

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**NORTH BAY REGIONAL CENTER, Service Agency.**

**DDS No. CS0009143**

**OAH No. 2023080858**

**DECISION**

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, who served as the hearing officer and heard this matter on October 11, 2023, by videoconference.

Beth DeWitt, Director of Client Services, represented the North Bay Regional Center (NBRC), the service agency.

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

The record closed and the matter was submitted for decision on October 11, 2023.

## ISSUE

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

## FACTUAL FINDINGS

1. Claimant was born in March 2020, and he is approximately three and one half years old. He is provisionally eligible for services under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.).<sup>1</sup>

2. "Full," "regular," or "enduring"<sup>2</sup> eligibility for services under the Lanterman Act requires claimant to have a developmental disability that originates prior to him attaining 18 years of age, the disability must not be solely physical in nature, the disability must be expected to continue indefinitely, and the disability must constitute a substantial disability for claimant. (§ 4512, subd. (a)(1).) A substantial disability, for an individual claimant's age, requires significant functional limitations in at least three of five major life activity areas: self-care, receptive and expressive language, learning, mobility, and self-direction. (*Id.*, subd. (l)(1).)

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<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code unless otherwise noted.

<sup>2</sup> All three terms were used in the documentary evidence and/or testimony at hearing.

3. Provisional eligibility under the Lanterman Act applies to children three or four years of age who do not otherwise qualify for full eligibility and have significant functional limitations in at least two of the five areas of major life activity appropriate to an individual three or four years of age. (§ 4512, subd. (a)(2)(A).)

4. There is no dispute between the parties that: claimant has autism spectrum disorder; he has significant functional limitations in two of the five major life activities appropriate to claimant's age (self-care and self-direction); and that he does not have a significant functional limitation in the major life activity of mobility. The parties' dispute is that claimant asserts he also has a significant functional limitation in two additional major life activity areas, receptive and expressive language, and learning, but NBRC disagrees.

5. After receiving services through the Early Start program and just prior to his third birthday, claimant was assessed by NBRC to determine if he was qualified for full eligibility under the Lanterman Act. On May 23, 2023, the NBRC eligibility team determined that claimant did not meet full eligibility requirements, but was provisionally eligible. The decision was based on information that included consideration of a March 28, 2023, psychological evaluation completed by Ashley Hazel, Ph.D., BCBA-D.

6. On August 8, 2023, NBRC provided claimant's parents with a Notice of Action (NOA) after the eligibility team reviewed assessments of claimant recently completed by his school district under the Individuals with Disabilities Education Act (IDEA). In claimant's initial, June 23, 2023, Individualized Education Program (IEP), his school district found him eligible for IDEA services and created an IEP that documented the services provided by the school district, which included 20 minutes of language and speech services per school week. Part of the information NBRC reviewed

in issuing the NOA included the following assessments of claimant by his school district: June 22, 2023, psychoeducational evaluation report by Jennifer Woods, M.A.; June 23, 2023, initial preschool speech-language assessment report by Jennifer Abrenica-Rey, M.S., CCC-SLP; and June 23, 2023, academic assessment report by Melanie Love, M.A.

7. On August 31, 2023, an informal meeting was held between NBRC and claimant's parents to further discuss whether claimant qualified for full eligibility under the Lanterman Act. Claimant's parents requested that NBRC review additional documents they would provide to re-consider the decision summarized in the NOA.

8. NBRC received and considered the following additional documents provided by claimant's parents regarding claimant's functioning: December 21, 2022, Trumpet Behavioral Health initial treatment plan; May 1, 2023, Trumpet Behavioral Health progress report; June 23, 2023, IEP; and September 12, 2023, Vineland Adaptive Behavior Scales – Third Edition results. After reviewing the documents, NBRC did not change its position summarized in the NOA.

9. Todd Payne, Psy.D., testified at hearing regarding the NBRC eligibility team decision-making process. Dr. Payne's testimony was persuasive and consistent with the documentary evidence. Dr. Payne testified that in determining whether an individual has a significant functional limitation in a major life activity, NBRC considers whether or not the individual has the inherent capacity to functionally engage in the major life activity. A significant functional limitation would not be found when an individual has the capacity but, for reasons such as emotional and behavioral dysregulation, does not demonstrate the capacity during a particular period of time or situation. Dr. Payne agreed with claimant's parents that there are times when claimant exhibits emotional and behavioral dysregulation that affects his learning and receptive

and expressive language. However, Dr. Payne opined the issue of claimant's dysregulation is best captured under the major life activity of self-direction and not under another major life activity area.

a. Learning: Dr. Payne opined claimant would be required to have a very low cognitive ability (intelligence quotient standard score within the mid-70's or lower) for NBRC to determine claimant has a significant functional limitation in the major life activity of learning. The evidence established that claimant's cognitive ability is within the average range (standard score of 90 to 110).

b. Receptive and Expressive Language: In the assessment report by Abrenica-Rey, she found claimant performed on the Preschool Language Scale, Fifth Edition (PLS-5), for the auditory comprehension portion in the average range (standard score of 97), for the expressive communication portion in the average range (standard score of 90), and with a total language score in the average range (standard score 93). Abrenica-Rey found similar results for the Developmental Assessment of Young Children – Second Edition (DAYC-2), where claimant's receptive language (standard score of 103), expressive language (standard score of 103) and his overall communication domain score (standard score of 100) were all in the average range. Abrenica-Rey opined in her report that when claimant wanted something he was able to use verbal language to communicate; however, "once he was dysregulated, [claimant] was unable to functionally communicate and resorted to behavioral responses." The evidence established that claimant's receptive and expressive language is within the average range, but when he is dysregulated, he has difficulties functionally communicating through receptive and expressive language.

Abrenica-Rey did note in her report that claimant exhibited difficulties with pragmatics (below the seventh percentile rank), which "can affect a child's ability to

develop normal peer and adult relationships, and use language appropriately to get one's needs met which could lead to social isolation." However, Dr. Payne credibly testified that pragmatics skills are social skills and not directly determinative of claimant's functioning in receptive and language as defined by the Lanterman Act. No expert testified to rebut Dr. Payne's opinion on this issue.

### **Claimant's Additional Evidence**

10. Both of claimant's parents testified passionately and clearly at hearing to describe their concerns for their son. The concerns of claimant's parents are reasonable and well-founded. While in novel and preferred situations claimant's language and communication skills are very strong, on a regular basis but with limited predictability, claimant becomes dysregulated and is unable to learn and communicate at a level commensurate with that of his same age peers.

11. Britney Pickering, claimant's current teacher at Little Flowers Montessori preschool, has taught him for approximately two months and she testified regarding his learning, communicating, and functioning at preschool. Pickering's testimony was generally consistent with that of claimant's parents.

### **Ultimate Factual Finding**

12. The evidence established claimant has autism spectrum disorder, he is under the age of 18, and he has significant functional limitations in the major life activity areas of self-care and self-direction. Dr. Payne's opinion that claimant does not have significant functional limitations in the major life activities of receptive and expressive language and learning, as defined by the Lanterman Act, was persuasive and consistent with the evidence. Claimant does not qualify for full eligibility at this time.

## LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The purpose of the Lanterman 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. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman 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.)

3. At least 90 days before a provisionally eligible child's fifth birthday, the regional center serving that child must reassess whether the child meets the applicable eligibility criteria to determine whether to continue Lanterman Act eligibility and services to that child beyond age five. (§ 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. (§ 4643.)

4. As described in Factual Findings 2 through 4, 9, and 12, claimant is three years old, has autism spectrum disorder, and qualifies for provisional eligibility under the Lanterman Act as he has significant functional limitations in the major life activity areas of self-care and self-direction. However, he does not have a significant functional

limitation in the major life activity areas of receptive and expressive language, learning, or mobility as defined under the Lanterman Act. Therefore, at this time, claimant does not qualify for full eligibility under the Lanterman Act, but he continues to qualify for provisional eligibility.

## **ORDER**

1. Claimant's appeal from NBRC's August 8, 2023, determination, that he has demonstrated provisional eligibility but not full eligibility for services under the Lanterman Act, is denied.

2. Claimant remains provisionally eligible for services from NBRC under the Lanterman Act.

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

DATE:

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and



Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.