

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

In the Matter of:

CLAIMANT

and

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0022217

OAH No. 2024110602

DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on January 24 and February 20, 2025, by videoconference.

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

On January 24, 2025, Lucelia Cardona, Senior Client Support Specialist, Behavioral Health Division, Sonoma County Department of Health Services, represented claimant. On February 20, 2025, claimant's stepfather represented her. Claimant was not present at the hearing.

The record closed and the matter was submitted for decision on February 20, 2025.

ISSUE

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

FACTUAL FINDINGS

1. Claimant was born in January 2015, she is 10 years old, and she is enrolled in the fifth 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 her mother, stepfather, and four older siblings (two of whom are young adults).

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 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,

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

self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, subd. (1).)

3. There is no dispute between the parties that claimant has Autism Spectrum Disorder (ASD), and that she has significant functional limitations in the major life activity areas of self-care and self-direction. The parties' dispute is that claimant asserts that she also has significant functional limitations in all other Lanterman Act major life activity areas (receptive and expressive language, learning, mobility, capacity for independent living, and economic self-sufficiency), but NBRC disagrees.

4. Claimant was born prematurely via cesarean delivery after almost seven month's gestation, and she was intubated for approximately three months. She had hydrocephalus on the right side of her brain, had a cerebrospinal fluid shunt, her feet turned inwards, and she used leg braces. Claimant crawled at three years of age, walked and used her first words at five years of age, and was toilet trained at approximately seven years of age.

5. Claimant lived in the Dominican Republic with her maternal grandmother until approximately three years ago when she moved to California into the home of her mother and stepfather. Her primary language is Spanish, which is also the primary language used at her home, and she is learning English. Claimant has been enrolled in the Piner-Olivet Union School District for approximately two and one-half years.

6. In October 2023, claimant was diagnosed by her Alliance Medical Center pediatrician with major depressive disorder and attention-deficit/hyperactivity disorder (ADHD), predominately hyperactive/impulsive presentation. Claimant has been

prescribed and has taken various medications to address her ADHD, but the evidence did not establish the current medications she is taking.

7. Claimant was referred by Alliance Medical Center to NBRC to rule out a developmental disability and to determine her eligibility for services under the Lanterman Act. On April 17, 2024, NBRC Assessment Counselor Michelle Covell conducted an intake meeting with claimant, her mother, and her stepfather. Covell gathered information from the meeting, reviewed documents, and wrote an intake social assessment report with her findings dated April 19, 2024.

8. Claimant was referred by her Alliance Medical Center pediatrician to psychologist Gabriella Ruzin, Psy.D., in order to determine if she met the criteria for ASD. On May 10, 2024, Dr. Ruzin conducted a four-hour assessment via videoconference with claimant while claimant's mother was present. On May 12, 2024, Dr. Ruzin wrote an assessment report with her findings. Dr. Ruzin concluded claimant met the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for diagnoses of ASD and ADHD, predominately hyperactive/impulsive presentation. Dr. Ruzin advised that claimant should be further assessed to rule out a diagnosis of intellectual disability (ID).

9. Claimant was referred by NBRC to psychologist Ubaldo F. Sanchez, Ph.D., to determine her current levels of intellectual, cognitive, and adaptive functioning and whether she had ID and/or ASD. On June 27, 2024, Dr. Sanchez assessed claimant and wrote a report dated August 2, 2024, with his findings. Dr. Sanchez administered the Wechsler Intelligence Scale for Children, Fifth Edition, to claimant and she obtained a Full Scale Composite standard score of 103, in the average range. Claimant's stepfather completed the Adaptive Behavior Assessment System - Third Edition (ABAS-3) questionnaire regarding claimant's adaptive functioning. Claimant received a

General Adaptive Composite standard score of 57 on the ABAS-3, in the extremely low range. Dr. Sanchez also administered the following ASD-related instruments: the Autism Diagnostic Observation Schedule (ADOS-2), Module 3; Autism Diagnostic Interview-Revised (ADI-R); and the Social Responsiveness Scale, Second Edition (SRS-2). Dr. Sanchez opined that claimant's scores on the ADOS-2, ADI-R, and SRS-2, "are strongly associated with a clinical diagnosis of ASD." Dr. Sanchez reported that:

[claimant] is in a regular education class with 38 students and has difficulty keeping up. She does well in math but not in other subjects. She does not have behavioral issues at school.

...

During the evaluation, she was not self-absorbed or self-directed. She was hyperactive and constantly moving from side to side in her chair. She gave eye contact and used gestures to regulate her social interaction. She displayed a full range of facial expressions and had a great smile.

Dr. Sanchez concluded that claimant met the DSM-5 diagnostic criteria for: ASD; ADHD, combined presentation; and unspecified depressive disorder.

10. On a date after August 2, but prior to September 25, 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 intake social assessment

report referenced in Factual Finding 7 and the psychological evaluations referenced in Factual Findings 8 and 9. The eligibility team determined that claimant was not eligible for services under the Lanterman Act, finding that while she had ASD, she did not have a substantial disability because she only had a significant functional limitation in two major life activity areas (self-care and self-direction).

11. On September 25, 2024, NBRC issued to claimant's mother a Notice of Action that denied claimant's eligibility for services under the Lanterman Act and included information on appealing the decision.

12. On November 12, 2024, claimant's mother filed an appeal of NBRC's decision.

13. Claimant's school district referred her for a psychoeducational assessment to determine her eligibility under the Individuals with Disabilities Education Act (IDEA) and whether she qualified for an Individualized Education Program (IEP). Licensed Educational Psychologist Julia VanderVennet, Ed.D., assessed claimant and wrote a confidential assessment summary report dated November 21, 2024, with her findings. Dr. VanderVennet concluded in her summary of assessment findings:

During testing, [claimant] was cooperative, enthusiastic, and showed resilience in adapting to new environments. She openly shared personal experiences and acknowledged challenges with reading due to learning English, but remained positive about her overall school experience. Cognitive assessment results showed that [claimant] has stronger nonverbal reasoning and visual-spatial abilities

compared to her verbal skills, which is common for English language learners. Her nonverbal reasoning and visual memory were identified as particular strengths. In the area of executive functioning, [claimant] demonstrated mixed results, with strengths in visual scanning, cognitive flexibility, and processing speed, but some difficulties with tasks requiring working memory and cognitive shifting, which may be impacted by her second language status.

...

The teacher's Autism Spectrum Rating Scale (ASRS) evaluation indicated that [claimant] exhibits age-appropriate social, communicative, and self-regulatory behaviors, with only minor challenges related to peer socialization that could benefit from additional support. Overall, the assessment paints a picture of a diligent, engaged student with cognitive strengths in nonverbal reasoning and visual memory, who is navigating the process of English language acquisition and may require some targeted support in certain areas of executive functioning and peer socialization. Additionally rating scales for ADHD are not indicating significant impact on her behavior, attention [or] functioning at school.

Dr. VannderVannet further concluded that she did not believe claimant qualified for eligibility under the IDEA.

14. 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 including decision-making and social deficits, 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 testified that, based on claimant's age, the NBRC team appropriately did not consider in depth claimant's capacity for independent living and economic self-sufficiency as a ten-year-old is not expected to have those skills, and these areas of major life activity are more appropriately considered for individuals approximately 12 years of age and older. Dr. Payne further testified that the assessments completed with claimant, including the recent assessment by Dr. VanderVennet, did not provide sufficient evidence to support that claimant has a significant functional limitation in the major life activity areas of receptive and expressive language, learning, and mobility.

15. Julia Green, L.C.S.W., testified at hearing and provided a one-page letter dated January 17, 2025, in support of claimant. She has been providing weekly therapy services to claimant through videoconference or telephone since June 22, 2023. Green conducts her therapy sessions with claimant in Spanish. She wrote that claimant, "can be very kind and caring to others, and most of the time does not pick up on the intention of others and as a result some classmates have taken advantage of her poor social cues and skills." Green testified that claimant's "train of thought goes everywhere" and claimant has limitations expressing herself, and she stutters and uses repetitive words. Green appeared to base much of her opinion on claimant's functioning at school and in the home on the reporting from claimant, and claimant's

mother and stepfather. There was not any evidence that Green conducted her own assessment of claimant, and she admitted she cannot diagnose autism as that “is out of [her] scope of practice.” In Green’s letter, she stated her belief that claimant’s school district should reconsider its decision not to find claimant eligible under the IDEA, and at hearing she stated her belief that claimant should be eligible for services under the Lanterman Act. Green also testified that NBRC and claimant’s school district should have contacted her during the assessment process so she could have provided information to support claimant’s eligibility under the Lanterman Act and the IDEA. Green’s concern for claimant was evident, but her opinions on claimant’s functioning in major life activity areas and claimant’s eligibility under the Lanterman Act were given little weight.

Claimant’s Additional Evidence

16. Claimant’s mother and stepfather testified compassionately and earnestly at hearing to describe their concerns for their daughter. The concerns of claimant’s mother and stepfather are reasonable and well-founded. They provided examples of claimant’s limited adaptive and pragmatic language communication skills. Claimant’s stepfather testified to his concerns regarding claimant’s clumsiness, propensity for falling, and not reporting her injuries. There was no documentary evidence, such as a medical report or other assessment, that claimant has any current mobility issues.

Claimant’s mother provided somewhat confusing testimony and evidence regarding the assessment of claimant by her school district to determine her eligibility for services under the IDEA. Notwithstanding the assessment report from Dr. VanderVennet that claimant introduced as evidence, Claimant’s mother testified that she had not provided consent for that assessment, that there has been no IEP

meeting to review the assessment, and that the school district is still in the process of assessing claimant to determine her eligibility under the IDEA.

Ultimate Factual Finding

17. The evidence established that claimant has ASD, she is under the age of 18, and she has significant functional limitations in the major life activity areas 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, learning, and mobility, was persuasive and consistent with the documentary evidence. Dr. Payne's opinion that the NBRC team appropriately did not consider in depth claimant's capacity for independent living and economic self-sufficiency based on her age, was persuasive and uncontroverted by any professional. Because claimant does not have a significant functional limitation in at least three areas of major life activity, she does not have a substantial disability as defined by the Lanterman Act.

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 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.