

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN ANDREAS REGIONAL CENTER, Service Agency.**

**DDS No. CS0016841**

**OAH No. 2024050596**

**DECISION**

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on September 10, 2024, in San Jose, California.

Attorney Sundeep Patel represented claimant, who was present. Claimant's parents were also present.

Executive Director's designee James Elliott represented service agency San Andreas Regional Center (SARC).

The record closed and the matter was submitted for decision on September 10, 2024.

## **ISSUE**

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

## **FACTUAL FINDINGS**

1. Claimant was born in August 2020. He is four years old and lives with his parents.

### **Background and History**

2. Claimant's parents observed regression in claimant's speech development and other skills when he was approximately 18 months old (in early 2022). They communicated their observations to claimant's pediatrician, which led to a referral to SARC. SARC accepted claimant into the Early Start<sup>1</sup> program in approximately March 2022. Claimant exited the Early Start program in August 2023.

3. An initial Individualized Family Service Plan (IFSP) for Early Start services was developed in October 2022. Claimant's exit IFSP was developed in April 2023. As part of the exit IFSP, an assessment of claimant, who was then 31 months old, was performed. The assessment showed various areas of concern, including in the areas of communication, cognitive, and fine motor skills.

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<sup>1</sup> The Early Start program is for infants and children younger than 36 months who are at risk for developmental delay or disability. (Gov. Code, § 95000 et seq.)

Claimant's mother testified that there were many inaccuracies in the exit IFSP that they wanted to correct. She reported that they were "forced" by their then-service coordinator to sign the document without edits because they were informed that their failure to sign the IFSP would affect their ability to continue obtaining SARC services.

4. On May 16, 2023, and without a formal diagnosis of a developmental disability, SARC found claimant provisionally eligible for Lanterman Act services. SARC concluded that claimant showed substantial developmental delays in the areas of communication and self-direction.

5. SARC staff members worked with claimant's parents in October 2023 to develop an Individual Program Plan (IPP) for claimant. The IPP describes several needs and potential services, including respite for claimant's parents, participation by a SARC staff member in claimant's Individualized Educational Program planning and reviews, the sharing of costs related to day care services, and providing claimant and claimant's parents with an emergency identification kit. SARC also notified claimant's parents that claimant would "have a redetermination when he turned 4.6 years old (February 2025) to determine if he will qualify for on-going Lanterman."

An addendum to the IPP now includes SARC's "assistance for funding for diapers/wipes/rash cream."

6. On November 16, 2023, claimant was diagnosed with autism spectrum disorder (autism or ASD) at Sutter Health's Palo Alto Medical Foundation (PAMF) Developmental-Behavioral Pediatrics. The developmental assessment performed by Sutter Health emphasized claimant's delays in cognitive and communication skills as the bases for this diagnosis.

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## **SARC's Eligibility Determination**

7. On May 1, 2024, claimant's parents requested that SARC determine whether claimant was eligible for full Lanterman Act services. In support, they submitted claimant's ASD diagnosis and stated that claimant has significant functional limitations in communication, learning, self-care, and self-direction.

8. On May 15, 2024, SARC neuropsychologist Faith Langlois-Dul, Psy.D., reviewed claimant's documentation. Dr. Langlois-Dul determined that while claimant presented delays in receptive/expressive language and self-direction and met the criteria for provisional eligibility, there was not enough information to make a finding that claimant presented delay in three or more areas of major life activity or that his disability would be lifelong such that he would be fully eligible for Lanterman Act services. She observed the lack of any records from speech therapy or occupational therapy (OT) providers, and further noted that Sutter Health's ASD diagnosis indicated progress in certain areas of major life activity, including in some aspects of social functioning and the ability to follow directions.

9. On May 17, 2024, SARC issued a notice of action and letter of denial, informing claimant's parents that claimant was not fully eligible for Lanterman Act services but continued to be provisionally eligible. Claimant's parents filed a timely request for an appeal.

10. On July 18, 2024, claimant's parents submitted additional documents to SARC. Claimant's mother and claimant's speech and language therapist submitted Adaptive Behavior Assessment System Third Edition (ABAS-3) forms. Claimant's father submitted a Developmental Profile 4 (DP-4) form.

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11. Ivania Molina, Ph.D., a clinical psychologist at SARC for over 10 years, reviewed claimant's file, including the ABAS-3 and DP-4 forms. On July 25, 2024, Dr. Molina issued an addendum to Dr. Langlois-Dul's determination. She agreed with Dr. Langlois-Dul's assessment that claimant did not meet the qualifications for full eligibility under the Lanterman Act.

In her addendum, Dr. Molina agreed that there was a lack of information to determine whether claimant is "substantially disabled for life." She noted claimant's "drastically low" ratings on the ABAS-3 and DP-4 forms, which were "indicative of a high level of parental concern." However, Dr. Molina wrote that "they alone do not provide proof of substantial disability, because [SARC] ha[s] not been given the opportunity to review updated objective reports about the child's response to intervention over time." Dr. Molina wrote that SARC needed to review other reports, such as Individualized Educational Program (IEP) and Applied Behavioral Analysis (ABA) progress reports, psychoeducational evaluations, and OT and speech therapy reports, because "[a]ttesting that an individual is disabled for life due to a developmental disability is a multifactorial process."

12. Both Dr. Langlois-Dul and Dr. Molina testified consistently with their written evaluations at hearing.

Dr. Langlois-Dul has worked in the psychology field since 1994 and at SARC for approximately 12 years. Describing the information required to make an eligibility determination, Dr. Langlois-Dul explained that she needed more data to better assess claimant's disability, including records that showed claimant in different environments and not just in the home. She had requested more documents through claimant's service coordinator but does not know why they were not submitted. Dr. Langlois-Dul,

who had not seen claimant prior to hearing, would be happy to perform a full assessment on claimant.

Dr. Molina, a psychologist since 2009, noted that it is “best practice” to obtain and examine more records and objective data from multiple sources and across different environments to make a Lanterman Act eligibility decision. Having scored and considered over 5,000 ABAS-3 forms over the course of her career, Dr. Molina explained that the ABAS-3 and DP-4 forms cannot be the sole source of information to make eligibility determinations. Dr. Molina offered to complete a full assessment on claimant.

## **Claimant’s Evidence**

13. Melissa Joseph, a pediatric speech-language pathologist of six years and the owner of Honey Bear Speech Therapy, testified at hearing. She has worked with claimant since January 2022 and currently provides weekly speech therapy services to claimant. Joseph provided a written assessment of claimant’s communication skills as part of the exit IFSP and filled out an ABAS-3 form, but she has not written any other reports concerning claimant’s abilities or progress.

Joseph reported that claimant has made no progress in his communication skills and that he has sensory problems. She also stated that claimant cannot perform self-care tasks, has a “harder time” learning, and has feeding and sleeping issues.

14. Claimant’s parents testified about their observations of and concerns for their son.

Claimant’s mother reported that claimant’s life skills are weak. Claimant will scratch people if he is frustrated, has digestive and feeding problems, and has issues

with “stranger danger” and elopement. Claimant does not respond to his name, is not potty trained, and cannot follow directions. Claimant’s mother noted that claimant needs to be sedated so that his dentist can perform dental cleanings.

Claimant’s mother also testified about the difficulty in obtaining services for claimant. Claimant’s parents contacted multiple clinics before obtaining a speech therapy referral from SARC. They only retained an occupational therapist for claimant within the last three months. Claimant is currently on waitlists for ABA, feeding, and sleep therapies. They have also recently reached out to claimant’s school district to begin the process of creating an IEP.

Claimant’s father testified consistently with claimant’s mother. He also noted with frustration their relationship with SARC, pointing to his perception of the lack of information, communication, and assistance from SARC and its service coordinators. For instance, claimant’s father testified that no one at SARC informed them about what would occur after the end of the Early Start program, or what provisional eligibility meant and what specific services were available to claimant. Claimant’s father also noted that it was he who initiated the conversation with Dr. Molina to obtain the ABAS-3 and DP-4 forms. He also testified that they did not know that they could seek an assessment of claimant from SARC or that Dr. Molina had offered to assess claimant, stating that this appeal would not have occurred had they known.

15. Claimant’s father reported that, other than the ABAS-3 and DP-4 forms, SARC never requested any additional information about claimant. He testified that they could have provided more documentation from Joseph, claimant’s dentist and occupational therapist, and other professionals.

No such documentation was submitted at hearing.

## 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.) Because the Act is a remedial statute, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. To establish eligibility for regional center services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that he suffers from a developmental disability, and that he is substantially disabled by that developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a); Evid. Code, §§ 115, 500.)

3. A “developmental disability” potentially qualifying a person for services under the Lanterman Act includes intellectual disability, autism, epilepsy, cerebral palsy, and other “disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.” (Welf. & Inst. Code, § 4512, subd. (a)(1).) The matters stated in Factual Finding 6 confirm that claimant has a developmental disability, autism spectrum disorder, that potentially qualifies him for Lanterman Act services.

4. The qualifying disability must be “substantial,” which 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: (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, subd. (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The last two major life activities are generally not taken into consideration when evaluating a young child such as claimant.

The evidence established that claimant has experienced substantial impairment, as compared to children of similar age, in two major life activities, receptive and expressive language and self-direction. This substantial impairment continued at the time of the hearing and resulted, and still results, from autism spectrum disorder. However, for the reasons stated in Factual Findings 8 and 11 through 15, claimant has not demonstrated, by a preponderance of the evidence, a substantial impairment in a third major life activity at this time.

5. Further, rather than being temporary, substantial disability qualifying a person for Lanterman Act services must be, or must be reasonably likely to be, lifelong. (Welf. & Inst. Code, § 4512, subd. (a)(1) [a developmental disability "continues, or can be expected to continue, indefinitely"]; Cal. Code Regs., tit. 17, § 54000, subd. (b)(2).) The evidence did not establish that claimant's substantial impairment in the two major life activities were, at the time of hearing, to be lifelong.

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6. The Lanterman Act deems children under the age of five “provisionally eligible for regional center services” if available evidence suggests but does not establish conclusively that they meet all requirements for full eligibility. (Welf. & Inst. Code, § 4512, subd. (a)(2).) In particular, the Lanterman Act authorizes a regional center to make a three-year-old child who currently experiences substantial disability provisionally eligible for regional center services if information about the child’s developmental history is inadequate to demonstrate whether the child’s disability will continue to be substantial as the child matures.

The matters stated in Factual Findings 4, 6, 8, and 11 through 15, and in Legal Conclusions 3 through 5, justify SARC’s determination as of claimant’s third birthday that claimant is provisionally eligible for SARC services, until he becomes five years old.

7. Claimant’s parents’ concerns about claimant’s development are reasonable. At the same time, these matters do not establish as of the hearing date that claimant has a substantial disability in three or more areas of major life activity, or that his disability is likely to continue for the rest of his life. Claimant will be reassessed in February 2025, when claimant approaches five years old. At that time, more information will be available about him, reflecting a longer treatment record and evidence from multiple professionals including therapists, educators, and health care providers.

On this record, claimant has not demonstrated that he is fully eligible for services under the Lanterman Act. Claimant remains provisionally eligible for services.

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## **ORDER**

Claimant's appeal from the San Andreas Regional Center's determination that claimant is not fully eligible for services under the Lanterman Act is denied.

DATE:

MARIO M. CHOI

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.