

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

In the Matter of:

CLAIMANT

v.

SAN ANDREAS REGIONAL CENTER.

DDS. No. CS0012824

OAH No. 2024020789

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, who served as the hearing officer, heard this matter on August 13, 2024, by videoconference.

James Elliott, Executive Director's Designee, appeared for San Andreas Regional Center (SARC).

Claimant was represented by his mother. Jonathan Lam, claimant's case manager at Hope Services, was present and assisted claimant's mother. Claimant was not present.

The record remained open until August 14, 2024, for claimant to submit additional documents and for SARC to file an optional response/closing statement. No submissions were received.

The record closed and the matter was submitted for decision on August 14, 2024.

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

Background

1. Claimant is seven years old and will turn eight in October. He lives with his family. Claimant has Autism Spectrum Disorder (autism or ASD) which was diagnosed in 2018. Claimant has also been diagnosed with Attention-Deficit/Hyperactivity Disorder and Oppositional Defiant Disorder.

2. Claimant received Early Start services and applied behavioral analysis therapy prior to age three. He has been receiving special education services from his school district since age three. His August 2023 Individualized Education Program provides for claimant to receive specialized academic instruction in a small group class 100 percent of the time outside the general education setting, and a 30-minute speech and language session weekly. Claimant has a one-on-one aide due to his disruptive, aggressive, and eloping behavior.

Claimant's family contacted SARC in 2023 to request an evaluation for Lanterman Act services. A SARC Intake Service Coordinator and two psychologists, including Cristal Byrne, Ph.D., met with claimant and his mother over videoconference on August 30, 2023. The team provided assessment forms for claimant's mother and his schoolteacher to prepare based on their observations of claimant's functioning.

3. Dr. Byrne reviewed the assessment forms and documents provided by claimant's family and wrote an Eligibility Determination Report dated December 27, 2023. She concluded that claimant is not eligible for services because he had not shown substantial disability in three areas of major life activity.

4. At the family's request, Dr. Byrne met with claimant in person for one hour on January 30, 2024. She wrote an addendum to her original report, dated February 8, 2024, including additional observations from this session. She maintained her original opinion that claimant is not substantially disabled in three areas of major life activity and is not eligible for regional center services. A Notice of Action was sent to the family notifying them of the decision to deny eligibility.

5. Claimant submitted an appeal of the denial.

Regional Center Eligibility Criteria

6. To be eligible for services under the Lanterman Act, an individual must have a developmental disability that originates prior to age 18, 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 the individual. (Welf. & Inst. Code, § 4512, subd. (a)(1).) A substantial disability is defined as the existence of significant functional limitations in at least three of the following major life activity

areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, subd. (1)(1).)

SARC Eligibility Determination

7. Dr. Byrne agreed that claimant meets the diagnostic criteria for ASD. She explained in her two reports why she concluded that claimant is not substantially disabled by addressing the relevant major life activities.

8. Dr. Byrne noted that claimant walks independently and appropriately without assistance and does not have significant functional limitations in mobility.

9. Dr. Byrne noted that claimant was able to provide grammatically correct and appropriate responses to her questions and that his teacher reported his ability to communicate in the average range. She noted that claimant's mother reported lower functioning in communication than the teacher, but explained that a substantial disability must be pervasive in all environments. She concluded claimant does not have substantial disability in receptive and expressive language.

10. Dr. Byrne acknowledged that she could not directly observe claimant's self-care abilities, but noted that it was reported that he could perform basic hygiene tasks within age-appropriate limits, and can feed himself and drink. Dr. Byrne noted that the teacher's report reflected higher functioning than claimant's mother's report, but reiterated that substantial disability must be pervasive in all environments. She concluded that claimant does not have substantial disability in self-care.

11. Regarding learning, Dr. Byrne noted that claimant was able to answer questions about his birthday, age, and address, had taught himself different alphabets, and that psychoeducational assessments performed by his school district indicate

overall cognitive-intellectual functioning in the average range. During her in-person session with claimant, he was able to read out loud passages from a book and perform addition and subtraction equations. She noted again that the teacher's report reflected higher functioning than the parent report, and that disability must be pervasive in all environments. She concluded that claimant does not have substantial disability in learning.

12. Based on reports from the family and teacher, and on descriptions of claimant's behavior in school records, Dr. Byrne concluded that claimant does have substantial disability in self-direction.

13. Regarding capacity for independent living, Dr. Byrne noted that she could not observe these skills directly, but that based on the reports of the family and teacher, she did not believe there was substantial disability in this area. She noted that he is able to retrieve a snack for himself and that his teacher reported that he does help keep the classroom clean by returning books and supplies.

14. Dr. Byrne wrote that if in the future claimant demonstrates regression in his adaptive functioning skills or fails to make additional progress, he may reapply for regional center services. At the hearing, SARC's representative also reassured claimant's mother that SARC will reassess claimant if there is new information suggesting he is eligible for services and that it is possible that claimant might meet the eligibility criteria at a later age.

Claimant's Evidence

15. Claimant's mother testified credibly about claimant's challenging behaviors. Claimant is receiving the maximum number of hours of In-Home Supportive Services because of his need for supervision. Claimant tries to climb and jump off high

surfaces, and the family has modified their home to prevent him from engaging in dangerous activities. Claimant has run into the street. He has broken three televisions sets by throwing objects at them. He is aggressive with other children, punching and swearing at them.

16. Claimant's mother believes that claimant is substantially disabled in receptive and expressive language. She reported having to explain things to claimant repeatedly, and that he will not recall something he was told just minutes before. She explained that claimant was able to answer Dr. Byrne's questions about his name, age, and address, because this is information that she has taught claimant "over and over" for his safety. She reported that claimant frequently cries, screams, and curses, and the family cannot understand why he is upset.

17. Claimant's mother believes that claimant is substantially disabled in learning. She reported that he has a one-to-one aide in the classroom "to calm him down and protect him." Claimant has fight with other students, eloped, and engaged in angry and threatening behavior. She believes he is disabled in learning because of his difficulty focusing in school.

18. Claimant's mother reported that she helps claimant dress because when he tries, he puts his clothes on backwards. She cannot leave him in the bathroom unsupervised because he enjoys playing with the water in the toilet and sometimes plays with his poop. Claimant also will flush objects down the toilet if left unsupervised. She helps claimant brush his teeth and sometimes helps him clean his bottom after he uses the toilet. Claimant can feed himself, but his mother also feeds him by hand because he is underweight, and she is concerned that he does not eat enough.

19. Claimant's mother worries about claimant's future and whether he will be able to achieve her hopes for him.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman 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 that originates before an individual attains age 18, is likely to continue indefinitely, and constitutes a substantial disability for that individual. (Cal. Code Regs., tit. 17, § 54000, subd. (b).) The term "developmental disability" includes autism (Welf. & Inst. Code, § 4512, subd. (a).)

3. Pursuant to Welfare and Institutions Code section 4512, subdivision (1), 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." These last two major life activities are generally not relevant when evaluating a younger child.

4. It is claimant's burden to prove that he has a developmental disability, as that term is defined in the Lanterman Act.

5. It is undisputed that claimant meets the diagnostic criteria for ASD, an eligible condition, and that he has significant functional limitations, relative to his peers, in self-direction. These limitations are directly related to his ASD.

6. The evidence failed to establish that claimant has significant functional limitations in any other relevant area of major life activity under the Lanterman Act. There was no evidence that respondent has any limitations in his mobility. The evidence did not establish significant functional limitations in expressive and receptive language, learning, or self-care. The challenges claimant's mother described in these areas (for example, not retaining information, uncooperative behavior at school, need for supervision in the bathroom) reflect his significant limitations in self-direction rather than substantial disability.

7. The evidence did not establish that claimant has significant functional limitations in his capacity for independent living or economic self-sufficiency, relative to other children his age.

8. Claimant has not established that he is substantially disabled, within the meaning of the Lanterman Act. Claimant is not eligible for regional center services at this time.

ORDER

Claimant's appeal is denied.

DATE:

KAREN REICHMANN

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.

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STATE OF CALIFORNIA**

In the Matter of:

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vs.

San Andreas Regional Center, Service Agency.

DDS No. CS0012824

OAH No. 2024020789

ORDER ON APPLICATION FOR RECONSIDERATION

An Administrative Law Judge (ALJ) serving as a hearing officer from the Office of Administrative Hearings (OAH) issued a decision in this matter on August 22, 2024.

On September 17, 2024, OAH received claimant's request for rehearing. Claimant seeks to present additional documentation that "was not provided at the time of the initial hearing." This request is construed as an application for reconsideration of the decision under Welfare and Institutions Code section 4713.

It does not appear that claimant notified either the San Andreas Regional Center (SARC or Regional Center) or the Department of Developmental Services (DDS) about the request for reconsideration, as required. SARC did not file an opposition.

The undersigned hearing officer did not hear the matter or write the decision for which reconsideration is requested.

Within 15 days of receiving the decision, a party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Welf. & Inst. Code, § 4713, subd. (b).)

In this case, the application for reconsideration was not timely submitted. The decision was served on claimant on August 23, 2024, and was due within 15 days (on September 9, 2024). The request was not submitted until September 17, 2024. Therefore, the application for reconsideration (rehearing) must be denied.

ORDER

The application for reconsideration is DENIED.

DATE: September 30, 2024

REGINA BROWN
Presiding Administrative Law Judge
Office of Administrative Hearings