

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

In the Matter of:

CLAIMANT

and

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency

DDS No. CS0013352

OAH No. 2024100769

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 27, 2024.

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

Tami Summerville, Appeals and Governmental Affairs Manager, represented the South Central Los Angeles Regional Center (SCLARC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 27, 2024.

ISSUE

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

EVIDENCE RELIED UPON

Exhibits: SCLARC exhibits 1 through 9; Claimant's exhibit A. Testimony: Laurie Brown, Ph.D.; Claimant's mother.

FACTUAL FINDINGS

Background and Procedural History

1. SCLARC 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).) The term "shall include intellectual disability, cerebral palsy, epilepsy, and autism." (*Ibid.*) The 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 five-year-old boy who lives with his mother and twin brother. In January 2021, when Claimant was two years old, his pediatrician referred him to SCLARC for assessment of speech delays. The assessment resulted in SCLARC providing speech therapy services to Claimant under the Early Start program, which is a program for infants and toddlers who are born with, or at risk for, developmental delays. (Gov. Code, § 95000 et seq.) The Early Start program is not a part of the Lanterman Act, and eligibility for that program ends when a child turns three years old.

3. In November 2021, before Claimant’s third birthday, SCLARC referred Claimant for a psychological evaluation to assess his eligibility for services and supports under the Lanterman Act after he aged out of the Early Start program. The evaluation did not result in a definitive diagnosis for Claimant because he and his mother did not attend the second of two planned evaluation sessions. Nonetheless, SCLARC determined Claimant was provisionally eligible for services and supports under the Lanterman Act based on significant functional limitations in the areas of language and self-direction. A child who is three or four years old who is not otherwise eligible for such services and supports is provisionally eligible “if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity, as determined by a regional center and as appropriate to the age of the child: [¶] (i) Self-care. [¶] (ii) Receptive and expressive language. [¶] (iii) Learning. [¶] (iv) Mobility. [¶] (v) Self-direction.” (Welf. & Inst. Code, § 4512, subd. (a)(2)(A).)

4. In July 2023, Amy Aduna, a board-certified behavioral analyst (BCBA), assessed Claimant to develop a behavioral health treatment plan for him. The

assessment included observation of Claimant, an interview with Claimant's mother, a review of records, and the administration of the Vineland Adaptive Behavior Scales, 3rd Edition (Vineland III), which is a standardized assessment measuring personal and social skills. Claimant's adaptive behavior composite score on the Vineland III was in the adequate range, but his maladaptive behavior composite scores were elevated. Ms. Aduna recommended a six-month behavioral treatment plan that included direct behavioral therapy, BCBA supervision, parent training, and treatment planning and reassessment.

5. Provisional eligibility under the Lanterman Act ends when a child turns five years old. In September 2023, before Claimant's fifth birthday, SCLARC referred Claimant for another psychological evaluation to assess his Lanterman Act eligibility. Maria Magallanes, Psy.D., a clinical psychologist, evaluated Claimant's cognitive and adaptive functioning and assessed whether he met the diagnostic criteria for autism spectrum disorder. Dr. Magallanes determined Claimant's cognitive and adaptive functioning were within normal limits, but he met the diagnostic criteria for autism spectrum disorder and had challenges and delays with expressive and receptive language. Based on the assessment, Dr. Magallanes diagnosed Claimant with "Autism spectrum disorder, Without accompanying intellectual impairment, With accompanying language impairment." (Exhibit 5, p. A47.)

6. On February 6, 2024, a few weeks after Claimant's fifth birthday, SCLARC's "interdisciplinary core staff team" met to consider Claimant's eligibility for Lanterman Act services and supports. The team is comprised of two psychologists, a physician, a service coordinator, a program manager, and a nutritionist. Upon considering the psychological evaluation performed by Dr. Magallanes and other available records, the team determined Claimant does not have a developmental

disability as defined in the Lanterman Act. Although Dr. Magallanes diagnosed Claimant with autism spectrum disorder, the team concluded the condition 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.

7. Based on these findings, SCLARC sent a letter to Claimant's mother notifying her that Claimant is ineligible for services and supports under the Lanterman Act. Claimant's mother timely appealed the decision and requested an informal meeting with SCLARC on the appeal. SCLARC subsequently received additional school records for Claimant, and the interdisciplinary core staff team reviewed Claimant's case again on May 28, 2024. The second review did not change the team's determination that Claimant is ineligible. On October 16, 2024, Claimant's mother submitted an Appeal Request Change Form requesting a hearing on the appeal.

Hearing Testimony

LAURIE BROWN, PH.D.

8. Laurie Brown, Ph.D., is the lead psychologist consultant at SCLARC. Dr. Brown has a bachelor's degree in psychology, a master's degree in clinical psychology, and a Ph.D. in psychology with a clinical emphasis. Her responsibilities at SCLARC include participation in multi-disciplinary teams, including the interdisciplinary core staff team that makes Lanterman Act eligibility determinations. Dr. Brown also oversees the work of other psychologists for SCLARC, assists with mental health referrals, and assists SCLARC with appeals.

9. Dr. Brown 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. Dr. Brown 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 (with respect to adults). Given this requirement, a high-functioning individual may not be eligible for Lanterman Act services and supports even with a qualifying condition.

10. Dr. Brown testified Claimant has a qualifying condition (autism spectrum disorder), but he does not evidence significant functional limitations in three or more areas of major life activity as required for eligibility. The interdisciplinary core staff team determined Claimant only had significant functional limitations in the area of receptive and expressive language. Therefore, the team concluded Claimant's autism spectrum disorder does not constitute a substantial disability for him.

11. Dr. Brown testified Claimant's evaluations and records did not demonstrate significant functional limitations in other major life areas at present. With respect to self-care and learning, Claimant's evaluations show his overall adaptive functioning and cognitive abilities are in the average range. With respect to mobility, Claimant's records do not show any issues of concern. With respect to self-direction, Claimant had significant functional limitations when SCLARC found him to be provisionally eligible in 2021, but Dr. Brown testified Claimant's more recent records do not show the same level of functional limitations. The interdisciplinary core staff team also did not find Claimant to have significant functional limitations in his ability to perform age-appropriate independent living skills (e.g., age-appropriate safety awareness).

12. Dr. Magallanes's evaluation of Claimant included administration of the Adaptive Behavior Assessment System – 3rd Edition (ABAS-3), which is a comprehensive, norm-referenced assessment of adaptive behavior and skills. The ABAS-3 includes a general adaptive score and standard scores for three general areas of adaptive behavior, including the conceptual, social, and practical domains. Claimant's mother served as a source of information for Claimant's adaptive functioning skills on the assessment.

13. Dr. Brown testified the ABAS-3 assessment results do not support a finding of significant functional limitations in at least three areas of major life activity. Claimant's general adaptive score and conceptual domain scores were in the below average range, but his social and practical scores were in the average range. Based on the information from Claimant's mother, Claimant's abilities to function in the community and inside the home, including looking both ways before crossing the street, finding the restroom in public places, cleaning, food preparation, performing chores, and taking care of personal possessions, were in the average range. Claimant's abilities to protect his physical well-being and prevent and respond to injuries, including following safety rules, showing caution, and using medicine when appropriate, were also in the average range. Claimant's ability to perform self-care activities, such as eating, dressing, and taking care of personal hygiene, was in the average range as well. (Exhibit 5, p. A46.)

14. Furthermore, the school records SCLARC received after Claimant's mother appealed the case support a determination of ineligibility. A psycho-educational assessment in March 2024 states Claimant's teacher "indicated [Claimant] is eager to learn, loves participating in class, participates in all academic activities, is attentive in class, stays on task, completes assignments, and usually gets along well

with peers.” (Exhibit 7, p. A62.) An Individualized Education Program (IEP) report in March 2024 noted Claimant had challenges with respect to articulation, phonological processes, and language, but it did not note other challenges impacting his educational performance. (Exhibit 8.)

CLAIMANT’S MOTHER

15. Claimant’s mother testified Claimant’s records and evaluations do not fully depict his limitations. Claimant has a very short attention span and a hard time staying focused, and he needs frequent direction and repeated guidance to get tasks done. He cannot put on his socks and shoes, and he requires guidance brushing his teeth every morning. Claimant also says he is not hungry even when he is, and he needs to be reminded to eat. Claimant does not like cleaning up, loud noises, or distractions, and he often plays alone. In addition, Claimant still wets his bed and has to wear pullups.

16. Claimant’s mother testified she spoke highly of Claimant during his various evaluations, emphasizing his strengths rather than his challenges. Claimant’s mother explained that due to her own learning disability, she may have given information about how she wants Claimant to perform in the future rather than how he performs now. Claimant behaves much differently than his twin brother, who has to act more like a big brother than a twin due to Claimant’s challenges. Claimant’s mother requests assistance from SCLARC due to Claimant’s functional limitations and diagnosis of autism spectrum disorder.

Analysis

17. There is no dispute between the parties that Claimant has autism spectrum disorder or that the condition 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 mother contends it does, while SCLARC contends it does not.

18. The evidence supports SCLARC's contention that Claimant's autism spectrum disorder is not substantially disabling at present. Dr. Brown's testimony was detailed and thorough, and the records of Claimant's evaluations and school performance support SCLARC's contention. Claimant's mother was the source of information for the recent standardized assessment of Claimant's adaptive functioning by Dr. Magallanes, and the assessment results support a finding that Claimant's condition does not constitute a substantial disability for him at this time. The results include a low score in self-direction (see Exhibit 5, p. 51), but they do not indicate Claimant has significant functional limitations in three or more areas of major life activity. Claimant's most recent educational records indicate substantial functional limitations in language, but the records do not document other challenges impacting Claimant's educational performance. Those records also support SCLARC's contention.

19. Claimant's mother testified she did not emphasize Claimant's challenges during the evaluations, and the records for Claimant do not depict those challenges fully. But the evaluations were regularly performed and include assessment results that are detailed and support SCLARC's position. Given those evaluations and results, the testimony of Claimant's mother is insufficient to prove Claimant has significant functional limitations in three or more areas of major life activity.

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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. (1)(1).)

2. SCLARC determined Claimant is not eligible for services and supports under the Lanterman Act because his autism spectrum disorder does not constitute a substantial disability for him. Claimant has properly exercised his 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 Claimant at present. Dr. Brown's testimony and Claimant's records support a conclusion that Claimant's condition is not currently causing significant functional limitations in three or more areas of major life activity. 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 SCLARC under the Lanterman Act.

4. Claimant is a young child, and the effects of his 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.