

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

In the Matter of:

CLAIMANT,

vs.

REDWOOD COAST REGIONAL CENTER, Service Agency.

DDS No. CS1005353

OAH No. 2024040406

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on June 28, 2024, by videoconference.

Client Services Manager Karen Elliott appeared for Redwood Coast Regional Center (RCRC).

Claimant's grandmother appeared for claimant.

The matter was submitted for decision on June 28, 2024.

ISSUE

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

FACTUAL FINDINGS

1. Claimant was born in November 2017. He lives in far northern California with his grandmother and siblings.

2. Beginning when he was about three years old, claimant received some services through RCRC. Claimant's grandmother was not his primary parent at this time, and does not recall precisely the basis on which RCRC deemed claimant to qualify for these services.

3. In November 2022, claimant's family asked RCRC to evaluate whether claimant qualified for lifelong services under the Lanterman Act. RCRC determined that he did not.

4. In December 2023, claimant's family asked RCRC to re-evaluate claimant's eligibility for Lanterman Act services. RCRC again determined that claimant did not qualify. Claimant's grandmother timely appealed on his behalf.

Claimant's Characteristics and Challenges

5. Claimant is active, fidgety, and easily distractible. He hates crowds, such as school assemblies, and noisy environments. Claimant sometimes loses his temper and seems unable to control himself from hitting himself or others or breaking items. He disrupts class and elopes from school regularly.

6. Claimant's RCRC-funded services before November 2022 included one-on-one assistance in preschool. His grandmother believes that this assistance helped him pay attention and cooperate with his teachers and classmates, and would like him to receive similar assistance as he progresses in school.

7. Near the end of the 2023–2024 academic year, claimant and his school district finalized a new Individualized Education Plan for him. It does not call for the one-on-one assistance his grandmother would like him to receive, but does call for other school-based interventions.

8. For several years, claimant has had motor control problems relating to his tongue and mouth. He bites his tongue often when eating and does not speak clearly. Claimant soon will begin receiving services from a speech language pathologist to address these concerns.

9. In August 2023, claimant's mother died suddenly and unexpectedly. Claimant witnessed her death. His grandmother became his primary guardian and finalized his adoption in spring 2024.

10. His grandmother describes claimant as "very withdrawn" from other people, noting that this behavior has worsened since his mother's death but was present even before this traumatic event. She describes him as having "the sweetest heart" and as interacting well for his age with adults but struggling to interact successfully with his peers.

11. Claimant has been receiving grief counseling. He recently underwent a psychological evaluation through a children's mental health services provider and is likely to continue in mental health treatment. Claimant also has begun taking

medication to treat attention deficit hyperactivity disorder, which his grandmother believes to be effective though inadequate.

12. Before claimant joined her family, claimant's grandmother served as a foster parent to more than one child with autism spectrum disorder. She believes claimant resembles these children in his hypersensitivity, his social struggles, and his frequent agitation.

Clinical Evaluations

13. Claimant's grandmother understands that claimant's primary care pediatrician had diagnosed claimant in approximately 2021 with autism spectrum disorder. She does not have these medical records, however, because she was not claimant's parent at that time. Now that claimant's grandmother has adopted claimant, she has begun gathering records from his earlier childhood and hopes to obtain complete medical records from his former pediatrician soon.

14. In early 2024, RCRC asked licensed clinical psychologist Tonya L. Comstock, Ph.D., to evaluate claimant. Comstock interviewed claimant and his family, reviewed his medical and developmental history, and administered several psychological tests.

15. Comstock determined through testing, interviews, and clinical observation that claimant's intellectual capacity is near-average. Comstock recognizes that claimant functions poorly at school, but her opinion is that claimant's challenges in school reflect deficits in attention or emotional regulation more than in cognitive ability. She does not consider claimant to have intellectual disability.

16. Comstock also determined through testing, interviews, and clinical observation that claimant's communication and reciprocal social skills are age-appropriate and neurotypical. Similarly, she determined that claimant does not show restricted, repetitive, sensory-seeking, or sensory-avoidant behavior to an unusual degree for his age. Comstock's opinion is that claimant does not have autism spectrum disorder.

17. Comstock did diagnose claimant, based on testing, interviews, and clinical observation, with attention deficit hyperactivity disorder and post-traumatic stress disorder. She noted that these disorders do affect claimant's adaptive function to some degree, particularly in relation to self-direction and learning. Comstock recommended interventions to decrease claimant's anxiety and improve his attention, which include psychotherapy (as described in Finding 11), speech therapy (as described in Finding 8), and coordination between his home and school environments (as described in Finding 7).

18. RCRC psychologist Robin Kissinger, Ph.D., and pediatrician John Sullivan, M.D., have reviewed Comstock's evaluation, as well as other records regarding claimant. They concur in Comstock's conclusions. No professional evaluations or diagnoses other than Comstock's are in evidence.

LEGAL CONCLUSIONS

1. To establish eligibility for RCRC'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); see also Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) For a child as young as claimant, only the first six of these seven activities are at all relevant, and the sixth (independent living) has limited relevance.

4. Although evidence shows that claimant displays unusual and difficult behavior, the only professional clinical diagnostic evaluation in evidence regarding claimant finds that he does not have autism spectrum disorder, intellectual disability, or any other condition identified in Legal Conclusion 2. Criteria to qualify a child for special education services are not identical to the DSM-5 criteria that may qualify a child for Lanterman Act services. Likewise, 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 establishing a diagnosis and substantial limitations in accordance with the Lanterman Act, the evidence available to RCRC in June 2024 does not establish claimant’s eligibility for Lanterman Act services.

ORDER

Claimant's appeal is denied.

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.