

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

In the Matter of:

CLAIMANT

and

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0022300

OAH No. 2024110610

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on December 18, 2024, in Santa Rosa, California.

Claimant was represented by his parents. Claimant was not present.

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

The record closed and the matter was submitted for decision on December 18, 2024.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.¹) for services from NBRC?

FACTUAL FINDINGS

Introduction

1. Claimant was born in April 2018. He is about six and a half years old. Claimant lives with his mother (a former elementary school teacher), father (a high school teacher), three-year-old sister, and infant brother.

2. In 2024, claimant's parents referred him to NBRC to determine his eligibility for services under the Lanterman Act. An NBRC eligibility team reviewed documents and information provided by claimant's parents, and a counselor conducted an intake social assessment on July 19, 2024.

3. On October 30, 2024, NBRC issued a notice of action, finding that claimant was not eligible for services under the Lanterman Act. Claimant filed an appeal request on November 14, 2024. This hearing followed.

4. Eligibility for services under the Lanterman Act requires claimant to have a developmental disability (one of five specified eligible conditions, including autism) that originates before the age of 18, that is expected to continue indefinitely, and that

¹ Statutory references are to the Welfare and Institutions Code.

constitutes a substantial disability for claimant. (§ 4512, subd. (a)(1).) A “substantial disability” requires claimant to show “significant functional limitations” in three or more of the following areas of major life activity, as appropriate to his age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, subd. (l)(1).)

5. The parties agree that claimant has Autism Spectrum Disorder (ASD), which is a condition that may qualify claimant for Lanterman Act services and is expected to continue indefinitely. The dispute in this appeal is whether claimant’s ASD constitutes a substantial disability. The parties agree that claimant has significant functional limitations in two areas of major life activity: self-care and self-direction. Claimant asserts that he also has significant functional limitations in a third area: receptive and expressive language. NBRC disagrees.

ASD Diagnosis

6. Claimant was assessed by the Kaiser Permanente Autism Spectrum Disorders Evaluation Center when he was four years, nine months old. A report was issued on January 31, 2023, diagnosing claimant with ASD, and also noting a prior diagnosis in October 2022 of ADHD (Attention-Deficit/Hyperactivity Disorder).

Educational History

7. Claimant attended Healdsburg Nursery School when he was three years old. Claimant attended transitional kindergarten (TK) in a Spanish/English immersion program at Cali Calmécac Language Academy in the Windsor Unified School District during the 2022–2023 school year. Claimant attended kindergarten at SunRidge Charter School in the fall of 2023. Claimant was on independent study status at the beginning of 2024. Since March 2024 (the end of his kindergarten year), claimant has

been homeschooled through the Heartwood Charter School. He is now in first grade. Claimant also briefly attended KindKin Collective, a self-directed learning center, in November 2024, but he was only able to attend four weekly sessions before the program asked him to leave.

SPECIAL EDUCATION EVALUATION AND IEP MEETING IN MAY 2023

8. In spring 2023, toward the end of his TK school year at Cali Calmécac, claimant was referred for a comprehensive psychoeducational evaluation by the Windsor Unified School District due to concerns about how his recent ASD and ADHD diagnoses might affect his access to education. A multidisciplinary evaluation report was issued on May 1, 2023, reflecting information obtained from: interviews with claimant's teachers and parents; observations of claimant in the classroom and play yard; cognitive and behavioral assessments administered by school psychologist Ashley Hansen; an academic achievement assessment by a resource specialist; a speech language assessment by speech language pathologist Jessica Lickey; and an occupational therapy assessment by Rudy Marticorena.

The speech language assessment showed an overall score of 112 (average) on the Comprehensive Assessment of Spoken Language, Second Edition (CASL-2). On the Descriptive Pragmatics Profile of the Clinical Evaluation of Language Fundamentals-2 (CELF: Preschool-2), claimant received an average score of 75.66. The speech language assessment found claimant had age-appropriate skills in semantic language, syntax and morphology, articulation, pragmatic language, and voice and oral fluency.

Teachers reported that claimant had strong verbal skills, but that attention, impulse control, and self-regulation issues affected his success in school.

9. An initial IEP (Individualized Education Program) meeting was held on May 1, 2023. Based on the results of the evaluation described in Factual Finding 8, the IEP team determined that claimant's symptoms of autism and ADHD were observed to a "mild-to-moderate degree" at school, but were not interfering in a significant way with his learning or development of adult and peer relationships. The IEP team did not find that special education services were needed at that time.

IEP RE-EVALUATION IN DECEMBER 2024

10. In the fall of claimant's first grade year, claimant was re-evaluated for special education services. A multidisciplinary psychoeducational report was issued on November 22, 2024, by school psychologist Vicki Duffy, Psy.D., reflecting information obtained from: interviews with claimant's certified support teacher Andrea McEvoy and claimant's parents; interview and observation of claimant; and cognitive/academic and behavioral assessments. Claimant was also evaluated by speech language pathologist Holly Marie Suda, and occupational therapist Denise Skaglin.

In Dr. Duffy's opinion, cognitive and academic testing showed claimant's general intellectual ability was in the low average to average range overall, although he showed an area of need in reading and written language. Several social emotional and behavioral assessments administered by Dr. Duffy showed that social-emotional was an area of need. One instrument, the Autism Spectrum Rating Scale (ASRS) yielded a total T-score of 79 (very elevated) reflecting, among other things, difficulty using appropriate verbal and non-verbal communication for social contact, and using language in an atypical manner.

11. IEP re-evaluation meetings were held on December 5 and 9, 2024. Based on the results of the evaluations described in Factual Finding 10, the IEP team

determined that claimant is eligible for special education services in the primary disability of autism and the secondary disability of "other health impairment" (ADHD). The IEP summary stated that claimant

has difficulty using appropriate verbal and non-verbal communication for social contact, engages in unusual behaviors, has problems with inattention and/or motor and impulse control, has difficulty relating to children and adults, has difficulty providing appropriate emotional responses to people in social situations, uses language in an atypical manner, engages in stereotypical behaviors, has difficulty tolerating changes in routine, overreacts to sensory stimulation and has difficulty focusing attention.

12. Claimant's IEP describes his "communication development" by summarizing the findings of speech language pathologist Suda, who administered standardized assessments that showed impairments in articulation and pragmatic skills. On the AAPS-4 (Arizona Articulation Proficiency Scale, Fourth Edition), claimant received a standard score of 70, percentile rank of 2 (severe range) in word and sentence articulation. Suda judged claimant's speech to be 60 to 70 percent intelligible to an unfamiliar listener. On the Test of Pragmatic Language, Second Edition (TOPL-2), claimant received a standard score of 75, percentile rank of 5 (poor range). On the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF), Pragmatics Profile, claimant received a scaled score of 4, percentile rank of 2. Claimant's noted areas of weakness include: using repetitive or redundant information, turn-taking, participating in structured and unstructured group activities, interrupting others appropriately,

offering help to others, “asking others to change their states,” and reading social situations and responding appropriately.

13. The December 2024 IEP concluded that claimant required special education services, setting three goals in the area of articulation, one goal in social skills, one goal in fine motor and sensory processing, one goal in coping strategies, and two goals related to letter/number and word recognition. A variety of program accommodations were needed for general education. In addition, the IEP team found that claimant required speech and language services (60 minutes weekly), specialized academic instruction (90 minutes weekly), occupational therapy (30 minutes weekly), and parent counseling (30 minutes weekly).

Testimony of Dr. Payne

14. Todd Payne, Psy.D., a clinical psychologist employed by NBRC, testified at hearing regarding the NBRC eligibility team’s determination that claimant did not meet the eligibility criteria for services under the Lanterman Act. The NBRC eligibility team included Dr. Payne, a physician, an intake service coordinator, and a supervisor.

15. Dr. Payne confirmed that claimant’s ASD diagnosis is undisputed by NBRC. Regarding the areas of major life activity, he explained that the last two areas, capacity for independent living and economic self-sufficiency, are not applicable for a child of claimant’s age.

16. Dr. Payne agreed that claimant has significant functional limitations in self-care and self-direction. For example, claimant has toileting accidents and at night he will not go to the bathroom or remove his “pull ups” even if they are full or heavy; he will not flush the toilet and hates to wash his hands; he will only agree to bathing 50 percent of the time and hair-washing once a month; toothbrushing is traumatic;

and he will only wear clothing when he leaves the house. Many of claimant's autism traits cause significant limitations in self-direction, such as difficulty with emotional dysregulation, self-initiative, and social skills, and lack of safety awareness.

17. Dr. Payne found no significant functional limitations in mobility or learning. Claimant's scores on cognitive assessments were average and above average.

18. The key dispute in this matter is whether claimant has shown significant limitations in receptive and expressive language. Dr. Payne concluded that he had not, relying on the May 2023 speech language assessment that showed average scores and found age-appropriate speech and language skills across all areas. The May 2023 evaluation noted that claimant told made-up or untrue stories more frequently than is usual, and also noted concerns about social skills expressed by claimant's teacher and parents. However, in Dr. Payne's opinion, these did not reflect a significant functional limitation in receptive and expressive language.

19. Dr. Payne also discussed the July 2024 NBRC intake social assessment, which included information about claimant's communication functioning. Claimant engaged in echolalic and scripted speech, and the family reported his scripted speech had increased recently. Claimant's pronunciation, voice volume, and vocabulary were age appropriate. When he was upset, angry, or frustrated, he reverted to hissing and growling. Claimant made up words and created his own language. He had difficulty initiating conversation with another person, but could have back-and-forth conversation with "chosen people." He misreads, misunderstands, and misinterprets facial and body language. In Dr. Payne's opinion, these issues are symptoms of claimant's autism, but are not sufficiently severe to show a significant limitation in receptive and expressive language.

20. Claimant's parents submitted additional information that was obtained after NBRC's eligibility team determination, and Dr. Payne reviewed that information, but it did not change his opinion.

21. The December 2024 IEP included an evaluation by speech language pathologist Suda, who came to a different conclusion than the prior pathologist, and found claimant eligible for speech language services. Dr. Payne noted that the December 2024 IEP contained contradictory information about claimant's communication skills, such as finding age-appropriate speech and language skills, while also stating Suda's findings of impairments in articulation and pragmatic language skills. (However, as explained by claimant's mother, and confirmed by a comparison of the reports, that discrepancy is due to the December 2024 IEP including copied-and-pasted portions of the May 2023 IEP verbatim, without notation. The December 2024 IEP does clearly identify information from the new evaluations.)

Dr. Payne was concerned that the IEP contained excerpts from Suda's report, but the full report was not provided. However, the IEP contains the pertinent findings from Suda's assessment (see Factual Finding 12); these are sufficient.

Dr. Payne also reviewed Suda's letter (see Factual Finding 30), but found that it did not indicate claimant cannot understand others or others cannot understand him.

22. Dr. Payne reviewed the December 17, 2024, visit note from claimant's new speech language pathologist (see Factual Finding 31), but in his opinion it mostly discussed behavioral problems that fall under the area of self-direction.

Testimony of Claimant's Parents and Additional Documents

23. Claimant's parents testified sincerely and compassionately at hearing about claimant's strengths and limitations, and their concerns for his wellbeing.

24. Claimant's mother credibly testified that claimant has regressed significantly in the time since his first IEP evaluation. Claimant wants to attend school but cannot interact and communicate effectively with his peers.

25. Claimant's eye contact is inconsistent. Claimant misunderstands instructions and directions. He does not understand the power of his own words and blurts out socially offensive comments. Claimant misinterprets others' comments, mannerisms, facial expressions, and body language. Claimant's parents provided multiple examples of these misunderstandings and inability to read social cues.

26. Claimant's mother described multiple occasions, over the course of years, in which she observed claimant be unable to recognize when peers were teasing or bullying him, and unable to advocate for himself.

27. Claimant is talkative, but often what he says is simply repeating phrases he has heard on television or spoken by his parents. His parents described multiple examples of claimant's inability to express his feelings and frustrations using words.

28. Sometimes claimant is able to express himself. However, when claimant becomes dysregulated, he loses all of his language ability and reverts to hissing, growling, and grunting. During these episodes, he also does not appear to hear others and does not respond to his name being called.

29. Claimant elopes and engages in dangerous behavior, while being unresponsive to attempts to communicate and unable to express himself. One such

episode led to claimant being taken to the emergency room for psychiatric evaluation before being released with a safety plan and adjustments to his medication.

30. Speech language pathologist Suda wrote a letter that was undated, but that claimant's parents credibly stated was received in December 2024. Suda wrote that claimant required speech language services due to "significant challenges in social communication" that are "negatively impacting his ability to engage in basic, everyday conversations and to interact meaningfully with peers and adults, both in and out of the classroom." Suda stated that claimant:

struggles with turn-taking during conversations, initiating and maintaining interactions, participating in both structured and unstructured group activities, apologizing and accepting apologies, responding appropriately to requests to change his behavior, and accurately interpreting social cues. He also has difficulty maintaining consistent eye contact and sometimes misunderstands orally presented directions.

Suda also discussed the test results, opining:

Additionally, standardized testing indicates that his articulation skills fall within the severe range for his chronological age. His decreased speech intelligibility further impedes his ability to express himself clearly during communication, which may limit his social interactions.

31. Claimant has just begun seeing a new speech language pathologist, Jamie M. Stuth, and attended his first session with Stuth on December 17, 2024. Stuth

wrote a summary of that one-hour session. She described that claimant was in a pleasant mood and ready to learn and interact, and participated in tasks and activities, while requiring high levels of physical activity and breaks. However, claimant became dysregulated during one activity and was unable to communicate. Stuth wrote:

He requested building paper swords and having a "sword fight" but became upset when therapist did not follow his internalized expected routines. This resulted in a physical lashing out involving hitting and kicking therapist during which time [claimant] completely shut down all verbal communication aside from angry grunting and heavy breathing sounds. He was not receptive to redirection and did not respond to his name being called. After several minutes of lashing out, [claimant] ran across the room and hid under the trampoline. At that time, therapist and mom gave [him] a few minutes to self calm before addressing him and allowing him to try to verbalize what had caused the physical outburst. After a bit of discussion it was stated that he was supposed to win.

Claimant's mother described this event consistently with Stuth's note. Claimant's mother noted this as an example of claimant losing the ability to hear and communicate, and that the incident was prompted by claimant's inability to express his internal expectation that he was supposed to win the sword fight.

32. Jessica Seevers, the facilitator and director of KindKin Collective, wrote a letter dated November 20, 2024, discussing her observations of claimant. Seevers observed "language deficiencies that made it impossible for him to connect with the

community and follow the cultural norms." Claimant was "unable to connect verbally with his peers; choosing to revert to a dog personality rather than maintain a simple conversation." Claimant interpreted nonverbal cues incorrectly and Seevers interjected to help claimant understand the nonverbal cues. She would ask him if he understood and claimant would say no, so Seevers continued to rephrase more and more simply. During play, peers would repeatedly ask claimant to stop in many different ways, and it appeared to Seevers that claimant did not register the requests cognitively. She opined that this was not due to rebellion, because claimant did want to have friends. Seevers noted that claimant was "unable to express verbally or nonverbally his needs or feelings," that he was "not able to negotiate the rules of play," and that he was "unable to participate in simple clean up tasks without being asked repeatedly and physically supported in the task." Claimant was asked to leave the KindKin program due to his inability to comprehend and verbalize its culture and rules.

33. Andrea McEvoy wrote a letter dated December 9, 2024. McEvoy is claimant's credentialed support teacher at Heartwood, a public charter school that supports homeschooling families. McEvoy also stated that she has known claimant since he was a baby. McEvoy wrote that in her years of spending time with claimant, his challenges have always been present, and have increased in frequency and profoundness over time. She described claimant as a bright and curious child who wants to succeed in school and social interactions, and has strong support from his parents. However, McEvoy opined that even with those supports, claimant "struggles with autism, ADHD and an inability to self-regulate to the extent that his personal and academic life is heavily affected in a negative way." She worries about his academic growth, social behavior, self-esteem, and safety.

Ultimate Factual Findings

34. The evidence established that claimant has ASD, is under the age of 18, and has significant functional limitations in the major life activities of self-care, self-direction, and receptive and expressive language. Dr. Payne's opinion that claimant does not have significant functional limitations in receptive and expressive language is not persuasive. The evidence as a whole, including the most recent IEP and speech language assessment, and the observations of claimant's teachers and parents (Factual Findings 10-13, 19, 23-33), shows that claimant's challenges with social interactions implicate not only the area of self-direction, but also the area of receptive and expressive language, and that his functional limitations are significant.

LEGAL CONCLUSIONS

1. To establish eligibility for NBRC's services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that (1) he suffers from a developmental disability and (2) he is substantially disabled by that developmental disability. (§§ 4501, 4512, subd. (a).)

2. Disabilities that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (§ 4512, subd. (a).) They 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." (*Id.*) In any case, the "developmental disability" must originate before the person turns 18, and must be lifelong. (*Id.*)

3. A qualifying disability must be "substantial," meaning that it causes "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, subds. (a), (l)(1); see also Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).)

4. Claimant has the eligible condition of ASD, is under the age of 18, and his condition is expected to be lifelong. As set forth in Factual Finding 34, claimant’s ASD is a substantially disabling developmental disability for him, with significant functional limitations in the areas of self-care, self-direction, and receptive and expressive language. Claimant has established eligibility for NBRC’s services under the Lanterman Act.

ORDER

Claimant’s appeal is granted. Claimant has established his eligibility under the Lanterman Act for services from NBRC.

DATE:

HOLLY M. BALDWIN
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.