

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

In the Matter of:

CLAIMANT

and

SAN ANDREAS REGIONAL CENTER, Service Agency

DDS No. CS0021857

OAH No. 2024110125

DECISION

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on December 16, 2024, by videoconference.

Claimant's parents represented claimant, who was not present.

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

At hearing, claimant moved to enter the document marked for identification as Exhibit M into evidence. SARC objected. The parties' arguments concerning Exhibit M were taken under advisement. Because Exhibit M constitutes argument, claimant's

argument was considered. Exhibit M will remain marked for identification but is not admitted as evidence.

The record closed and the matter was submitted for decision on December 16, 2024.

ISSUE

Is claimant fully eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.), and not provisionally eligible only?

FACTUAL FINDINGS

Background and History

1. Claimant was born in November 2021. He is three years old and lives with his parents and younger brother.
2. Claimant entered the Early Start program at 12 months due to concerns with his communication. The Early Start program is for infants and children younger than 36 months who are at risk for developmental delay or disability. (Gov. Code, § 95000 et seq.)
3. On November 13, 2023, claimant was diagnosed with autism spectrum disorder (autism or ASD) at Stanford Children's Health Specialty Services – Sunnyvale (Stanford Children's). Stanford Children's found that claimant has "social

communication and social interaction difficulties” and “repetitive patterns of behavior, interests, or activities.”

4. An Individualized Family Service Plan (IFSP) was developed in December 2023, and an exit IFSP was developed on July 10, 2024. As part of the exit IFSP, an assessment of claimant, who was then 31 months old, was performed. The assessment, which included an evaluation based on the Battelle Developmental Inventory, Third Edition (BDI-3), showed concerns in the areas of social-emotional, adaptive, and communication skills.

5. Examiners from the Palo Alto Unified School District’s Special Education Preschool Program also evaluated claimant. In an Integrated Initial Psychoeducational Report (Psychoed Report) dated October 18, 2024, the examiners determined that claimant demonstrated delays in communication and social interaction, and exhibited engagement in repetitive activities, resistance to environmental change and daily routines, and unusual responses to sensory experiences.

SARC’s Eligibility Determination

6. On SARC’s “Early Start Unit 3-year-old Eligibility Routing Form” dated July 29, 2024, a handwritten notation stated that “[b]ased on Exit BDI, there is no evidence of substantial delay at this time.” It is unclear who made this notation.

Ivania Molina, Ph.D., a psychologist with SARC for over 10 years, reviewed claimant’s file and wrote that claimant’s “[Adaptive Behavior Assessment System] scores reflect that he has adaptive skills in the below [average] range according to his father except in social. These scores do not provide [] evidence of substantial delays in 2 areas and are consisten[t] w/ all other information about [claimant].” Dr. Molina found claimant ineligible for further SARC services and the “case closed.”

Dr. Molina again reviewed claimant's case on October 24, 2024, and wrote that she:

[f]ound no evidence of substantial delays on his Exit IFSP. In addition, the IEP [Individualized Education Program] & Psychoed only shows evidence of difficulties w/ self-direction (self-directed, inconsistent attention, frequent redirection). IEP/Psychoed mention age level communication & self-care. Learning is not an issue. No mobility issues. Case to remain closed due to lack of delays.

7. On October 25, 2024, SARC issued a notice of action and a certificate of eligibility, informing claimant's parents that claimant was neither eligible for Lanterman Act services nor provisionally eligible because claimant had no substantial delays in any area of major life activity. Dr. Molina incorrectly filled out the certificate of eligibility by failing to mark that claimant was "substantially handicapped" in the self-direction area of major life activity.

8. Claimant's parents timely appealed. An informal meeting occurred between SARC's Executive Director's designee and claimant's parents.

On November 22, 2024, claimant's parents were informed that, "[a]fter interviewing [claimant's parents], reviewing the information [SARC had] available on file, and consulting with Dr. Molina," claimant was found provisionally eligible to receive services based on "significant functional limitations in his communication and self-direction areas of daily living as compared to other children of his age."

SARC issued an administrative decision on November 25, 2024, confirming claimant's provisional eligibility for regional center services. SARC also determined

that, although claimant's parents presented evidence, claimant did not have significant functional limitations in the area of self-care. Some of the other concerns claimant's parents presented were "more properly considered as aspects of self-direction."

Self-Care

9. Claimant's parents testified about claimant's self-care limitations.

Although claimant is potty-trained, he cannot clean himself or wash his own hands. When brushing his teeth, claimant does not know to spit out the toothpaste or the water. Claimant can hold a hairbrush but will use it to hit his head instead of combing his hair. He cannot independently dress, and he cannot express whether he is hot or cold. Claimant also refuses to nap. He needs others to make certain that he stays hydrated and is an "extremely picky" eater and requires prompting to eat. And although claimant can hold a utensil, he will use it to injure himself.

Claimant also does not seem to register pain. In one incident at his preschool, claimant was severely bitten by another child. In another incident, claimant ran his hands over wood and collected numerous splinters. In neither situation did claimant inform an adult or suggest to anyone that he was hurt.

10. Claimant receives both speech therapy and occupational therapy. His occupational therapist is currently working with him in the areas of self-regulation, play skills, mutual engagement and social connection, regulation during parallel play, and feeding.

11. Stephanie Lai, M.D., claimant's primary pediatrician, wrote that claimant "experiences substantial delays in multiple areas of development, including language, self-direction, and self-care." She noted claimant's "run[ning] into the street without

looking and run[ning] dangerously far away . . . outdoors.” Dr. Lai also wrote about claimant’s inability “to stop activities that are harmful to himself,” including “sucking his thumb so much the skin gets raw.” Dr. Lai also noted her inability to obtain claimant’s measurements because claimant refused to cooperate.

12. Lynne Coe Huffman, M.D., the Developmental-Behavioral Pediatrics Attending Physician at Stanford Children’s and a teaching professor of pediatrics, and of psychiatry and behavioral sciences, at Stanford University, also examined claimant.

In a report dated December 4, 2024, Dr. Huffman concluded that claimant “currently demonstrates significant impairments in expressive and receptive language, social interaction, and age-appropriate self care” and requires “extensive therapeutic services to augment his functional abilities.” Dr. Huffman noted concerns with claimant’s self-care, including his inability to “express his internal states,” the preschool biting incident, the “constant prompting and help with eating,” the need to help claimant with putting on clothes and shoes, and his bathing issues.

As part of her report, Dr. Huffman reviewed an updated Behavior Assessment System for Children (BASC-3). Claimant was found to be at risk as his adaptive skills area score profile placed him in the bottom fourth percentile compared with children his age.

13. Claimant’s parents also testified about claimant’s scores on the Assessment, Evaluation and Programming System for Infants and Children, Second Edition (AEPS). Included with the Psychoed Report, claimant’s AEPS adaptive score, which focuses on daily living skills, was one point below the cutoff score for children within his age range. As stated in the Psychoed Report, “[b]ecause cutoff scores have been placed well below the expected Area Goal Score for specific age intervals, it is

highly likely that children whose Area Goal Scores are below cutoff scores will be eligible for services.”

14. Dr. Molina testified that it was her clinical opinion that claimant was not substantially disabled in the area of self-care at this time. Overall, Dr. Molina’s opinions regarding claimant’s eligibility were persuasive. However, certain aspects of her testimony were not persuasive.

Dr. Molina noted that children at claimant’s age would normally have issues with, among other things, brushing, dressing, eating, and drinking. It is also typical for parents to assist children with self-care at this age. She also stated that concerns relating to claimant’s injuries, behavior, and safety awareness are not self-care issues, but are instead self-direction issues. This testimony was persuasive.

Dr. Molina testified that she did not have concerns about claimant’s low BASC-3 adaptive skills score because she only considered those individuals who displayed abilities among the bottom third percentile as having a significant functional limitation. However, Dr. Molina did not adequately explain why claimant, whose BASC-3 score placed him in the bottom fourth percentile, was not considered as having a significant functional limitation. Dr. Molina also noted her “reluctance” in considering claimant’s AEPS scores because they are related to educational services and are used to develop claimant’s Individualized Education Program. But Dr. Molina did not satisfactorily explain why claimant’s AEPS adaptive score did not translate to claimant’s abilities for self-care outside the classroom. Dr. Molina’s testimony concerning claimant’s BASC-3 and AEPS scores was not persuasive.

Because claimant was made provisionally eligible, Dr. Molina testified that claimant will be reviewed for full Lanterman Act eligibility when he reaches 4.6 years of

age and after further evaluations are completed. Dr. Molina, who has never met claimant, also noted that claimant's parents can request that SARC perform an in-person assessment of claimant.

Ultimate Findings

15. It is undisputed that claimant has ASD, an eligible condition. The parties also agree that claimant has significant functional limitations in the areas of communication and self-direction. At this time, however, it was not established by a preponderance of the evidence that claimant currently has significant functional limitations in the area of self-care as compared to children his age.

While it is concerning that claimant engages in incidents that call into question his safety, that issue is a behavioral factor that is more appropriately categorized within the self-direction area of major life activity. And, although there are aspects of Dr. Molina's testimony that were not persuasive, her testimony concerning how the regional center analyzes whether an individual has significant functional limitations in self-care was convincing. That claimant, who is only three years old, is currently able to engage in self-care activities, some with his parents' assistance, demonstrates that he is not significantly handicapped in a third area of major life activity, relative to children his age, at this time.

16. Because claimant is provisionally eligible, claimant will be further assessed before he turns five years old. At that time, and with further evaluations and reports, SARC will be able to determine whether claimant is fully eligible for Lanterman Act services.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 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. (Welf. & Inst. Code, §§ 4501, 4502; *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.) Because the Act is a remedial statute, it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.).

2. To establish eligibility for regional center services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that he suffers from a developmental disability, and that he is substantially disabled by that developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a); Evid. Code, §§ 115, 500.)

3. A “developmental disability” potentially qualifying a person for services under the Lanterman Act includes intellectual disability, autism, epilepsy, cerebral palsy, and other “disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.” (Welf. & Inst. Code, § 4512, subd. (a)(1).)

The matters stated in Factual Findings 3 and 15 confirm that claimant has a developmental disability, autism spectrum disorder, that potentially qualifies him for Lanterman Act services.

4. The qualifying disability must be “substantial,” which is defined as “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.” (Welf. & Inst. Code, § 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The last two major life activities are generally not taken into consideration when evaluating a young child such as claimant.

The evidence established that claimant has experienced substantial impairment, as compared to children of similar age, in two major life activities, receptive and expressive language and self-direction (Factual Findings 8 and 15). These substantial impairments continued at the time of the hearing and resulted, and still results, from autism spectrum disorder. However, for the reasons stated in Factual Finding 15, claimant has not demonstrated by a preponderance of the evidence that he has a substantial impairment in a third major life activity at this time.

5. The Lanterman Act deems children under the age of five “provisionally eligible for regional center services” if available evidence suggests but does not establish conclusively that they meet all requirements for full eligibility. (Welf. & Inst. Code, § 4512, subd. (a)(2).) In particular, the Lanterman Act authorizes a regional center to make a three-year-old child who currently experiences substantial disability provisionally eligible for regional center services if information about the child’s developmental history is inadequate to demonstrate whether the child’s disability will continue to be substantial as the child matures.

The matters stated in Factual Findings 8, 15, and 16, and in Legal Conclusions 3 and 4, justify SARC's determination that claimant is provisionally eligible for regional center services until he becomes five years old.

6. Claimant's parents' concerns about claimant's development are reasonable. At the same time, these matters do not establish as of the hearing date that claimant has a substantial disability in a third area of major life activity. Claimant is eligible to be reassessed in May 2026, when claimant approaches five years old. After a reassessment, more information will be available about him, reflecting a longer treatment record and additional evidence from multiple professionals including therapists, educators, and health care providers.

On this record, claimant has not demonstrated that he is fully eligible for services under the Lanterman Act. Claimant remains provisionally eligible for services.

ORDER

Claimant's appeal from SARC's determination that claimant is not fully eligible for services under the Lanterman Act is denied. Claimant remains provisionally eligible for services.

DATE:

MARIO M. CHOI

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.