

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**CENTRAL VALLEY REGIONAL CENTER, Service Agency**

**DDS Case No. CS0013479**

**OAH No. 2024030585**

**DECISION**

Administrative Law Judge Marcie Larson, Office of Administrative Hearings (OAH) State of California, heard this matter by videoconference on May 21, 2024, from Sacramento, California.

Jacqui Molinet, Appeals and Compliance Coordinator, and Sandra Saavedra, Assistant Director of Legal Services, represented Central Valley Regional Center (CVRC).

Claimant was present and assisted by Elena Inthisane.

Evidence was received, the record closed, and the matter submitted on May 21, 2024.

## **ISSUE**

Does claimant's epilepsy condition qualify her for services from CVRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

## **FACTUAL FINDINGS**

1. Claimant was born in 2003. She is currently 21 years old. Claimant lives with her parents in Fresno, California. Claimant began having seizures when she was approximately 13 years old. Thereafter she was diagnosed with epilepsy. She takes medication to control her seizures.

2. In late 2023, claimant sought services from CVRC under the Lanterman Act, for epilepsy. On February 28, 2024, CVRC denied her request, asserting that claimant was not eligible for regional center services because she does not have a qualifying disability under the Lanterman Act. Claimant appealed the denial. A fair hearing was held on her appeal.

### **January 2024 Intake Assessment**

3. On January 6, 2024, Virginia Campos, Intake Coordinator III in the Intake and Assessment Services Unit at CVRC, conducted an intake interview of claimant, at her home in Fresno. Claimant's grandmother was also present. Ms. Campos prepared an Intake Assessment report. She did not testify at hearing. Ms. Campos obtained information from claimant about her medical history and level of current functioning.

4. Claimant reported she had her first seizure when she was 14 years old. Her last seizure was on October 31, 2023. Claimant has a primary care physician and is also treated at the Valley Children's Hospital neurology department. Claimant reported taking levetiracetam, a medication used to treat seizures.

Regarding her level of current functioning for independent living, claimant reported that she lives with her parents. Claimant is ambulatory, has full use of her extremities and has fully functional fine motor skills. She takes care of all her own self-care needs such as bathing and dressing. She also helps with chores at home by washing dishes, sweeping, making her parents' bed, and cleaning her room. She helps her mother with cleaning their home and grocery shopping.

Claimant does not cook meals, but she does reheat food in a microwave. Claimant's "mother does her laundry and schedules her medical appointments." Claimant had no issues with "safety awareness at home and the community." She also "understands personal boundaries and does not like being around to [sic] many people."

5. Concerning claimant's level of social and emotional functioning, Ms. Campos noted claimant "offered fleeting eye contact when addressing" her during the interview. Claimant reported she has at least two friends from high school and a "boyfriend who is diagnosed with autism who she met during lunch in High School." Claimant and her boyfriend spend time together at their homes, go to the movies, and play video games. They are transported to events because neither drive. Claimant also reported she did not know how to access public transportation.

Claimant explained she enjoys painting and hoped to enroll in art classes. Ms. Campos noted claimant "understands emotions, facial expressions, and comforts

others in distress.” Claimant explained she was “stressed and depressed because she doesn’t feel normal.” Ms. Campos noted that claimant “can transition with no problem with few verbal and physical prompts.” Claimant “is not physically aggressive and does not engage in self-injurious behaviors.” Claimant also reported “no concerns regarding repetitive activities, behaviors, and atypical motor movement.”

6. Concerning claimant’s level of cognitive function and communication, claimant reported that in 2022, she received a high school diploma from Fresno High School. Claimant was enrolled in general education classes in high school. She did not receive any special education services and did not have an Individual Education Plan (IEP). Claimant reported she enjoys reading. She also reported using her cell phone to talk to her boyfriend and mother. Ms. Campos noted claimant could follow “two-step direction without physical or verbal prompts.” Claimant “mostly uses short phrases to verbally communicate her needs and wants. She answers questions but struggles to hold a back-and-forth conversation.”

7. After Ms. Campos finished the Intake Assessment, she forwarded her report to the CVRC Multidisciplinary Eligibility Determination Team to determine eligibility.

## **Neuropsychology Consultation**

8. On April 23, 2024, claimant had a neuropsychological evaluation performed by Errol F. Leifer, Ph.D., Senior Neuropsychologist, Valley Children’s Hospital. The purpose of the evaluation was to address concerns about claimant’s “cognitive, neurobehavioral, motor or sensory functioning.” Claimant’s mother requested the evaluation be performed so that claimant could be “convinced that she should go out in the world and learn to drive as she refuses to learn.” As part of the

evaluation, Dr. Leifer reviewed claimant's medical records, conducted clinical interviews with claimant and her mother, performed a Mental Status Examination, and administered several tests including the Delis-Kaplan Executive Function System: Trail Making Test; Wechsler Adult Intelligence Scale: Digit Span, Letter-Number Sequencing, Symbol Search and Coding; Wechsler Abbreviated Scale of Intelligence; and the California Verbal Learning Test. Dr. Leifer issued a report concerning his findings. He did not testify at hearing.

9. Dr. Leifer noted claimant is a "physically healthy early adult female of her chronological age who was responsive and fully cooperative" throughout the assessment. He noted claimant was "inhibited, shy, apprehensive, hesitant and withdrawn physical posture and interactive demeanor with a vocal level that was barely audible." Additionally, her "[v]erbal expressions were hesitant and marked by long delays in expression and impaired qualities of conceptualization, formulation and presentation."

Dr. Leifer noted that throughout the evaluation claimant "manifested impaired accurate sustained attentional processing of information with rapid loss of information, impaired learning of information across trials, and even loss of mental set." Dr. Leifer explained "[t]his pattern represented a notable picture of deficient brain-based attentional taking in, holding onto and maintaining accurate information or an attention deficit disorder." Dr. Leifer found the "impairment in attentional accuracy was most evident in language exchanges and tasks of language based information processing and much less evident in her cognitive processing of nonlanguage visual spatial constructional and problem-solving information."

10. The testing demonstrated claimant's Verbal Comprehension Index is 71, Perceptual Reasoning Index is 96 and Full-Scale intelligence quotient (IQ) is 81. Dr.

Leifer diagnosed claimant with impaired instrumental activities of daily living; localization-related epilepsy; mixed receptive-expressive language disorder; attention deficit disorder (ADD) without hyperactivity; generalized anxiety disorder; cognitive disorder; learning disability; and executive function deficit. Dr. Leifer did not opine in his report that claimant's epilepsy condition is the cause of her disorders or deficits.

Dr. Leifer opined claimant has "impaired attention and a mixed receptive expressive language disorder whose learning difficulties and disabilities had never been recognized and accommodated to with appropriate support and assistance throughout her formal education." Dr. Leifer recommended claimant consult with "medical personnel about obtaining medication for her attention deficit disorder which if significantly ameliorated would assist her in her day-to-day life and building more confidence and self assurance in her processing of information."

He also recommended that claimant seek "vocational counseling that would direct her into programs of vocational skill developments through learning by seeing and doing and not through the necessity of processing language-based information in written or verbal form." He also stated claimant should "receive therapeutic guidance and assistance in developing greater confidence in negotiating her day-to-day life and discovering that she can have friendships and not feel so alone."

### **Opinions of Becky Kawashima, M.D.**

11. Becky Kawashima, M.D., is a board-certified pediatrician. She has worked as a medical consultant for CVRC approximately 20 years. She specializes in eligibility cases. Dr. Kawashima works as a pediatrician for Children's Services. Dr. Kawashima was asked to determine whether claimant is eligible for services from CVRC under the Lanterman Act.

12. In making the eligibility determination, Dr. Kawashima reviewed claimant's medical records, high school transcripts and the Intake Assessment. Prior to hearing, she also reviewed the April 2024 neuropsychological evaluation. Dr. Kawashima determined that in 2015, claimant's seizure disorder started. She was treated at the hospital with medication. Dr. Kawashima explained epilepsy is a qualifying condition under the Lanterman Act. However, to be eligible for services, the qualifying condition must constitute a substantial disability, which causes significant functional limitations in three or more major life activities.

13. Dr. Kawashima found no evidence in records that claimant's epilepsy causes functional limitations in three or more major life activities. Claimant graduated from high school with a 2.44 grade point average. She did not receive any special education services or have an IEP during high school. Additionally, the Intake Assessment demonstrates claimant's level of functioning is age-appropriate in many respects, including in self-care, mobility, self-direction, and language skills.

Dr. Kawashima explained that the neuropsychological evaluation concluded claimant's full-scale IQ is 81, which demonstrates claimant does not have intellectual disability. Dr. Kawashima explained that Dr. Leifer opined claimant's ADD impacts her learning, and that medication will help treat that condition. However, ADD is not a qualifying condition under the Lanterman Act.

14. Based on all the information Dr. Kawashima reviewed, she determined claimant is not eligible under the Lanterman Act, because she does not have a qualifying condition that causes functional limitations in three or more major life activities.

## **Additional Testimony**

15. Claimant testified at hearing that she believes “something is not right.” Claimant feels isolated and alone. Although her seizures have been controlled with medication, she recently had a seizure while she was sleeping. This prompted her parents to take her to the hospital and have a magnetic resonance imaging (MRI) scan. It was discovered that she has a brain tumor, which may be the cause of her seizures. She will undergo surgery in a month.

Claimant is requesting CVRC services so she can learn how to live independently. She is anxious and afraid to do many things, such as drive. Claimant believes with the support of CVRC she will be able to develop the skills to be more independent.

16. Elena Inthisane also testified at hearing. Claimant is dating Ms. Inthisane’s son. Ms. Inthisane feels claimant did not receive the services she needed in school. Although claimant graduated from high school, she struggled and should have been given special education services. Ms. Inthisane believes claimant would benefit from the services CVRC can provide.

## **Analysis**

17. When all the evidence is considered, claimant did not establish she is eligible for services from CVRC based on her epilepsy condition, or any other qualifying condition under the Lanterman Act. Although there is no dispute claimant suffers from epilepsy, the evidence did not establish that her condition constitutes a substantial disability that significantly limits her in at least three major life activities. Claimant may have learning and adaptive functioning deficits because of her ADD and other medical conditions, as Dr. Kawashima explained, but the evidence did not



establish that these deficits are due to any developmental disability recognized in the Lanterman Act.

18. The legislature made the determination that only individuals with one or more of the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. In addition, the legislature provided that, in order for an individual to qualify for services under the Lanterman Act, the individual's developmental disability must be substantially disabling and must be the cause of the adaptive deficits as to which the requested services relate. Although the result may seem harsh, particularly given claimant's strong desire for assistance, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the eligibility criteria.

19. Because claimant did not show that her epilepsy condition qualifies her for services from CVRC under the Lanterman Act, her request for services from CVRC must be denied.

## **LEGAL CONCLUSIONS**

1. The Lanterman Act governs this case. (Welf. & Inst. Code, section 4500 et seq.) Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act "seeks to integrate developmentally disabled Californians into mainstream life and to ensure they are accorded equal access to programs receiving state funds." (*Tri-Counties Association for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137; see also Welf. & Inst. Code, §§ 4501, 4502.)

2. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, sections 4700–4716.) The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant has the burden of proving she has a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means proving something is more likely to be true than not true. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Applicants are eligible for services under the Lanterman Act if they suffer from at least one substantial developmental disability based on intellectual disability, cerebral palsy, epilepsy, autism, or “the fifth category.” (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category is a disabling condition closely related to an intellectual disability or requiring treatment like that required for individuals with an intellectual disability. (*Ibid.*) A qualifying condition must start before the age of 18, continue indefinitely, and constitute a “substantial disability.” (Welf. & Inst. Code, § 4512; Cal. Code Regs., tit. 17, § 54000, subd. (b).)

4. California Code Regulations title 17, section 54001, subdivision (a) defines a “substantial disability” as:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

5. The "substantial disability" assessment "shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client," including a program coordinator, a physician, and a psychologist. (Cal. Code Regs., tit. 17, § 54001, subd. (b).) After receiving consent, that group consults with potential clients and other relevant parties. (*Id.*, at subd. (c).)

6. As set forth in the Factual Findings as a whole, claimant did not show that her epilepsy is a qualifying disability. She did not provide evidence that shows this condition independently causes her significant functional limitations in at least three

or more major life activities. As a result, claimant is not eligible for CVRC services under the Lanterman Act.

## **ORDER**

Claimant's appeal is DENIED. Central Valley Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATE: May 24, 2024

MARCIE LARSON

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.