

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

In the Matter of:

CLAIMANT

and

GOLDEN GATE REGIONAL CENTER, Service Agency.

DDS No. CS0020602

OAH No. 2024090243

DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on November 21, 2024, by videoconference.

Lisa Rosene, Director of Regional Center Services, represented the Golden Gate Regional Center (GGRC), the service agency.

Claimant was represented by her mother. Claimant was not present at the hearing.

The record closed and the matter was submitted for decision on November 21, 2024.

ISSUE

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

FACTUAL FINDINGS

1. Claimant was born in January 2021, and she is almost four years old. Claimant is currently not receiving services under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.).¹ Claimant lives with her adoptive mother and adopted older brother (who is approximately two years older). Her brother has been diagnosed with Autism Spectrum Disorder (ASD), and is eligible for services under the Lanterman Act.

2. Eligibility for services under the Lanterman Act requires claimant to have a developmental disability that originates prior to claimant attaining 18 years of age, the disability must not be solely physical in nature, the disability must be expected to continue indefinitely, and the disability must constitute a substantial disability for claimant. (§ 4512, subd. (a)(1).) A substantial disability, for an individual claimant's age, requires significant functional limitations in at least three of five major life activity

¹ Statutory references are to the Welfare and Institutions Code unless otherwise noted.

areas: self-care, receptive and expressive language, learning, mobility, and self-direction. (*Id.*, subd. (1)(1).)²

3. Provisional eligibility under the Lanterman Act applies to children three or four years of age who do not otherwise qualify for full eligibility and have significant functional limitations in at least two of the five areas of major life activity areas appropriate to an individual three or four years of age. (§ 4512, subd. (a)(2)(A).)

4. There is no dispute between the parties that claimant has ASD and that she does not have a significant functional limitation in the major life activity of mobility. The parties' dispute is that claimant asserts she has significant functional limitation in four major life activity areas (self-care, receptive and expressive language, learning, and self-direction), but GGRC disagrees.

5. In July 2022, claimant was found to be eligible for services by the Santa Clara County Early Start Program (Early Start) due to expressive language delays and an initial Individualized Family Service Plan (IFSP) was developed for her. Infants and toddlers with developmental delay in at least one of six areas of functioning, who have established risk conditions, or who are at high risk for substantial developmental disability, are eligible in California for services under the Early Start program up until their third birthday. (Gov. Code, § 95014.)

² At claimant's age, she is expected to have limited functioning in the major life activities of capacity for independent living and economic self-sufficiency.

6. In September 2022, responsibility for claimant's Early Start IFSP was transferred to GGRC. While claimant was in Early Start, she received specialized instruction to address her expressive language delays.

7. On October 13, 2023, prior to claimant's third birthday, she was referred by her Early Start social worker to determine her eligibility for ongoing services under the Lanterman Act. The referral form indicated claimant was showing deficits in the major life activity areas of learning and self-care.

8. Claimant was referred by GGRC for a psychological evaluation to clarify her diagnosis, to establish the nature and extent of her disability, and to ascertain her cognitive and adaptive levels to assist in determining her eligibility for services under the Lanterman Act.

9. Clinical psychologist Liza Bathori, Psy.D., conducted a comprehensive psychological assessment of claimant. Dr. Bathori has approximately 20 years of experience conducting psychological assessment with individuals who are claimant's age. Dr. Bathori testified at hearing in a credible, persuasive manner, and her opinions were given great weight. Dr. Bathori's evaluation procedures included review of claimant's records, a clinical interview with claimant's mother, direct behavioral and developmental observation, and administration of the following assessment instruments: the Social Communication Questionnaire; module 2 of the Autism Diagnostic Observation Schedule, Second Edition; parent/caregiver rating form for the Vineland-III Adaptive Behavior Scales, Third Edition; and the Wechsler Preschool and Primary Scales of Intelligence, Fourth Edition. Dr. Bathori wrote a detailed psychological assessment report with her findings that was submitted on May 31, 2024.

Dr. Bathori concluded claimant met the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), criteria for a diagnosis of ASD. Dr. Bathori summarized her evaluation with the following:

[Claimant] is a bright young girl with overall Average to High Average cognitive abilities (FSIQ-110) with a relative weakness in visual spatial abilities (VSI-91). While [claimant] does not have cognitive deficits, she demonstrates some social and language pragmatic difficulties which impact her daily living skills. [Claimant's] mother completed the Vineland-3 and indicated that she was functioning in the Moderately Low range (SS-83).

[Claimant] is a sweet and friendly girl who enjoys being with her family and going to school. While she enjoys being around her peers, she struggles to engage with them and as a result, she often does her own thing. Her primary interactions with others tend to be prompted or initiated by her as she wants others to follow her lead and when they do not it creates issues for [claimant]. In addition, she tends to do better with adults than her peers. Furthermore, she has difficulties with attention in social situations and seems to miss what to focus on or what is salient. She does not consistently respond to others and at times prefers to engage in her own world or activity. [Claimant's] skills and behaviors including deficits in developing, maintaining, and

understanding relationships, inconsistent nonverbal communication skills (i.e., facial expressions and gestures), lack of social/emotional reciprocity, repetitive behaviors, and rigid behaviors meet the diagnostic criteria for [ASD].

Dr. Bathori opined that, at the time of her assessment, claimant did not have any significant functional limitations in any major life activity area referenced in Factual Finding 2. Dr. Bathori made clear that her opinion does not mean claimant does not require support, as she opined that claimant does require support for her social communication deficits and for her restricted, repetitive behaviors related to her ASD, but that the need for support was relatively mild. Dr. Bathori also opined that it was possible that at some point in the future, claimant might present with a significant functional limitation in one or more major life activity areas, and, if so, a reassessment of claimant's eligibility for services under the Lanterman Act should be conducted at that time.

At hearing, Dr. Bathori testified that while she reviewed claimant's extensive medical records as part of her assessment, she did not have and did not review claimant's school records, including claimant's current Individualized Education Program (IEP) document developed pursuant to the Individuals with Disabilities Education Act (IDEA). After Dr. Bathori's assessment, but prior to hearing, she reviewed claimant's IEP and other documents, and her opinions regarding claimant did not change.

10. On May 30, 2024, a GGRC eligibility team met to review information and determine whether claimant was eligible for services under the Lanterman Act. The eligibility team consisted of: Maria Mba Wright, M.D.; Dr. Bathori; and social worker Natalia Pasmanick. The eligibility team reviewed information and documents, including

Dr. Bathori's report (set forth in Factual Finding 9), and they determined that claimant was not eligible for services under the Lanterman Act as she did not have a significant functional limitation in any major life activity area.

11. On a date not established by the evidence, but on or after May 31, 2024, GGRC sent a letter of ineligibility, that included information on appealing the decision, to the appropriate parties having legal responsibility for claimant. At this time, claimant's mother was claimant's foster parent, and she had not yet adopted claimant. Shortly thereafter, claimant was adopted by her mother.

12. On August 7, 2024, based on claimant's mother's new legal status as claimant's parent, GGRC sent another letter of ineligibility to claimant's mother. Included with the letter was a Notice of Action (NOA). The NOA explained the basis for GGRC's decision and provided information on the right and the process to file an appeal.

13. On September 6, 2024, claimant's mother filed an appeal based on her concern that "the assessor and another medical doctor suspects [claimant's] anxiety and autism will be more pronounced by middle school if not before" and "I believe [claimant] qualifies for Regional Center Services and I know she would be helped by Regional Center Services."

14. On October 2, 2024, GGRC agreed to read four articles on ASD claimant's mother provided and to review claimant's eligibility under the Lanterman Act.

15. On October 17, 2024, a GGRC interdisciplinary team meeting was convened for the purpose set forth in Factual Finding 14. Present at the meeting were: Dr. Bathori; Dr. Wright; Dominique S. Gallagher, L.C.S.W., Intake and Assessment

Liaison; and Khatonia McCarty, Appeals and Compliance Specialist. Following the meeting, Gallagher sent claimant's mother a letter that stated in part:

The Interdisciplinary Team concurs with the original decision that [claimant] is not eligible for regional center services. While she does have autism, she does not meet eligibility criteria of having three or more deficits of substantial disability of the areas of major life activity.

Claimant's Additional Evidence

16. Claimant's mother testified in a sincere and credible manner, and her concern and compassion for claimant was clearly evident. Claimant's mother has cared for claimant since she was one week old, and she described claimant's history and the effects of claimant's prenatal exposure to methamphetamine. Claimant's mother described her concerns that claimant may have future health concerns related to claimant's prenatal exposure to methamphetamine.

Claimant attends preschool at her local school district, and she has an IEP pursuant to the IDEA that provides her with weekly speech and language services. Claimant's mother has been seeking grants and scholarships to provide socialization and extracurricular recreation services for claimant. Claimant's mother is also in the process of applying through claimant's health insurance to obtain applied behavior analysis services for claimant. Claimant's mother believes that claimant has more difficulties in social situations with peers than with adults, and that Dr. Bathori's assessment may not have fully described the severity of claimant's ASD. Claimant's mother understands that claimant's ASD symptoms are not currently severe, but she would like claimant to obtain services now to avoid claimant having increased

symptoms and issues with ASD when claimant ages. Claimant's mother understands that if claimant's ASD symptoms become more severe, that she can refer claimant for an eligibility reassessment under the Lanterman Act.

Ultimate Factual Finding

17. The evidence established claimant has ASD and she is under the age of 18. Dr. Bathori's opinion, that claimant does not have significant functional limitations in any of the major life activities under the Lanterman Act that would constitute a substantial disability, is persuasive and consistent with the evidence. Claimant does not qualify, even on a provisional basis, for eligibility under the Lanterman Act at this time.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The purpose of the Lanterman 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; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. As set forth in Factual Finding 17, claimant does not have significant functional limitations in any of the major life activities under the Lanterman Act that would constitute a substantial disability. Therefore, claimant does not qualify, even on a provisional basis, for eligibility under the Lanterman Act at this time.

ORDER

Claimant's appeal of GGRC's denial of eligibility is denied. Claimant is not eligible for regional center services at this time.

DATE:

CARL D. CORBIN

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.