

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

In the Matter of:

CLAIMANT

and

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0021806

OAH No. 2024110091

DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on December 10, 2024, in Santa Rosa, California.

Beth DeWitt, Director of Client Services, represented the North Bay Regional Center (NBRC), the service agency.

Claimant was represented by his mother, who was assisted by his father. Claimant was not present at the hearing.

The record closed and the matter was submitted for decision on December 10, 2024.

ISSUE

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

FACTUAL FINDINGS

1. Claimant was born in November 2015, he is approximately nine years old, and he is enrolled in the third grade. Claimant is currently not receiving services under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.).¹ Claimant lives with his mother, father, and twin sister.

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, must not be solely physical in nature, must be expected to continue indefinitely, and must constitute a substantial disability for claimant. (§ 4512, subd. (a)(1).) A substantial disability requires the claimant to have 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: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, subd. (j)(1).)

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

3. There is no dispute between the parties that claimant has Autism Spectrum Disorder (ASD), that he has significant functional limitations in the major life activities of self-care and self-direction, and that he does not have significant functional limitations in the major life activities of learning, mobility, and economic self-sufficiency. The parties' dispute is that claimant asserts that he has significant functional limitations in the major life activities of receptive and expressive language and capacity for independent living, but NBRC disagrees.

4. From the age of three months up to his third birthday, claimant received services from the Redwood Coast Regional Center (RCRC) pursuant to the Early Start program. 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.)

5. Prior to turning three years of age, claimant was assessed by RCRC to determine his eligibility for services under the Lanterman Act. A psychological evaluation report, dated November 2, 2018, concluded that claimant did not meet the criteria for ASD. Based on this evaluation and other information, RCRC determined that claimant was not eligible for services under the Lanterman Act.

6. On November 13, 2018, claimant was determined by his school district to be eligible for services under the Individuals with Disabilities Education Act (IDEA) due to a speech or language impairment. Claimant's school district developed an Individualized Education Program (IEP) that placed him at Lattice Educational Achievement Preschool in a combined special education and general education classroom where he received 30 minutes per week of speech and language services.

During this same time period, claimant received one hour per week of speech language therapy from Kaiser Permanente.

7. On December 9, 2019, following assessment, a report was issued by Kaiser Permanente Autism Spectrum Disorders Evaluation Center, that concluded claimant did meet the criteria for ASD.

8 On a date not established by the evidence, claimant's school district changed his primary eligibility category under the IDEA to "autism." Claimant's most recent IEP document, dated October 12, 2023, states that he:

currently exhibits social and communication challenges at school, as well as social-pragmatic language delays, that require skilled speech therapy to support his development of functional communication skills as well as [occupational therapy] to support fine and gross motor skills.

Claimant's IEP describes his communication development by stating he "is currently demonstrating age-appropriate articulation, and language skills at this time," "he is 100% intelligible," and he "exhibits few errors in the areas of semantics, morphology and syntax."

9. On a date in early 2024, claimant's parents referred him to NBRC to determine his eligibility for services under the Lanterman Act. As part of the eligibility process, NBRC referred claimant for a psychological evaluation, which was completed by Morgan L. Bailey, Psy. D., on August 19, 2024. In Dr. Bailey's written report, she concluded that claimant met the criteria for ASD, and that:

[Claimant] presented as a bright young boy with a long history of deficits in social communication, pragmatics, interpersonal skills, and limited play skills. He is a rigid thinker, and struggles to take the perspective of others. Furthermore, [claimant]'s sensory differences are somewhat disruptive to his life, including not using public restrooms without the support [of] his mother. [Claimant] is currently receiving academic interventions related to an ASD [diagnosis], however, it was also suggested that he receive developmental supports, with a focus on pragmatic communication, social skills and sensory needs.

10. For the 2024-2025 school year, claimant is enrolled in a general education third grade classroom, and he receives 20 minutes per day of speech or language services delivered in a group setting.

11. On October 1, 2024, an NBRC eligibility team met to determine whether claimant was eligible for services under the Lanterman Act. The eligibility team consisted of: a developmental pediatrician; Todd Payne, Psy.D., a clinical psychologist; an intake service coordinator; and a supervisor. The team reviewed information and documents, including the psychological evaluations referenced in Factual Findings 5, 7, and 9, claimant's IEP documents, and information from his parents. The eligibility team determined that claimant was not eligible for services under the Lanterman Act, finding that he did not have a substantial disability because he only had a significant functional limitation in two major life activity areas (self-care and self-direction).

12. On October 2, 2024, NBRC issued to claimant's parents a Notice of Action that denied his eligibility for services under the Lanterman Act, and included information on appealing the decision.

13. On October 29, 2024, claimant's mother filed an appeal of NBRC's decision.

14. On November 15, 2024, Darcy Analora, a school psychologist who recently assessed claimant, wrote a two-page letter in support of his need for services. The school psychologist wrote that claimant, "while cognitively bright, [has] severe socio-emotional and adaptive deficits, as well as weak receptive and expressive ability." Ms. Analora did not testify at hearing, did not provide a clear basis for her opinions, and did not reconcile her description of claimant's deficits with his successful general education placement with limited special education support and the information documented in his most recent IEP document referenced in Factual Finding 8. For these reasons, Ms. Analora's letter is given little weight.

15. On December 4, 2024, claimant's third grade teacher, who has known him since August 2024, wrote a letter describing claimant's functioning in her general education classroom. Claimant's teacher detailed in her letter various challenges claimant has, but also described him as "confident and bright and performs well academically," and stated that he "is testing at grade level at this time," and he has "done an excellent job completing our book summary challenge and has turned in more than required for the 1st trimester."

16. Dr. Payne testified at hearing regarding the NBRC eligibility team decision-making process generally and specifically regarding claimant. Dr. Payne's testimony was persuasive and consistent with the documentary evidence.

Dr. Payne acknowledged in his testimony that claimant has deficits in adaptive skills and pragmatic language, and this is why the NBRC eligibility team concluded claimant has a significant functional limitation in two major life activity areas (self-care and self-direction). Dr. Payne opined that claimant's challenges with pragmatic language, such as conversational turn-taking, were best described as limitations in self-direction and not limitations in receptive and expressive language. Dr. Payne testified that, based on claimant's age, the NBRC team appropriately did not consider in depth claimant's capacity for independent living as a nine-year-old is not expected to have the skills necessary for independent living, and this area of major life activity is more appropriately considered for individuals approximately 12 years of age and older. On cross-examination, Dr. Payne acknowledged that claimant currently does have some limitations in his adaptive skills that relate to his capacity for independent living, but Dr. Payne could not predict whether claimant would continue to have these limitations when he reached 12 years of age and older.

Claimant's Additional Evidence

17. Both of claimant's parents testified compassionately and earnestly at hearing to describe their concerns for their son. The concerns of claimant's parents are reasonable and well-founded. They were able to articulate claimant's weaknesses in pragmatic language and adaptive skills especially in comparison to claimant's twin sister. They opined that claimant's weaknesses in language are minimized because of the artificial nature of the assessment process and that he has difficulty generalizing his language skills in the classroom and in other social settings. They also clearly described claimant's limited adaptive skills and provided many examples that they believe demonstrate claimant's limited capacity for independent living, including, but not limited to: needing assistance to brush his teeth, not being safe with sharp objects

such as those used for cooking, not understanding that a hot stove can burn him, not being able to pour milk for cereal without spilling, not looking for vehicles when crossing streets, and not being safe while riding a bicycle on the road with his father. Claimant's parents would like him to receive applied behavior analysis therapy social skills in a group setting and to receive as many opportunities as possible to have access to his community.

Ultimate Factual Finding

18. The evidence established that claimant has ASD, he is under the age of 18, and he has a significant functional limitation in the major life activities of self-care and self-direction. Dr. Payne's opinion, that claimant does not have a significant functional limitation in the major life activities of receptive and expressive language and capacity for independent living (as appropriate to the age of the person), was persuasive and consistent with the evidence. Because claimant does not have a significant functional limitation in at least three areas of major life activity, he does not have a substantial disability as defined by the Lanterman Act. Claimant does not qualify for services 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 18, claimant does not have a substantial disability as defined by the Lanterman Act. Therefore, claimant does not qualify for services under the Lanterman Act at this time.

ORDER

Claimant's appeal of NBRC'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.