

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

**In the Matter of:**

**CLAIMANT**

**vs.**

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

**DDS Case No. CS0020023**

**OAH No. 2024080404**

**DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on September 17, 2024, by videoconference.

Claimant was represented by his mother. Claimant was not present.

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

The matter was submitted for decision on September 17, 2024.

## **ISSUE**

Is claimant provisionally eligible for regional center services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act)?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant was born in May 2021. He is three years old and lives with his mother, older brother, maternal aunt, and cousin.

2. Claimant received services from the Monterey County Early Start Program run by SARC and the Monterey County Office of Education. The Early Start program is for infants and children up to age 36 months who are at increased risk for developmental delay or disability. (Gov. Code, § 95000 et seq.) Claimant received services through an organization called Life Applied until he turned three years old.

3. When claimant was scheduled to age out of the Early Start program, his mother requested that claimant be assessed for provisional or ongoing eligibility for regional center services under the Lanterman Act.

The Lanterman Act provides ongoing lifetime assistance from regional centers to people with five specified types of developmental disabilities. (Welf. & Inst. Code, § 4512, subd. (a)(1).)<sup>1</sup> The eligible condition must begin before the age of 18, must be

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<sup>1</sup> All subsequent statute citations are to the Welfare and Institutions Code.

permanent, and must be a substantial disability for the person. "Substantial disability" means the person has significant functional limitations, as appropriate to the person's age, in three or more areas of major life activity. (§ 4512, subd. (1)(1).)

For children under the age of five, the Lanterman Act allows for "provisional eligibility" if the child has significant functional limitations in two or more areas of major life activity. (§ 4512, subd. (a)(2).) A provisionally eligible child will be reassessed before age five to determine whether the child is eligible for ongoing services.

4. On July 19, 2024, SARC issued a notice of action and denial letter, finding that claimant was neither provisionally eligible nor fully eligible for regional center services. SARC does not dispute that claimant has delays and special needs, but contends that these do not rise to the level of significant functional limitations in two or more areas of major life activity.

5. Claimant's mother contends that claimant is provisionally eligible due to delays in language, self-care, and self-direction.

## **Assessments of Claimant**

6. On November 21, 2023, claimant was evaluated by licensed psychologist Elsie Mak, Ph.D. Claimant was 30 months old at the time of the evaluation, and was referred by his pediatrician for evaluation due to suspected autism. Dr. Mak reviewed records about claimant; conducted an autism clinical interview with claimant's mother; administered the Vineland Adaptive Behavior Scales, Third Edition (Vineland) questionnaire to claimant's mother; administered the ADOS-2 toddler module (Autism Diagnostic Observation Schedule, Second Edition); and observed claimant.

Dr. Mak diagnosed claimant with Autism Spectrum Disorder (ASD); with accompanying early language impairment, and without accompanying intellectual impairment; and requiring support (Level 1) in the social communication domain and substantial support (Level 2) in the restricted interests and stereotyped behaviors domain. Dr. Mak recommended that claimant receive intensive ABA therapy and speech therapy, and be evaluated to determine if occupational therapy is needed for sensory processing difficulties.

7. Life Applied assessed claimant in a 33-Month Exit Report for the Early Start program dated March 15, 2024. This included administration of the ABAS-3 (Adaptive Behavior Assessment System, Third Edition), a questionnaire completed by the parent that measures adaptive behavior.

8. The Monterey County Early Start Program issued a six-month review IFSP (Individualized Family Service Plan) for claimant dated May 14, 2024, which also served as his exit review because claimant was approaching his third birthday. The IFSP exit review included discussion of services claimant was receiving, a home observation and interview with claimant's mother, assessments of claimant's vision and hearing, and administration of the Battelle Developmental Inventory, Third Edition (BDI-3). The IFSP noted that claimant was receiving 30 minutes of speech therapy every other week. He received one hour weekly of occupational therapy from July 2023 to March 2024, but the family took a pause in services due to illness and they were on a waitlist to resume. Claimant also had adaptive swimming therapy 30 minutes per week since March 2024.

9. Claimant's local public school district evaluated him for special education needs, and created an Individualized Education Plan (IEP) dated May 10, 2024. Claimant was found eligible for special education services due to autism and speech and language impairment. Noted parental concerns include communication, social

interactions with peers, and self-regulation. The IEP provides that claimant will receive services embedded within the district's "preschool inclusion program." Claimant will receive specialized academic instruction from a special education teacher in a general education class for 160 minutes per week; and speech and language services from a speech and language pathologist (small group, co-therapy delivery model) in a general education class for 120 minutes per month.

10. In May and June 2024, claimant went through the intake process and was evaluated for Applied Behavior Analysis (ABA) therapy needs by the Center for Autism and Related Disorders (CARD), to which claimant was referred by his medical insurer. The CARD intake report signed on June 19, 2024, recommends that claimant receive 35 hours of one-to-one therapy per week, 26 hours of supervision per month, 2 hours of caregiver collaboration per month, and 12 hours of reassessment.

## **SARC Eligibility Determination**

11. SARC provided two versions of its Early Start Unit's "three-year-old eligibility routing form" for claimant, dated March 29 and June 10, 2024.

(a) The March 29 routing form noted that after claimant's autism diagnosis, intensive services were recommended (10 hours per week), but claimant's mother wanted to wait to receive ABA through Medi-Cal. The comments from psychologist Ashley Berry, Psy.D., state: "Objective data is in the context of the child not having received intensive therapy. As a result, he does not qualify for provisional services since his level of delays are not in the significantly impaired range." Dr. Berry did not testify at hearing, and it was not clear what her comment noting the lack of intensive therapy was intended to signify.

(b) The June 10 routing form stated that claimant's parent had provided an ABA initial report and speech progress notes. Dr. Berry's comment stated: "Speech therapy assessment/note supports that he does not have significant impairment in communication. ABA notes problems being targeted relate to behavior. Documents do not support for @ least 2 areas of significant impairment to qualify for Provisional."

12. Azelin Ellis, Psy.D., testified at hearing. Dr. Ellis works for SARC as an ASD and clinical manager. She is a licensed psychologist and has worked for SARC for nine years. Dr. Ellis is experienced in evaluating children exiting the Early Start program for regional center eligibility. She did not personally observe claimant, but she reviewed SARC's file and documents provided by claimant. In the opinion of Dr. Ellis, the information available about claimant did not show he is provisionally eligible.

13. Dr. Ellis emphasized that an eligibility assessment depends on data from multiple sources, not any single instrument or observation. She also stated that reports from six months to one year of services such as ABA therapy should be reviewed, to see if a child was making progress or regressing. Dr. Ellis noted that as of May 2024, claimant had not yet received any ABA services.

14. Dr. Ellis discussed the IFSP exit review's narrative information and scores from the BDI-3. The report noted claimant's level of development in five domains and for each item included a BDI raw score with an age equivalent and a percentage below age level. Dr. Ellis stated that she does not flag a BDI score as a significant delay for purposes of Lanterman Act eligibility (or provisional eligibility), unless it is 55 percent below age level or greater. She did not explain the basis for using 55 percent as a cutoff or threshold.

Claimant's BDI-3 scores showed a variety of age-level equivalents across the five domains assessed, but none were more than 55 percent below age level.

- Personal-Social: Adult Interaction (at age level), Peer Interaction (18 percent below age level), and Self-Concept and Social Role (21 percent below age level).
- Motor: Gross Motor (above age level), Fine Motor (above age level), and Perceptual Motor (listed as less than 24 months and unable to determine age level). A note stated that claimant did not participate in some of the motor skills assessment activities.
- Adaptive: Self-Care (47 percent below age level), and Personal Responsibility (29 percent below age level).
- Cognitive: Attention and Memory (38 percent below age level), Reasoning and Academic (at age level), and Perception and Concepts (26 percent below age level).
- Communication: Receptive (3 percent below age level), and Expressive (5 percent below age level).

When asked about the Self-Care area, which was the area where claimant had the lowest score, Dr. Ellis stated that 47 percent below age level is still within the normal range. She cross-referenced the IFSP review's narrative statement about what skills claimant had, for example that he can communicate need for food, distinguish between food and non-food, remove shoes, and use a spoon sometimes. Dr. Ellis stated that it is normal for an almost three-year-old child to require a lot of assistance

with these tasks. For toddlers and preschool age children, a variety of abilities can be within the normal range of development.

15. Dr. Ellis also discussed the adaptive behavior scores from the Vineland assessment contained in Dr. Mak's report from November 2023. Dr. Ellis explained that the Vineland's numerical scores are translated into categories (Moderately Low, Low, Adequate, etc.) and percentile ranks.

Claimant's adaptive level was scored in the domains of Communication, Daily Living Skills, Socialization, and Motor Skills, and in an Adaptive Behavior Composite. Claimant's scores were in the "Moderately Low" range for all domains (5th percentile rank in Communication and Daily Living Skills, 10th percentile rank in Socialization, and 16th percentile rank in Motor Skills), with an Adaptive Behavior Composite of "Moderately Low" or 5th percentile rank.

Dr. Mak stated that the Vineland scores showed claimant's adaptive functioning was "delayed" in receptive and expressive communication, personal care, gross motor skills, and socialization skills. However, Dr. Ellis testified that for purposes of the Lanterman Act, "significant functional limitations" in areas of daily living typically equates to the 3rd percentile rank or lower. Dr. Ellis did not explain the basis for using the 3rd percentile as a numerical cutoff or threshold.

16. Claimant's parent also provided a more recent Vineland report dated May 2024. Dr. Ellis did not discuss the differences between the two Vineland assessments. The May 2024 Vineland report summary categorizes claimant's Communication Skills and Daily Living Skills as "Low," and Social Skills and Relationships as "Moderately Low," with an overall summary score of "Low." An optional section categorized claimant's Physical Skills as "Moderately Low."



17. Dr. Ellis discussed the IEP from claimant's school district. She found it significant that services will be delivered as part of a general education program rather than a special day program. Dr. Ellis stated that children who are provisionally or fully eligible for Lanterman Act services tend to need a high level of special education services such as a special day class. The IEP does not state whether the district has any special preschool classes.

18. SARC submitted a copy of the Association of Regional Center Agencies (ARCA) recommendations for assessing "substantial disability." Dr. Ellis did not discuss these recommendations in her testimony, nor did the SARC representative explain how the ARCA recommendations apply to an assessment of claimant.

The ARCA document includes a general discussion stating that scores on adaptive functioning measures such as the Vineland do not solely determine the presence or absence of substantial disability, and that adaptive scores should be interpreted by trained clinical staff. It also states that a wide variety of information, such as an intake interview, psychological reports, school and medical records, and parent and caregiver interviews, should be used to determine whether substantial disability exists in three or more areas of major life activity. In discussing those areas, the ARCA document does not contain numerical guidelines. It states for each area that the applicant must have "noticeable limitations" or "noticeable impairment," and provides lists of items to consider in each area, as appropriate to the applicant's age.

### **Claimant's Evidence**

19. The Life Applied exit assessment for the Early Start program recommended that claimant receive intensive early intervention services. However, claimant's mother declined such services, because she thought that receiving such

services would make claimant ineligible to get ABA therapy through his medical insurance provider. Claimant's mother wanted to focus on obtaining ABA therapy because it had been highly recommended by Dr. Mak. She started seeking ABA in February 2024, but due to delays with the insurance approval, she could not start the intake evaluation with CARD until May 2024.

20. Claimant's mother reports that claimant regressed while he was awaiting ABA services, and claimant became more like his older brother (age 4.5) who is also autistic but is non-verbal.

21. Claimant started receiving ABA therapy through CARD in June 2024. He attends ABA 35 hours per week, in addition to school. Claimant's mother reports that claimant has improved since starting ABA therapy. His behaviors and aggression come out when he cannot express himself, and he is learning how to use what he has to get what he needs. She also stated that claimant is now more social and working to follow directions from people other than his mother.

22. Claimant started attending school in mid-August, in an inclusion classroom that is half general education students and half students with IEP's.

23. Claimant had two other recent assessments in connection with eligibility for SSI (Supplemental Security Income) benefits, but claimant's mother has not yet received copies of the reports. On August 9, 2024, claimant was evaluated by a speech and language pathologist. On August 17, 2024, claimant had a psychological examination, and the psychologist told claimant's mother that claimant would benefit from additional services in order not to fall further behind.

24. Claimant's mother believes if claimant does not get additional services he will fall further behind and regress. She noted the delays shown on claimant's adaptive

behavior assessments and contends that these support provisional eligibility. She does not contend that claimant is eligible for ongoing Lanterman Act services at this time.

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (§ 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. (§§ 4501, 4502.) Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including SARC. (*Id.*, § 4620.)

2. Claimant bears the burden of establishing that he qualifies under the Lanterman Act for regional center services.

3. A “developmental disability” potentially qualifying a person for services under the Lanterman Act is “intellectual disability, cerebral palsy, epilepsy, [or] autism,” or any other condition “closely related to intellectual disability or [requiring] treatment similar to that required for individuals with an intellectual disability.” (§ 4512, subd. (a)(1); see Cal. Code Regs., tit. 17, § 54000, subd. (a).) As set forth in Factual Finding 6, claimant has the developmental disability of autism, potentially qualifying him for Lanterman Act services.

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: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subds. (a)(1),

(1)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The last two major life activities are generally not taken into account when assessing very young children such as claimant.

5. A child under the age of five is “provisionally eligible” for regional center services under the Lanterman Act, if the child has a disability that is not solely physical (it is not required to be one of the five disabilities listed in Legal Conclusion 3), and has significant functional limitations in at least two areas of major life activity. (§ 4512, subd. (a)(2).) As set forth in Factual Findings 14 through 17, the evidence established that claimant has delays in some areas of daily living. However, based on the evidence currently available, those delays are not severe enough to be considered a substantial disability or significant functional limitation under the Lanterman Act.

6. At this time, claimant has not met his burden to establish he is provisionally eligible for regional center services, and his appeal must be denied. Claimant can seek reassessment at a later time, if his family obtains new evidence or his level of functioning decreases relative to his peer group.

## **ORDER**

Claimant’s appeal is denied. Claimant is not provisionally eligible for regional center services.

DATE:

HOLLY M. BALDWIN

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.