

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

In the Matter of:

CLAIMANT

v.

NORTH BAY REGIONAL CENTER, Service Agency.

DDS. No. CS0015598

OAH No. 2024040418

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, who served as the hearing officer, heard this matter on May 23, 2024, by videoconference.

Claimant was represented by her parents. Claimant was not present at the hearing.

Beth DeWitt, Director of Client Services, represented North Bay Regional Center (NBRC).

The record closed and the matter was submitted for decision on May 23, 2024.

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

Background

1. Claimant is 10 years old. She lives with her parents and younger sibling in Sonoma County. Claimant has been diagnosed with autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), and anxiety disorder.

2. Claimant's family sought regional center services towards the end of 2023. NBRC staff conducted an intake social assessment of claimant and obtained documents from her family.

3. An eligibility team that included a physician and a psychologist met to review the evidence. The team determined that claimant did not satisfy eligibility criteria. NBRC issued a Notice of Action to claimant's family on March 1, 2024, stating that NBRC had found claimant ineligible. An appeal was submitted on March 29, 2024, challenging NBRC's determination.

Regional Center Eligibility Criteria

4. To be eligible for services under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), 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, 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. (1).) The last two major life activities are generally not taken into consideration when evaluating a young child such as claimant, because children of this age are not typically capable of living independently and are not expected to be economically self-sufficient.

5. The parties agree that claimant has a developmental disability (ASD) and significant functional limitations in self-care and self-direction. Claimant contends that she has further significant functional limitations in learning and receptive and expressive language. NBRC disagrees.

ASD Diagnosis

6. Claimant was evaluated for ASD at age 8, at the Kaiser Permanente Autism Spectrum Disorders Center in San Francisco. The Kaiser clinical team provided the family with a comprehensive report on May 22, 2022, setting forth the conclusion that claimant meets the diagnostic criteria for an ASD diagnosis.

School Assessment and Special Education Services

7. Claimant was assessed for special education services in the spring of 2022. Intelligence testing reflected claimant to score in the average to very high range in all domains. Academic testing in reading and math reflected scores mainly in the average or higher range, with one score of low average. Claimant scored in the average to high average range on a social language development assessment, and was not found eligible for special education services for speech and language impairment.

Claimant was found eligible for special education services for autism and emotional disturbance.

8. An Individualized Education Program (IEP) was developed to support claimant. The IEP notes that claimant has many significant weaknesses affecting her progress, including in “using language appropriately to communicate her needs.” The IEP provides for claimant to attend a general education classroom and receive individual and group language and speech therapy, individual counseling, and specialized academic instruction.

9. A Behavior Intervention Plan from May 2023 notes that claimant’s noncompliant behaviors, including elopement, aggression, verbal threats, refusal to transition, vocal protest, and misuse of school and personal items, occurred several times each week. These behaviors were noted to impede her ability to consistently engage in tasks and activities throughout the school day.

NBRC Eligibility Determination

10. Psychologist Todd Payne, Psy.D., was on the eligibility team. He testified at hearing to explain NBRC’s decision to deny eligibility.

11. The eligibility team agreed with the Kaiser ASD diagnosis, finding the evaluation to have been comprehensive. The team determined that due to her ASD, claimant has significant functional limitations in two domains: self-direction and self-care. The team did not find that she has significant functional limitations in mobility, expressive and receptive language, or learning.

12. Dr. Payne discussed the team’s determination that claimant does not have significant functional limitations in receptive and expressive language. NBRC

looks for an individual's ability to understand communication and to be understood. He acknowledged that it can be a difficult area to assess. Because claimant's standardized testing scores for language skills were in the average or higher range, the team concluded that claimant does not have significant functional limitations in expressive and receptive language. The team was aware that respondent is receiving school district services for language and speech, but found that these services are to assist claimant with social language, not for expressive and receptive language. Dr. Payne believes that any challenges claimant has with expressing herself or understanding others reflect her limitations in self-direction.

13. Dr. Payne explained that while there is no definition of "learning" in the Lanterman Act, NBRC views learning as an individual's intellectual ability and academic skills. Because claimant's intelligence testing and academic testing did not show intellectual impairment, the team concluded that claimant does not have significant limitations in learning. The team viewed claimant's difficulty attending school and accessing education as relating to her limitations in self-direction and not demonstrating any limitations in her capacity for learning.

14. The eligibility team saw no evidence suggesting that claimant has significant limitations in mobility.

Claimant's Evidence

15. Claimant's parents testified credibly regarding claimant's significant challenges and limitations. Claimant uses many strategies to maintain self-regulation. She has a special teddy bear with her at all times. Claimant frequently places two fingers in her mouth, often while also simultaneously pressing two fingers of her other

hand on her belly button. When claimant becomes dysregulated, she threatens self-harm and demands that her parents kill her.

16. Claimant's parents report that when claimant is dysregulated, she can lose the ability to speak and will communicate with grunts. They described communication as presenting a daily challenge for claimant. Claimant has difficulty asking for help or expressing her needs and difficulty understanding directions. When claimant's mother is talking, claimant will pinch her, snarl, or tell her to shut up. In conversations with peers, claimant expresses disgust and repeats herself. She gets upset when others express negative feelings.

17. Claimant has faced significant difficulty attending school since the fall of 2021, when her school reopened after the lifting of pandemic restrictions. Claimant was in the second grade. She resisted going to school and became dysregulated when separating from her mother. She would drop to the ground in a fetal position and would hide under the teacher's desk. This behavior caused claimant's parents to seek the assessment that determined that claimant suffered from ASD.

18. Claimant has been unable to attend school for a full day due to her dysregulation and sensory-seeking and sensory-avoiding behaviors. Claimant has a history of eloping and threatening to harm herself or others. Many interventions have been tried, including a classroom aide and the presence of claimant's mother on school grounds throughout the school day. Claimant was permitted to use gum, fidget devices, and other sensory tools. She was provided access to a quiet space at school to help her self-regulate, but still was not consistently able to complete a full school day.

19. Claimant is currently in fourth grade. During the first 35 days of the school year, she attended only one full school day. In September, claimant again

eloped from school and threatened self-harm. Claimant's parents consulted with claimant's therapist and decided to remove her from school. They requested a "home/hospital" placement from the school district which was denied. They have been seeking an alternate placement for claimant, but in the meantime have been homeschooling her through the Heartwood homeschool program. They report that claimant is behind in academics, especially in math where she is performing at the second-grade level.

20. Claimant has been receiving ABA services and psychotherapy, which have been beneficial. Claimant has also enjoyed and benefitted from equine therapy.

21. Claimant's parents seek regional center eligibility because they wish to provide her with all available resources and services to help her manage living with ASD. The Kaiser Permanente ASD assessment team suggested that they contact NBRC, as have families they have met through claimant's participation in equine therapy. Claimant's parents worry about claimant's future. They have been overwhelmed by the pressure of caregiving which has been detrimental to her mother's health and career. They do not have family for support and would greatly benefit from respite services.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. 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 intellectual disability, autism, epilepsy, cerebral palsy, and what is referred to as the “fifth category.” (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category refers to “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.*)

3. Pursuant to Welfare and Institutions Code section 4512, subdivision (f), 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.”

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

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

6. The evidence further established that, due to claimant's persistent dysregulation and sensory-seeking and sensory-avoidance behaviors, she is unable to access education in the school setting, even with significant supports. Despite her apparent average level of intellectual capacity, claimant persuasively established that she suffers significant functional limitations in learning relative to her peers. These limitations are related to her ASD.

7. The evidence established that claimant has challenges with communication, especially when dysregulated, but was insufficient to establish a significant functional limitation in expressive and receptive language, relative to peers her age. There was no evidence that claimant has any limitations in mobility.

8. Because claimant has established that she suffers significant functional limitations in three areas of major life activity, she has established that she is substantially disabled due to ASD. Claimant has met her burden of establishing that she is eligible for regional center services.

ORDER

Claimant's appeal is granted. Claimant is eligible to receive services from North Bay Regional Center.

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.