

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

In the Matter of:

CLAIMANT,

v.

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS No. CS0010685

OAH No. 2023110407

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 14, 2023, by videoconference.

Claimant's father and grandmother appeared for him at the hearing.

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

The matter was submitted for decision on December 14, 2023.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from SARC?

FACTUAL FINDINGS

1. Claimant was born in December 2018. He lives in Watsonville with his father and grandmother.
2. In October 2021, claimant began receiving in-home behavioral therapy services. SARC arranged these services for claimant through the Early Start program for children younger than three years old (Gov. Code, § 95000 et seq.). Claimant also received speech therapy services through his medical insurance.
3. Claimant already was almost three years old when he began receiving services through the Early Start program. Because he showed developmental delays, as compared to peers, in communication skills, attention, and peer interaction, SARC deemed claimant provisionally eligible under the Lanterman Act for continuing services from SARC.
4. SARC staff members who worked with claimant's family to develop his Early Start Individualized Family Service Plan and to evaluate his eligibility at three years old for Lanterman Act services urged the family to ask claimant's pediatrician to refer him for a clinical diagnostic evaluation.
5. Records claimant's family has provided to SARC do not show that claimant ever has received a clinical diagnostic evaluation by a physician or licensed

psychologist that assesses whether he meets criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) for autism spectrum disorder.

6. In spring 2022, personnel from the Pajaro Valley Unified School District assessed claimant and found him eligible for special education services in the “autism” category. Claimant attended a special education preschool, and more recently has entered transitional kindergarten at an elementary school. School records in evidence show that school personnel consider claimant to show limitations, as compared to peers, in communication, social skills, self-care, and learning.

7. Although SARC had deemed claimant provisionally eligible for Lanterman Act services in October 2021, claimant’s family did not complete an Individualized Program Plan for those services until July 2023. In addition, claimant’s participation in his special education preschool was sporadic, primarily due to illness both for him and for family members. Through SARC and the school district, claimant has received some behavioral therapy, speech therapy, and occupational therapy; but the degree to which these interventions may affect his developmental progress remains uncertain.

8. Claimant’s father and grandmother describe claimant as hypersensitive and minimally communicative. He is not toilet-trained. Claimant is a very picky eater, although he eats enough to be well-nourished. He sometimes has tantrums during which he injures himself and threatens to injure other people.

9. Claimant alleges that he qualifies under the Lanterman Act for services from SARC because he has autism spectrum disorder, and because this disorder constitutes a substantial disability for him that will be lifelong.

10. SARC contends that the evidence available in December 2023 does not show that claimant has autism spectrum disorder. In addition, SARC contends that this

evidence does not show that claimant experiences significant functional limitations, as compared to other children of similar age. Finally, SARC contends that this evidence does not show that any significant functional limitations claimant experiences from an eligible developmental disability under the Lanterman Act are likely to continue for his whole life.

LEGAL CONCLUSIONS

1. To establish eligibility for SARC's services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that (1) he suffers from a developmental disability and (2) he is substantially disabled by that developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a).)

2. Conditions that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (Welf. & Inst. Code, § 4512, subd. (a).) They 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." (*Id.*) In any case, the "developmental disability" must originate before the person turns 18, and must be lifelong. (*Id.*)

3. 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, 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." (Welf. & Inst. Code, § 4512, subds. (a), (1)(1); see also Cal. Code Regs., tit. 17, § 54001,

subd. (a)(2).) For a child as young as claimant, only the first five of these seven activities are relevant.

4. Although testimony suggests that claimant displays unusual and difficult behavior that is that is consistent with autism spectrum disorder, the only diagnostic evaluation in evidence regarding claimant is from an educational setting. Criteria to qualify a child for special education services in the "autism" category are not identical to the DSM-5 criteria that may qualify a child for Lanterman Act services because of "autism." Moreover, functional limitations may be significant enough to qualify a child for special education services without being "substantial," within the meaning of the Lanterman Act. Without a medical or psychological clinical diagnostic evaluation for claimant, the evidence available to SARC in December 2023 does not establish either that claimant has one of the Lanterman Act's qualifying developmental disabilities, or that any such disability is substantial.

ORDER

Claimant's appeal is denied. As of his fifth birthday, in December 2023, claimant had not established his eligibility under the Lanterman Act for services from SARC.

DATE:

JULIET E. COX

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 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.