BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS No. CS0013631

OAH No. 2024040315

DECISION

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on June 14, 2024, in person in San Jose, California, and on August 23, 2024, by videoconference.

Jennifer Price represented service agency San Andreas Regional Center (SARC).

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

The record closed and the matter was submitted for decision on August 23, 2024. Claimant's mother submitted a written closing argument on August 24, 2024, and on August 26, 2024, SARC submitted a response to and motion to exclude claimant’s written closing argument because it was submitted after the record had closed. The record was reopened to consider these documents, which were marked for identification as Exhibit H and Exhibit 15. SARC’s motion to exclude claimant’s written closing argument is granted. The record closed on August 26, 2024, and the matter was submitted for decision.

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 early October 2023. He was noted to have multiple congenital anomalies, which included low set ears, prominent occiput, high arched palate, retrognathia, contractures of bilateral upper extremities, symbrachydactyly (missing fingers), bilateral club feet, and the inability to flex his right knee. He was admitted to the Neonatal Intermediate & Intensive Care Unit (NICU) at Lucile Packard Children’s Hospital Stanford for a workup with a principal diagnosis of “multiple congenital anomalies c/f arthrogryposis.” Claimant spent approximately one week in the NICU.

2. Claimant is now approximately eleven months old. Claimant has been diagnosed with cerebral palsy and arthrogryposis (multiple congenital joint contractures and lack of muscle mass).

3. On October 26, 2023, claimant was found eligible to receive services under the Early Start program, designed for children up to age three, under the category of high risk. It was noted that claimant has multiple congenital anomalies/genetic disorder, persistent tonal problems, and was significantly small for gestational size at birth (below the third percentile). A diagnosis of arthrogryposis was noted as well as a notation of orthopedic impairment.

4. Under claimant's initial Individualized Family Services Plan dated October 26, 2023, it was noted that physical development related to gross motor and fine motor movements are areas of concern, and that claimant had had a recent assessment that noted underdeveloped muscles and bones in his upper and lower body. Claimant's eligibility routing form dated January 5, 2024, noted that he was to receive services through the Santa Clara County Office of Education including early intervention, physical therapy, and occupational therapy.

5. While receiving services through the Early Start program, claimant was assessed by SARC to determine if he qualified for eligibility under the Lanterman Act. On January 24, 2024, the SARC eligibility team determined that claimant did not meet eligibility requirements. On March 12, 2024, SARC sent a letter and a Notice of Action (NOA) to inform claimant's parents of its determination that claimant does not meet criteria that would make him eligible for services under the Lanterman Act. The letter noted that the records reviewed did not support the presence of an eligible condition nor substantial disability in at least three areas of daily living.

6. Claimant's mother submitted an Appeal Request which resulted in the hearing. In the Appeal Request, claimant's mother wrote that her son is eligible for the Lanterman Act, and that they are seeking the Medi-Cal waiver from SARC.

7. To be eligible for services under the Lanterman Act (Welf. & Inst. Code, section 4500 et seq.), an individual must have a developmental disability that originates prior to the individual 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. (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, as appropriate to the age of the individual: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, subd. (*l*)(1).)

8. Provisional eligibility under the Lanterman Act applies to children under five years of age who do not otherwise qualify for full eligibility, have a disability that is not solely physical in nature, and have significant functional limitations in at least two of five areas of major life activities, self-care, receptive and expressive language, learning, mobility, and self-direction, as appropriate to the age of the child. (Welf. & Inst. Code, § 4512, subd. (a)(2)(A).)

9. After claimant's mother provided additional information to SARC, SARC's expert, Robert Wallerstein, M.D., found claimant provisionally eligible for services under the Lanterman Act in a report dated June 24, 2024. The determination was based on information that included consideration of records provided by Stanford Medicine Children's Health (Stanford), including an April 9, 2024, neurological evaluation completed by Elizabeth Celeste Ballinger, M.D., Ph.D., and an impression of an MRI of claimant's brain taken in October 2023.

10. The parties do not dispute that claimant has an eligible condition, cerebral palsy, that causes significant functional limitations in two of the seven major

life activities appropriate to claimant's age (mobility and self-care). The parties' dispute is that claimant asserts he also has a significant functional limitation in one additional major life activity area (capacity for independent living), but SARC disagrees. SARC argues that at this time, it cannot reasonably conclude that claimant has a significant functional limitation, expected to continue indefinitely, in capacity for independent living because of claimant's young age.

Medical Records and Testimony

11. Claimant's pediatrician at Stanford, Andrew J. Lan, M.D., wrote a letter dated February 2, 2024, opining that claimant has congenital arthrogryposis-type amyoplasia, which is a lifelong condition.

12. Steven L. Frick, M.D., Chief of Pediatric Orthopaedics at Stanford and Professor and Vice Chair of Education at Stanford School of Medicine Department of Orthopaedic Surgery, wrote a letter dated February 19, 2024. Dr. Frick wrote that claimant is his patient and that claimant has a diagnosis of amyoplasia, a type of arthrogryposis. Dr. Frick opined that:

> [Claimant] is affected in all 4 limbs resulting in substantial disability. He will have lifelong major problems in mobility, self-care, and independence. Unfortunately we do not have a cure or good solutions for him.

13. Elizabeth Celeste Ballinger, M.D., Ph.D., who works in the Neurology Clinic at Stanford, has been part of claimant's treatment team since birth and is familiar with his medical conditions and medical history. Dr. Ballinger wrote letters dated April 20, April 23, and June 14, 2024. In her letter dated April 23, 2024, Dr. Ballinger opined:

> [Claimant] carries a diagnosis of both arthrogryposis multiplex congenita as well as quadriplegic cerebral palsy, both of which are incurable, non progressive conditions. As a result of these conditions he is unable to use either of his arms and has only limited use of his left leg, deficits which will persist throughout his life.
>
> [Claimant's] cerebral palsy and arthrogryposis multiplex congenita have therefore caused lifelong substantial disability that will impair his mobility and his capacity for both self care and independent living.

14. In her letter dated June 14, 2024, Dr. Ballinger referenced claimant's diagnoses as set forth in Factual Finding 13. She noted that cerebral palsy is defined as a group of "permanent disorders of the development of movement and posture, causing activity limitation, that are attributed to non progressive disturbances that occur in the developing fetal or infant brain." She opined that claimant had an abnormal MRI brain at birth which was significant for a thin corpus callosum (which is commonly affected in individuals with cerebral palsy) as well as an ectopic neurohypophysis. She further opined:

> [Claimant] has complete flaccid paresis of both of his upper extremities and partial paresis of his lower extremities. These deficits have been present since birth, are not progressive, **and yet will persist throughout his life**.
>
> . . . It is possible that [claimant's] arthrogryposis and cerebral palsy share the same underlying cause/etiology.

> Certainly both are **lifelong, incurable conditions** that have caused **lifelong substantial disability** that will impair his mobility and his capacity for both self care and independent living.
>
> He and his family should be provided with maximal therapeutic supports in accordance with the Lanterman Developmental Disabilities Act. [Emphasis in the original.]

15. Robert Wallerstein, M.D., is a board-certified pediatrician and medical geneticist and has worked with individuals with disabilities for almost 35 years. Dr. Wallerstein has been a medical consultant rendering opinions regarding eligibility for SARC for more than four years. Dr. Wallerstein reviewed claimant's medical records, testified at hearing, and drafted two reports regarding SARC's eligibility determination. Dr. Wallerstein's report dated June 24, 2024, and his testimony on the second day of hearing considered additional medical evidence including records from the Neurology Clinic at Stanford (admitted as Exhibit E) as well as an interview with claimant's mother and are, therefore, considered to be the most relevant and up to date.

16. In his June 24, 2024, report, Dr. Wallerstein noted that claimant was born with arthrogryposis multiplex congenita; and that he has very limited motion in his extremities and severe feeding difficulties. Dr. Wallerstein noted that an MRI of claimant's brain with a result date of October 11, 2023, was interpreted by the radiologist to show "1. Ectopic neurohypophysis. Mildly thin corpus callosum. 2. Craniofacial anomalies including low-set ears, high arched palate, retrognathia, prominent spheno-occipital synchondrosis." Furthermore, Dr. Ballinger's neurology evaluation on April 9, 2024, showed:

> ASSESSMENT: [Claimant] is a 6-month old male born at term after uncomplicated pregnancy with multiple joint contractures c/f arthrogryposis multiplex. Exam is notable for diffuse, now partially corrected contractures with brisk antigravity movements of R lower extremity, paucity of movement of L lower extremity, and flaccid upper extremities, consistent with quadriplegic cerebral palsy.

17. Dr. Wallerstein opined that claimant is a very impaired infant. However, he wrote that two of the areas of disability typically considered by the regional centers cannot be considered due to claimant's age. Specifically, he wrote that capacity for independent living cannot be considered before six years of age and capacity for economic self-sufficiency cannot be considered before 18 years of age "as per Department of Developmental Disabilities guidance." Based on this guidance, he opined that:

> [Claimant] has significant deficits in the areas of mobility and self-care. Language and communication, self-direction, and learning cannot be determined at this time due to his age.
>
> Therefore, [claimant] has 2 areas of disability and would meet criteria for provisional eligibility at this time and can be re-evaluated in future for permanent eligibility.

18. During his hearing testimony, Dr. Wallerstein opined that claimant has a qualifying condition, cerebral palsy, and has severe disabilities. He testified that for lifelong services, substantial disability must be expected to continue for the rest of the

claimant's life (lifelong). Dr. Wallerstein opined that claimant is substantially impaired in the area of mobility because he has severely decreased range of motion in his arms and legs; and in the area of self-care because he has a severe feeding disability. Dr. Wallerstein opined that the areas of self-direction, communication, and learning cannot be assessed for any baby at ten months old because a baby does not need those skills to meet developmental milestones at that age. He noted that expectations for an infant are lower than for those for a toddler and that as a child gets older it is easier to identify deficits in development as they miss developmental milestones.

19. To determine an individual's capacity for independent living, the regional centers typically look at activities of daily living, such as eating, obtaining food, bathing, toileting, and getting dressed. Dr. Wallerstein reported that he has been instructed by SARC that he is precluded from determining whether an individual has the capacity for independent living prior to the age of six years old. Dr. Wallerstein explained that from a clinical perspective, he does not disagree with the medical opinions of the doctors at Stanford submitted in this matter, which he described as reasonable based on the data. Dr. Wallerstein agrees that claimant is a very disabled infant, that it appears very likely that he will be substantially disabled in his capacity for independent living for the rest of his life, and that in time he will likely qualify for full eligibility under the Lanterman Act.

20. However, Dr. Wallerstein reported that he was instructed by SARC that he can assess an infant claimant's age (and any child under six years old) for eligibility, using only the first five of the seven criteria for substantial impairment (set forth in Factual Finding 7), not the last two, one of which is capacity for independent living. He reported that the guidance he received from SARC applies to all individuals applying to the regional centers in California for services. He reported that the guidance was

not in writing but was provided verbally by two senior clinicians at SARC, a supervisor, and a nurse, who stated that they had received the guidance from the Department of Developmental Disabilities. Dr. Wallerstein does not have personal knowledge as to why the age of six was apparently chosen as the minimum age to assess an individual for the capacity for independent living. He agreed that it is reasonable to question how an individual who has a lifelong substantial disability in self-care who cannot feed himself will have the capacity to live independently.

21. Dr. Wallerstein's testimony that claimant has a qualifying condition and substantial impairment in mobility and self-care was persuasive and consistent with the documentary evidence. Dr. Wallerstein did not disagree with the opinions of Dr. Frick and Dr. Ballinger regarding claimant's capacity for independent living but was precluded by SARC from determining whether claimant has a lifelong substantial impairment in this area based on claimant's age.

Claimant's Additional Evidence

22. Claimant's mother testified in a forthright and believable manner. Claimant has severe deformities of his arms and legs and is unable to move his arms and legs. He cannot feed himself. He cannot hold a bottle. He is on special feeding medications because he is unable to swallow. He is behind on his milestones for development. The doctors at Stanford have stated that there is no cure for claimant's condition, and it is not anticipated that his condition will change with age. Claimant requires 24-hour care. As his primary caregiver, claimant's mother believes that claimant is substantially disabled in mobility, self-care, and capacity for independent living, and is eligible for services under the Lanterman Act. She does not understand how an individual who cannot feed himself and has been determined to have a lifelong substantial disability in self-care will have the capacity to live independently.

23. Claimant’s mother argued that there is no age limit for when an individual’s capacity for independent living can be determined under the Lanterman Act, nor in any other written documentation. She submitted a written statement during hearing that was marked for identification as Exhibit G stating “The SARC has not provided evidence that eligibility for capacity for independent living (one of the criteria) requires that the child be over the age of 6 years old.”

Ultimate Factual Finding

24. The evidence established claimant has cerebral palsy; he is under the age of 18; and he has significant functional limitations in the major life activity areas of mobility, self-care, and capacity for independent living as defined by the Lanterman Act. Dr. Ballinger and Dr. Frick are claimant’s treating physicians. Dr. Ballinger has treated claimant since birth. Their opinions that claimant has lifelong substantial disabilities that will impair his mobility, self-care, and capacity for independent living were persuasive and consistent with the evidence and supported by Dr. Wallerstein’s opinion regarding mobility and self-care, and Dr. Lan’s opinion that claimant’s condition is lifelong. Dr. Wallerstein did not disagree with Dr. Ballinger’s and Dr. Frick’s opinions but was precluded from opining on whether claimant has a lifelong substantial disability in his capacity for independent living based on his age pursuant to verbal guidance from SARC. It was not established (nor argued) at hearing that this verbal guidance is written in regulation or included in the Lanterman Act.

LEGAL CONCLUSIONS

1. 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. (Welf. & Inst. Code, §§ 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.)

2. It is claimant's burden to prove that he has a developmental disability, as that term is defined in the Lanterman Act. The standard of proof is a preponderance of the evidence.

3. Claimant has established that he has a developmental disability as defined in the Lanterman Act as set forth in Factual Findings 7 and 24. Thus, he is fully eligible for regional center services under the Lanterman Act.

ORDER

The appeal of claimant from SARC's denial of regional center eligibility is granted. Claimant is fully eligible for regional center services.

DATE:

MICHELLE DYLAN
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.