

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

In the Matter of:

CLAIMANT,

v.

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS No. CS0019994

OAH No. 2024080371

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on September 12, 2024, in San José, California.

Claimant's conservator represented her at the hearing. Claimant also was present.

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

The matter was submitted for decision on September 12, 2024.

ISSUE

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

FACTUAL FINDINGS

1. Claimant applied to SARC in November 2023 for an evaluation and determination of her eligibility under the Lanterman Act for SARC's services.
2. SARC staff members obtained and reviewed records about claimant, and conducted two intake assessment interviews with claimant. They also interviewed several other people who know claimant.
3. The SARC assessment team concluded in summer 2024 that claimant does not meet statutory criteria for Lanterman Act services, and notified claimant accordingly. Claimant timely appealed.

Claimant's Life History

4. Claimant was born in August 1972. She grew up in San José, where she still lives.
5. Claimant has never lived alone. She lived with her elder brother and her parents until her parents' deaths. After both their parents had died, claimant and her brother continued to share their home, until claimant's brother elected in 2023 to sell it. Claimant lived briefly with other caregivers in the caregivers' home, and then rejoined her brother in a new residence.

6. Claimant obtained a driver's license in her late teens. She held it for only about one year, however. Her family believed that her driving skills were dangerously poor, and had not improved with experience; also, she began taking medication that impaired her ability to drive safely.

7. The Superior Court of California, Santa Clara County, appointed claimant's brother as the general conservator of claimant's person in 2014.

8. For ten years or more, claimant has received Supplemental Security Income. The evidence does not establish precisely when she began receiving this income, or on what basis. Claimant's brother is her representative payee and manages her income and expenses for her. The evidence does not address whether claimant has any assets, and if so, how she manages them.

EDUCATIONAL HISTORY

9. According to claimant's brother, claimant was "held back" in kindergarten. In context, his statement more likely means that she started kindergarten at the usual age of five years old and then repeated it, not that she waited until she was six years old to start.

10. Claimant received speech therapy during elementary school. She also was in special education classes beginning before she was an adolescent. The evidence does not establish exactly when claimant began receiving special education services other than speech therapy.

11. Claimant graduated from high school. Her brother recalls that she did so only with significant assistance and support from their parents.

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12. Cynthia Hayes taught in the special education department at claimant's high school for more than 30 years, beginning at about the same time claimant started high school. Hayes also is a friend of claimant's family. Hayes testified that claimant had significant challenges in reading and information processing as a high school student, although Hayes does not remember the specific diagnosis that made claimant eligible for special education services. During all four years she was in high school, claimant spent about half her school day in mainstream classes and about half in special education classes.

13. No school records about claimant are in evidence. Claimant and her brother no longer have them, and her brother believes that relevant school district records have been destroyed (perhaps accidentally).

14. After high school, claimant attended Evergreen Valley College and received an Associate of Arts degree in child development. Claimant's mother, who had completed a similar college degree herself, also provided significant educational support for claimant during this period.

EMPLOYMENT HISTORY

15. As a high school student and young adult, over about five years, claimant worked in two different fast food restaurants. At each, she performed duties such as cleaning up the dining room, dressing as a mascot for promotions, and supervising children in the restaurant's play area. At one, the manager attempted to teach claimant to work as a cashier, but she could not master the cash register or count money. No manager ever attempted to teach claimant any food preparation tasks; her brother believes that these tasks would have been too dangerous for claimant.

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16. Claimant's mother was a preschool teacher. After claimant received her college degree, claimant's mother arranged for claimant to join her in her workplace as an unpaid intern. Because claimant was unreliable as a supervisor, preferring to play as a peer with the children rather than to monitor or guide them, the school's administrators asked her to stop accompanying her mother to work. Claimant's brother estimates that this internship lasted about 18 months.

17. Claimant has not held any other employment.

HEALTH HISTORY

18. Claimant has a significant mental illness history, beginning in adolescence. She has taken psychiatric medications for more than 35 years. In fall 2023, her medications included valproic acid (an anti-seizure medication), lithium carbonate (a medication usually prescribed for bipolar disorder), quetiapine (an anti-psychotic medication), buspirone (an anti-anxiety medication), olanzapine (an anti-psychotic medication), and clonazepam (an anti-anxiety medication).

19. The only medical records in evidence about claimant are from an October 2023 emergency room visit during a psychotic episode involving delusions and hallucinations that occurred despite medication compliance. These records include a diagnosis of "borderline intellectual functioning," but they do not explain who made this diagnosis, when, or on what basis. The medical records also list several diagnoses and concerns in addition to mental illness, including asthma and kidney disease.

20. A physician (Yasmin Khan, M.D.) prepared a summary regarding claimant's cognitive capacity in connection with claimant's brother's conservatorship petition. Dr. Khan was one of claimant's regular treating physicians, and examined her for this purpose on March 13, 2014. Dr. Khan described claimant as having moderate

to severe deficits in short-term memory and immediate recall, a severe deficit in abstract reasoning ability, and a severe deficit in her ability to plan and carry out actions in her own self-interest.

Adaptive Function

21. In his 2014 petition for appointment as claimant's conservator, her brother characterized her as follows:

[Claimant] cannot drive, cannot distinguish money or the value of money, cannot make her own medical decisions, cannot be left alone for more than short periods of time, cannot stay focused on tasks longer than 5 minutes, forgets what she is doing, cannot administer her own medications, needs to be prompted for simple daily activities and reminded constantly, cannot make her own decisions or even be able to call 911.

22. A court investigator interviewed claimant on April 14, 2014, in connection with her brother's conservatorship petition. The investigator noted that claimant did not know her telephone number. She described claimant as "articulate, although there were several times during the interview that this investigator had to redirect [claimant] as she had a tendency to ramble off-topic."

23. Claimant's brother characterizes claimant similarly in 2024. When he is not with claimant, caregivers claimant pays through the In-Home Supportive Services (IHSS) program keep her safe and assist her with activities such as cooking. She is suggestible and sometimes inappropriately trusting, and makes false statements that she may believe to be true.

24. Claimant speaks English fluently, and has studied American Sign Language. She attends to and participates in conversation around her, uses common greetings and polite phrases, gives appropriate answers to ordinary questions, and offers information (sometimes more than others reasonably expect) spontaneously. Claimant is literate, although the evidence does not establish what (if anything) she typically reads or writes, or how well.

25. Claimant walks with a somewhat clumsy gait, but does not use any mobility aids.

26. Claimant has been active in her church for many years. While claimant's mother was alive, claimant assisted her mother in the church library and in church child care services, in part because claimant's mother did not wish to leave claimant anywhere alone. Claimant also has participated in Bible study activities and in a mission program for adolescents called Young Life. Hayes has observed claimant in some of these church activities.

27. When Hayes taught claimant in high school, Hayes considered claimant "capable" despite her apparent cognitive limitations. With prompting from her parents, claimant took advantage of services available to her through school and church, and these services were adequate at the time to set claimant on a path toward adult independence. Since then, however, Hayes believes that claimant's impairment has increased, and that her independence has decreased.

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Psychologist's Evaluation

28. SARC staff psychologist Julia Shaub, Ph.D., evaluated claimant's eligibility and testified credibly about her conclusions. Dr. Shaub has more than 15 years' professional experience working with regional centers and the people they serve. For the past four years, approximately, her work has emphasized eligibility evaluations, including evaluations for adults.

29. A person must experience significant impairment in several aspects of daily living to qualify under the Lanterman Act for regional center services, but many persons with such impairment do not qualify. Rather, the impairment must result from a condition that the Legislature has identified for regional center service, and not from another condition (no matter how disabling), and the eligible disabling condition must have arisen before the person became an adult. Dr. Shaub looks for evidence relevant to each of these issues when evaluating an adult's eligibility.

30. Dr. Shaub considered two aspects of claimant's overall history to be especially relevant to claimant's potential eligibility for Lanterman Act services. First, she believes that claimant's educational history, including her ability to get (but not keep) a driver's license, graduate from high school, and receive a college degree with academic support, to be more consistent with a specific learning disability than with generalized intellectual disability. Second, Dr. Shaub explained that serious mental illness such as claimant has experienced since adolescence or young adulthood usually causes cognitive decline as a person ages.

31. From all available evidence, Dr. Shaub believes that claimant currently experiences substantial impairment as compared to other people of similar age in learning, self-direction, capacity for independent living, and economic self-sufficiency.

She believes as well, however, that the evidence demonstrates these impairments to result from persistent serious mental illness and its treatment, and from learning disability, rather than from global intellectual disability. Although claimant was somewhat impaired before she became an adult, Dr. Shaub does not believe that the evidence shows claimant's impairment at any age to result from a qualifying disability.

32. For these reasons, Dr. Shaub deems claimant ineligible for Lanterman Act services. Her un rebutted opinion is persuasive.

LEGAL CONCLUSIONS

1. To establish eligibility for SARC's services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that (1) she suffers from a developmental disability and (2) she 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. Eligible developmental disabilities do not include psychiatric illnesses, even if an illness or its treatment causes cognitive impairment, or learning disabilities other than general intellectual disability. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

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4. 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).)

5. Although the matters summarized above in Findings 24 and 25 show claimant not to have substantial impairment in language or mobility, the matters summarized in Findings 20 through 23 and 31 do show claimant to have substantial impairment in learning, self-direction, capacity for independent living, and economic self-sufficiency. Her need for assistance in most aspects of adult living is clear and undisputed.

6. The matters summarized in Findings 5, 6, 9 through 15, 18, and 27 suggest that claimant’s functional impairments began before she became an adult, although these impairments may have become more severe as claimant has aged. The matters summarized in Findings 4 through 20 and 28 through 32 do not show, however, that claimant is statutorily eligible for Lanterman Act services, because they do not show that her impairments result from a disability that qualifies under the Lanterman Act as a developmental disability.

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ORDER

Claimant's appeal is denied. Claimant has not established her eligibility under the Lanterman Act for services from SARC.

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.