

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency

DDS No. CS0019574

OAH No. 2024080261

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 24, 2025.

Claimant was represented by her mother and father. The names of Claimant and her family members are not used in this decision to protect their privacy.

Sonia Tostado, Director Designee, represented the Westside Regional Center (WRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 24, 2025.

ISSUE

Whether Claimant is eligible for services and supports from WRC under the Lanterman Developmental Disabilities Services Act.

EVIDENCE RELIED UPON

Exhibits: WRC exhibits 1 and 3 through 22. Testimony: Karesha Gayles, Psy.D.; Claimant's father; Claimant's mother.

FACTUAL FINDINGS

Background and Procedural History

1. WRC determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.) A "developmental disability" under the Lanterman Act "means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." (Welf. & Inst. Code, § 4512, subd. (a)(1).) "As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term "shall include intellectual disability, cerebral palsy, epilepsy, and autism." (*Ibid.*) "This term shall 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, but shall not include other handicapping conditions that are solely physical in nature.” (*Ibid.*).

2. Claimant Is a 10-year-old girl who lives with her mother and brother. In February 2024, when Claimant was nine years old, her mother and father asked WRC to assess whether Claimant was eligible for Lanterman Act services and supports due to autism spectrum disorder. At the time, Claimant was receiving special education services at her elementary school due to autism, and she reportedly had challenges with social and communication skills, behavior, self-care, and learning. Claimant also had a prior diagnosis of Moderate Expressive Language Disorder.

3. An intake counselor for WRC assessed Claimant and referred her for a psychological evaluation by Beth Levy-Wright, Ph.D., a clinical psychologist. Dr. Levy-Wright evaluated Claimant’s cognitive and adaptive functioning and assessed whether she met the diagnostic criteria for autism spectrum disorder. Dr. Levy-Wright determined Claimant’s cognitive functioning was average, but her overall adaptive functioning score was in the sixth percentile of individuals within her age group according to the Vineland Adaptive Behavior Scales, Third Edition (Vineland TM-3) Comprehensive Parent/Caregiver Form Report. The overall score reflected moderately low scores in the communication and socialization domains, and scores within the lower end of the adequate range in the areas of daily living skills and motor skills. (Exhibit 6, p. A62; see also Exhibit 10, p. A87.)

4. Dr. Levy-Wright also determined Claimant met the diagnostic criteria for autism spectrum disorder. Based on the assessment, Dr. Levy-Wright diagnosed Claimant with: (1) “Attention-Deficit/Hyperactivity Disorder Combined presentation;” (2) “Generalized Anxiety Disorder;” and (3) “Autism spectrum disorder without

accompanying language impairment and without accompanying cognitive impairment.” (Exhibit 6, p. A52.) In addition, Dr. Levy-Wright made a provisional diagnosis of obsessive-compulsive disorder. (*Ibid.*) With respect to autism spectrum disorder, Dr. Levy-Wright determined the severity is “Level 1” (i.e., requires support) as to her social communication difficulties and restricted, repetitive behaviors. (*Ibid.*) Autism spectrum disorder is divided into three levels of severity; level 1 requires the least amount of support.

5. On May 22, 2024, a “multidisciplinary team” met to consider Claimant’s eligibility for Lanterman Act services and supports. (Exhibit 4, p. A21.) The team is composed of a neurologist, psychologist, and counselors. After reviewing Dr. Levy-Wright’s evaluation and other available records, the team determined Claimant does not have a developmental disability as defined in the Lanterman Act. Although Dr. Levy-Wright diagnosed Claimant with autism spectrum disorder, the team concluded the disorder does not constitute a substantial disability for Claimant. The team also determined Claimant is not substantially disabled due to any other condition included within the definition of developmental disability in the Lanterman Act.

6. Based on these findings, WRC sent a Notice of Action to Claimant’s parents on June 1, 2024, notifying them that Claimant is ineligible for services and supports under the Lanterman Act. Claimant’s parents timely appealed the Notice of Action and requested a mediation with WRC. While that request was pending, Claimant’s parents had Claimant assessed by Early Childhood Treatment Center (ECTC), an outpatient program that offers medical, developmental, cognitive, speech/language, occupational, and psycho-educational testing. The ECTC assessment team included Angela Sumner, Ph.D., a psychological associate, and Pam Ajang, Ph.D., a clinical psychologist, among other professionals.

7. Like Dr. Levy-Wright, the ECTC assessment team found Claimant met the diagnostic criteria for autism spectrum disorder without cognitive impairment. But unlike Dr. Levy-Wright, the ECTC assessment team concluding the disorder included “mild language impairment,” and the severity of Claimant’s disorder is “Level 2” (i.e., requires substantial support) in social communication and restricted/repetitive behaviors. (*Id.* at p. A97.)

8. After a December 2024 mediation did not resolve the appeal, Claimant’s parents submitted an Appeal Request Change Form requesting a hearing on the appeal.

Hearing Testimony

KARESHA GAYLES, PSY.D.

9. Karesha Gayles, Psy.D., is a registered psychological associate and a staff psychologist at WRC. Dr. Gayles testified that eligibility for Lanterman Act services and supports requires more than just a qualifying condition. Eligibility also requires that the qualifying condition constitute a substantial disability for an individual.

10. Dr. Gayles explained that a substantial disability requires the existence of significant functional limitations in three or more of the following areas of major life activity 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; and (G) economic self-sufficiency. In Claimant’s case, the multidisciplinary team determined Claimant has a qualifying condition (autism spectrum disorder), but she does not evidence significant functional limitations in three or more areas of major life activity as required for eligibility. According to Dr. Gayles, the multidisciplinary team determined Claimant only had significant functional

limitations in the area of language. Therefore, the team concluded Claimant's autism spectrum disorder does not constitute a substantial disability for her.

CLAIMANT'S FATHER

11. Claimant's father testified he did not perceive Claimant's autism spectrum disorder until recently. Claimant had issues with language or saying certain words, and putting Claimant in speech therapy helped reveal that disorder.

12. Claimant's mother and father have different households, which gives them two different perspectives of Claimant's behavior. From the perspective of Claimant's father, Claimant does not have issues with making friends, but she has difficulty keeping friends because she becomes too attached and possessive of them. The same is true with close family members; Claimant does not want them to have close bonds with anyone else.

13. Claimant's father has given Claimant opportunities for growth, including Girl Scouts, sports, and sculpting, and those activities have been successful in bringing Claimant "out of her shell." In the view of Claimant's father, Claimant also regulates much better with him than with her mother.

CLAIMANT'S MOTHER

14. Claimant's mother testified Claimant requires considerable prompting with respect to performing daily living activities. She also displays odd behaviors while eating, including licking yogurt out of a bowl rather than using utensils, putting her face in a bowl of cereal, eating with her hands, and trying to drink water through a straw directly from the refrigerator water dispenser. Claimant also plays with spit in her

mouth, and she will not exit the shower without repeated prompting from Claimant's mother.

15. Claimant has also blown her nose using her shirt, and she will refuse to choose clothes to wear, even with assistance from her mother. Claimant has difficulty making choices and difficulty interacting with others in reciprocal exchanges, because Claimant is focused only on her own thoughts. Although Claimant can be very kind, she has bitten her brother and her mother's friend, and she also has hit and spit on her mother and her mother's friend. In addition, Claimant injured the family's pet bird, and she has verbally expressed a desire to hurt other children. Claimant has also expressed that she does not want to go to school because of difficulties with friends.

Analysis

16. There is no dispute between the parties that Claimant has autism spectrum disorder, which is included within the definition of developmental disability in the Lanterman Act. The only material dispute is whether that condition constitutes a substantial disability for Claimant. Claimant's parents contend it does, while WRC contends it does not.

17. The evidence supports WRC's contention that Claimant's autism spectrum disorder is not substantially disabling at present. Dr. Levy-Wright's assessment and Dr. Gayles's testimony support WRC's contention. Dr. Levy-Wright assessed Claimant's autism spectrum disorder as "Level 1" as to her social communication difficulties and restricted, repetitive behaviors. That level of severity requires some support, but it tends to show Claimant's disorder does not create significant functional limitations in three or more areas of major life activity. Dr. Levy-Wright also found mixed results in Claimant's adaptive functioning. While Claimant

had moderately low scores in the communication and social domains, her scores in the domains of daily living skills and motor skills were in the lower end of the adequate range. These results also tend to show Claimant's autism spectrum disorder does not constitute a substantial disability for her as defined in the Lanterman Act.

18. Additionally, the evidence presented includes a recent Individualized Education Program Report for Claimant that supports WRC's position. In that report from April 2024, the section regarding "Adaptive/Daily Living Skills" states, "[Claimant] is able to complete adaptive/daily skills in the home and school environment. She is able to dress herself, appropriately eat lunch at school, and access the school environment appropriately. Overall, [Claimant] demonstrates age-appropriate adaptive/daily skills and no concerns are reported in this area at this time." (Exhibit 17, p. A196.) This statement weighs against a finding that Claimant's autism spectrum disorder is substantially disabling at present.

19. Unlike Dr. Levy-Wright, the ECTC assessment team concluded the severity of Claimant's autism spectrum disorder is "Level 2" (i.e., requires substantial support) in social communication and restricted/repetitive behaviors. But that conclusion as to those particular aspects of Claimant's behavior does not prove she has significant functional limitations in three or more areas of major life activity as required for Lanterman Act eligibility. The weight of the evidence supports a finding she does not at this time.

LEGAL CONCLUSIONS

1. The Lanterman Act provides services and supports to meet the needs of persons with developmental disabilities, regardless of age or degree of disability.

(Welf. & Inst. Code, § 4501.) To be eligible for Lanterman Act services and supports, the development disability must “constitute[] a substantial disability for that individual.” (Welf. & Inst. Code, § 4512, subd. (a).) “‘Substantial disability’ means 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.” (*Id.*, subd. (j)(1).)

2. WRC determined Claimant is not eligible for services and supports under the Lanterman Act because her autism spectrum disorder does not constitute a substantial disability for her. Claimant has properly exercised her right to an administrative fair hearing to challenge those determinations. (See Welf. & Inst. Code, §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (E.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; see also *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1136.) This burden requires proof by a preponderance of the evidence because no law or statute (including the Lanterman Act) provides otherwise. (Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].) A preponderance of the evidence means “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. The evidence does not prove Claimant’s autism spectrum disorder constitutes a substantial disability for her at present. Dr. Gayles’s testimony and Claimant’s evaluations support a conclusion that Claimant’s condition is not currently

causing significant functional limitations in three or more areas of major life activity. While the evidence proves moderate deficits in expressive language, the evidence is insufficient to prove Claimant has significant functional limitations in the other enumerated areas of major life activities due to her autism spectrum disorder. There is also no evidence in the record that Claimant is substantially disabled due to any other condition included within the definition of developmental disability in the Lanterman Act. Therefore, Claimant is not presently eligible for services and supports from WRC under the Lanterman Act.

4. Claimant is just 10 years old, and the effects of her autism spectrum disorder may change over time. Nothing in this decision precludes a reassessment of Claimant's eligibility for services and supports under the Lanterman Act based on new or changed facts.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS HELLER
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 under Welfare and Institutions Code section 4713, subdivision (b), 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.