

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS No. CS0018042

OAH No. 2024060304

DECISION

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on July 30, 2024, by videoconference.

Claimant's father represented claimant. Claimant was not present.

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

The record closed and the matter was submitted for decision on July 30, 2024.

ISSUE

Is claimant 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 2019. He is five years old and lives with his parents and three siblings.

Background and History

2. Claimant was preliminarily diagnosed with autism spectrum disorder (autism or ASD) in October 2021 at the Stanford Children's Health Sunnyvale Development and Behavior Clinic (Stanford). In September 2022, Stanford confirmed claimant's autism diagnosis, finding claimant's developmental and adaptive functioning to be within the low to extremely low range. Stanford recommended lifelong support by SARC.

3. SARC accepted claimant into the Early Start¹ program in April 2021. In May 2022, SARC found claimant provisionally eligible for Lanterman Act services based on an initial finding that he was substantially limited in the areas of communication, learning, and self-direction. In June 2022, after a further assessment by a SARC

¹ 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.)

psychologist, claimant was found to be substantially limited only in the areas of communication and self-direction.

4. Claimant attempted speech therapy in 2021, but it was discontinued after approximately eight months. Claimant also attempted occupational therapy in 2021, but that was discontinued as well.

5. Claimant began Applied Behavioral Analysis (ABA) therapy in 2021. Since July 2022, claimant has received ABA therapy services from the Central Coast ABA (Central Coast). Central Coast prepares continuity of treatment reports (the reports), detailing its therapists' observations of claimant's behavior and offering further or modified treatment goals and objectives based on claimant's progress. Central Coast prepared four reports for claimant, dated February 14, 2023, August 9, 2023, December 27, 2023, and July 10, 2024. All of claimant's reports were authored by Michelle Caldwell, Assistant Behavior Analyst at Central Coast.

6. Claimant's local public school district established an Individualized Education Plan (IEP) for claimant as of June 2022. The IEP has not been updated. Claimant has not attended a school or educational program that provides IEP support.

SARC Eligibility Assessment

7. SARC staff members worked with claimant's parents to develop an Individual Program Plan (IPP) for claimant. The IPP, effective July 2023, describes several needs and potential services for claimant, including respite for claimant's parents and swim therapy.

8. On January 24, 2024, a SARC psychologist evaluated whether claimant was eligible for ongoing services under the Lanterman Act. Based only on the

then-available reports, she determined that claimant had significant functional limitations in self-direction, but not in any of the other areas of major life activity. She concluded that claimant was not eligible for ongoing services under the Lanterman Act. SARC issued a notice of action and an eligibility denial letter to claimant's parents on April 15, 2024.

9. An appeal of SARC's determination was filed on June 4, 2024. On June 24, 2024, claimant's father completed a Vineland-3 Comprehensive Parent/Caregiver Form (Vineland-3). The Vineland-3 is a standardized measure of adaptive behavior focusing on what claimant does "in daily life" and evaluates claimant in the areas of communication, daily living skills, and socialization. The Vineland-3 results showed that claimant had low scores in the areas of communication and daily living skills.

SARC's psychologist reviewed the Vineland-3 and affirmed her prior determination that claimant was not eligible. She noted that claimant had no mobility issues and agreed that claimant's self-direction was "significantly impaired consistent with ASD diagnosis." However, SARC's psychologist found that, because there were "no records of [claimant] getting Speech therapy" and because the "child does speak," claimant did not demonstrate significant delays in the "domain of communication." She also noted that because the IEP was not being followed, there was nothing to substantiate claimant's impairment in the learning domain. Finally, SARC's psychologist stated that because there were no notes or treatment records addressing claimant's self-care skills, it was unclear whether claimant had a substantial impairment in the self-care domain.

10. A Central Coast report was also completed on July 10, 2024, incorporating both Central Coast's recent observations of claimant and the Vineland-3. After a review of the report, SARC's psychologist reaffirmed her prior determination

that claimant is not eligible based on the reasons articulated in Factual Finding 9. SARC's psychologist did not testify at hearing.

Claimant's Evidence

11. Claimant's father testified about his observations of and concerns for his son. Claimant's father agrees with SARC that claimant is significantly delayed in self-direction. He also agrees with SARC that claimant does not have a mobility issue. However, he disagrees with SARC's determination that claimant is not significantly impaired in the areas of language and self-care, and he also questions whether claimant has a learning impairment.

(a) Receptive and expressive language. Using his younger 2-year-old son as a comparison, claimant's father provided examples of claimant's language impairment.

Unlike his brother, claimant is unable to convey emotions or feelings. If claimant's brother is hurt, he can convey that he is himself feeling hurt or in pain. Claimant will suddenly cry, but he is unable to communicate what the problem is. If he does communicate, he will repeat whatever is said to him. For instance, when claimant's family recently contracted COVID, claimant's brother was able to communicate that he was not feeling well. Claimant could not; instead, when asked "what's wrong," he would mimic back "what's wrong." If he was told "it's ok; it's alright," claimant would imitate that phrase.

As another example, claimant's brother will say "good morning, [claimant]" to claimant. But instead of responding with a "good morning" or another reply, claimant will mimic the same phrase ("good morning, [claimant]") back to his brother. Although claimant's brother will try to correct him, claimant will repeat "good morning, [claimant]" unless he is told to say something different.

As claimant's father explained, claimant cannot communicate effectively or articulate for himself. Instead, he will imitate what was or is said to him, without an understanding or awareness of what the communication was meant to convey or what the words mean.

(b) Self-care. Claimant's father reported that claimant's self-care skills are also not age appropriate.

For instance, claimant still lacks an awareness of his own bodily functions. Earlier this year, his parents tried potty training but that "did not go well." Claimant also does not know how to chew or eat properly. Claimant only drinks protein shakes, eats oatmeal, and will lick the salt off tortilla chips. As claimant's father explained, claimant is repulsed by and will not take any other type of food.

(c) Learning. Claimant's father noted that, given claimant's language and self-care issues, and comparing claimant's progress with that of his younger sibling, he believes that claimant is also impaired in learning.

Claimant's parents placed claimant in a preschool program that did not provide IEP support because the program allowed a parent and a specialized therapist to be present with claimant during school hours. Similarly, claimant's parents chose to enroll claimant in a private school for transitional kindergarten this fall instead of a public school because the school will allow claimant's therapist to be present with him during the entire school day.

Claimant's father noted that claimant does recognize simple commands, such as putting away his shoes. But unlike his younger brother, claimant does not comprehend multi-prompts such as, for instance, putting away his shoes and putting away his jacket. Although claimant tried speech therapy in 2021, claimant's parents had to

discontinue the service because claimant, being unfamiliar with the facility, refused to remain there.

Claimant's father also responded to the SARC psychologist's comment that claimant's use of an electronic tablet was "a major distraction" because it caused claimant to respond less to communications or to requests. Claimant's father explained that claimant's use of an electronic tablet was "not a distraction, but an accommodation" because he uses the tablet to learn and to interact with others. For example, claimant is using the tablet to learn the sounds that animals make.

12. Central Coast ABA analyst Caldwell testified consistently with claimant's father. Based on her own interactions with claimant, a review of the documents and data, and knowledge of the Lanterman Act, Ms. Caldwell's position is that claimant is eligible for continued Lanterman Act services.

(a) Continuity of Treatment Reports. Ms. Caldwell noted that Central Coast's reports, which are provided to and used by the insurance company to verify continued ABA service eligibility, are individualized assessments of claimant's progress. They prescribe the services and hours Central Coast will undertake for claimant based on his progress. These reports are not meant to compare claimant with his peers.

(b) Vineland-3. The Vineland-3 is used to "benchmark" claimant's skills with those of his peers. The Vineland-3 will show different equivalencies at different ages precisely because an individual is being compared with those in his or her age group. As Ms. Caldwell explained, while claimant may have demonstrated some equivalency with those in his age group in a previous Vineland-3, claimant has shown that he is not reaching the same equivalency with those in his current age group. And as claimant ages, it will get increasingly difficult for him to reach the same skill levels as his peers.

Central Coast uses the Vineland-3 results as a guide to “correlate goals” that are beneficial for claimant.

(c) Observations and Assessment of Claimant. As Ms. Caldwell explained, neither the continuity of treatment reports, the Vineland-3, nor SARC’s evidence accurately portrays the “extreme impairments” claimant has, especially in the areas of communication and self-care.

Based on Central Coast’s own data and daily observations of claimant, it is Ms. Caldwell’s opinion that claimant has an 18-month to 2-year-old level of communication. Claimant can make “very basic sentences,” but cannot express himself or his feelings. Claimant does not advocate for himself and, when he is upset, he will only cry and push things away.

Ms. Caldwell also described claimant’s inability to take care of himself. Ms. Caldwell noted that claimant cannot feed himself appropriately for his age and does not chew food. Claimant also has a severe aversion to food that he does not eat or know, requiring Central Coast to work on programming to teach claimant how to “tolerate being near” food. Claimant is also working with Central Coast on toilet training: claimant has learned to tolerate being in the bathroom and is now learning to tolerate sitting in the bathroom with his clothes on. But claimant is still not fully aware of having a wet diaper.

Claimant is also not aware of his surroundings and does not play or socialize with his peers. And claimant still does not “tolerate [a] caregiver not being near” for any amount of time.

Given claimant’s progress and needs, Central Coast has maintained and will continue to provide 30 hours of services to claimant. That is the maximum number of

hours Central Coast can provide any client. A Central Coast staff member was present with claimant while in preschool, and they will continue to be present when he attends transitional kindergarten. Central Coast staff takes the IEP into consideration when supporting claimant at school.

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. 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. (Welf. & Inst. Code, § 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000, subd. (b).) The term "developmental disability" 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).)

3. 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:

(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.

4. To establish eligibility for regional center 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); Evid. Code, §§ 115, 500.)

5. As stated in Factual Findings 2, 8, and 9, there is no dispute that claimant meets the diagnostic criteria for autism spectrum disorder, an eligible condition, and that he has significant functional limitations, relative to his peers, in self-direction. This limitation is directly related to his autism.

6. The matters stated in Factual Findings 11 and 12 confirm that claimant also has significant functional impairment, as compared to children of similar age, in the areas of receptive and expressive language and self-care due to his autism.

The matters stated in Factual Findings 11 and 12 do not at this time confirm that claimant experiences a significant functional impairment in the major life activity of learning.

7. 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 matters stated in Factual Findings 2, 8, 11, and 12 establish that claimant’s substantial disability is likely to be lifelong.

8. Claimant has met his burden of establishing that he is substantially disabled by autism, a developmental disability as that term is defined in the Lanterman Act. Claimant is thus eligible for regional center services.

ORDER

Claimant’s appeal from the service agency’s determination that claimant is ineligible for services under the Lanterman Act is granted. Claimant is eligible under the Lanterman Act to receive services from San Andreas Regional Center.

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.