns whether Claimant is fully eligible for Lanterman Act services and supports, not just provisionally eligible. A decision on that issue can wait until the end of the provisional eligibility period. This will allow time for the additional assessments of Claimant that ELARC's representative acknowledges are necessary.

## **ORDER**

Claimant's appeal is granted in part. Claimant is provisionally eligible for regional center services and supports under the Lanterman Act, and he is entitled to receive those services and supports from ELARC during the provisional eligibility period.

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During the provisional eligibility period, ELARC shall perform all assessments necessary to determine whether Claimant is eligible for Lanterman Act services and supports after the provisional eligibility period ends. Nothing in this decision prevents a future fair hearing request about that issue.

DATE: 11/01/2022

THOMAS HELLER

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.