

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

In the Matter of:

CLAIMANT

and

SAN ANDREAS REGIONAL CENTER, Service Agency.

DDS. No. CS0022333

OAH No. 2024110768

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, who served as the hearing officer, heard this matter on May 23, 2025, in San Jose, California.

Esmeralda Rivera, Appeals Resolution Specialist represented San Andreas Regional Center (SARC).

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

The record remained open until May 30, 2025, for claimant to submit additional documents and for SARC to file an optional response. Claimant's submissions were

timely received and admitted into evidence as Exhibits C14 through C24. SARC's response was marked as Exhibit 9 and considered as argument.

The record closed and the matter was submitted for decision on May 30, 2025.

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

Background

1. Claimant recently turned six. He lives with his family. Spanish is the primary language spoken in the home.

2. Claimant was found eligible for Early Start services in December 2021. He was granted provisional eligibility for services under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) (the Lanterman Act) in April 2022, as he approached his third birthday. Provisional eligibility under the Lanterman Act applies to children three or four years of age who do not otherwise qualify for full eligibility and have significant functional limitations in at least two of the five areas of major life activity areas appropriate to an individual three or four years of age. (Welf. & Inst. Code, § 4512, subd. (a)(2)(A).)

3. In late 2023, when claimant turned four and one-half years old, SARC determined that claimant was not eligible for Lanterman Act services based on the records available at that time.

4. Additional records were received and reviewed throughout 2024, and SARC continued to maintain the position that claimant is not eligible. The final determination denying eligibility was made on October 30, 2024.

5. Claimant appealed the denial of eligibility on November 15, 2024.

Regional Center Eligibility Criteria

6. To be eligible for services under the Lanterman Act, an individual must have a developmental disability that originates prior to age 18, the disability must not be solely physical in nature, the disability must be expected to continue indefinitely, and the disability must constitute a substantial disability for the individual. (Welf. & Inst. Code, § 4512, subd. (a)(1).) A substantial disability is defined as the existence of significant functional limitations in at least three of the following major life activity areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, subd. (j)(1).) The last two major life activities are generally not taken into consideration when evaluating a young child such as claimant, because children of this age are not typically capable of living independently and are not expected to be economically self-sufficient.

SARC Eligibility Determination

7. Psychologist Ivania Molina, Ph.D., has been involved in claimant's case since he first sought Early Start services. She explained that she recommended provisional eligibility for claimant despite the fact that at the time he did not have a diagnosis of an eligible condition because he showed delays in communication, learning, and self-care. Claimant subsequently obtained a diagnosis of autism spectrum disorder (ASD).

8. In evaluating whether claimant should be found eligible, Dr. Molina reviewed school records and did not find corroborating evidence to support the ASD diagnosis. She noted that claimant is described as friendly and charismatic. Claimant is not receiving special education services under the autism category and has been placed in a general education classroom. School documents also reflect that claimant engages in reciprocal conversation, shows interest in his peers, can follow directions, and makes eye contact. Dr. Molina also noted that certain behaviors reported by the family are not identified as occurring at school. Because ASD is pervasive across all environments, this disparity weighs against the conclusion that claimant has ASD. Dr. Molina questions the long-term viability of claimant's ASD diagnosis.

9. Dr. Molina was also concerned that the family did not provide some documents SARC requested, including the most recent Individualized Education Program (IEP) from his school district, and an Independent Educational Evaluation (IEE) report that was performed in 2024 and is mentioned in some school documents relating to claimant's special education services. An IEE is performed by a neutral evaluator who is not affiliated with the school district. Dr. Molina testified that she is very interested in reviewing the IEE should the family provide it. Claimant's family was again afforded the opportunity to provide this document as part of the record in this hearing, but did not do so.

10. Dr. Molina noted that claimant has also been diagnosed with attention-deficit/hyperactivity disorder (ADHD), generalized anxiety disorder, and separation anxiety disorder, and has been prescribed medications for these conditions. She explained that claimant's documented aggression, tantrums, impulsivity, and social challenges can be caused by his other diagnosed conditions.

11. Dr. Molina explained that the records she reviewed reflect that claimant's intellectual functioning is average for his age. She does not believe he has significant functional limitations in learning.

12. Dr. Molina noted that claimant's school records indicate that he has strong language skills. She concluded that claimant does not have substantial disability in receptive and expressive language.

13. Dr. Molina also concluded that claimant does not have substantial disability in self-care, noting that he uses utensils to feed himself, can tell an adult when he needs to use the bathroom, can put his shoes on, and can wash and dry his hands.

14. Dr. Molina concluded that there was insufficient evidence of a significant functional limitation in self-direction. She noted that records reflect that he asks peers to play and asks about other people's feelings.

15. Dr. Molina opined that claimant's family has not established that claimant is eligible for regional center services.

Claimant's Evidence

16. Claimant was born prematurely and claimant's mother reports that she could tell that something was wrong all along.

17. Claimant was diagnosed with ASD in April 2022 by Roxane Almas, M.D., a developmental-behavioral pediatrician.

18. Pediatrician Talia Lester, M.D., wrote a letter confirming that claimant displays behavioral challenges, including issues with sleep, hyperactivity, self-care, and

aggression. He has displayed these behaviors during her examinations, posing safety concerns. Dr. Lester reported that claimant has been prescribed a variety of different medications since 2022.

19. Claimant's mother testified credibly about claimant's challenging behaviors. He can be aggressive and cause harm to himself and others. He pulls his ears and spins around. He insists on wearing the same things every day. He uses a pacifier. He struggles with changes in his routine and changes at school. Other family members and a long-time caregiver wrote letters also describing similar behavior.

20. Claimant is receiving 261 hours of In-Home Supportive Services (IHSS) each month, which includes protective supervision. He has been receiving IHSS since he was four years old. The number of hours was increased this past January.

21. Claimant has been receiving applied behavior analysis (ABA) services since 2024, although not consistently. The ABA provider reported social skills as claimant's greatest area of deficit.

22. Claimant has been receiving special education services since 2022. He is receiving services under the category Other Health Impairment.

23. Claimant has been in kindergarten during the current school year. School records establish that he has had significant challenges adjusting to kindergarten. Early in the school year, claimant became very upset when he was dropped off at school. He hit another parent as he attempted to return to his mother's car. He and his mother went together to the resource room. When his mother left again, claimant tried to follow her, pulled a staff member's hair, struck another staff member, and threw chairs in the classroom before finally calming down.

24. Claimant continued to have difficulty coming to school. Eventually, the school district began providing special transportation services to school every morning. An individual comes into the home to help claimant get ready to leave and drives him to school. This service has been provided due to claimant's resistance to coming to school and difficulty separating from his mother, which has resulted in poor attendance.

25. Claimant's family has requested a 1:1 aide at school, but this has been denied. Claimant's mother reported that claimant is in fact with an aide most of the school day.

26. Claimant's mother reported that he has fallen behind in school and has not completed his schoolwork or reached his educational goals.

27. Social Worker Stephanie Ascencio and Family Development Specialist Dor Yehielli of Pacific Clinics wrote that claimant has been receiving weekly therapy through the Early Childhood Mental Health Outpatient Continuum program since December 2024. They wrote that they have been addressing "symptoms of disruptive and impulsive behaviors, aggressive behaviors . . . difficulty regulating his strong emotions, tantrums, difficulty with transitions, and lack of social skills due to his diagnosis of F849 Pervasive developmental disorder, unspecified."

28. Psychologist Mickell Lethco, Psy.D., wrote a letter in December 2024, in support of the family's request for a 1:1 aide at school. Dr. Lethco referred to a comprehensive evaluation she performed with "Dr. Heller." Dr. Lethco wrote of the "importance of a behavioral plan and environmental modifications to support [claimant's] executive functioning challenges associated with ADHD." She added, "Given [claimant's] diagnoses of Attention Deficit Hyperactivity Disorder (ADHD),

Generalized Anxiety Disorder, and Separation Anxiety Disorder, it is crucial that he receives the appropriate level of support to address his unique needs.” The report of Dr. Lethco and Dr. Heller was not offered into evidence.

29. Claimant’s mother expressed frustration with SARC employees and with the eligibility process. She stated that she has provided information to SARC that was not taken into account, and that she was told that many of her documents were not considered relevant, which discouraged her from submitting additional material. She also complained that she was not notified by SARC of its eligibility denial, not notified about a meeting that was to take place, and that her emails and calls have not been answered.

30. Claimant’s mother also expressed concerns that no one from SARC has performed an in-person evaluation or observation of claimant, and she does not believe that SARC can make a legitimate determination without such an evaluation.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. 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; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The 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.)

2. A developmental disability is a disability that originates before an individual attains age 18, is likely to continue indefinitely, and constitutes a substantial disability for that individual. (Cal. Code Regs., tit. 17, § 54000, subd. (b).) The term “developmental disability” includes autism. (Welf. & Inst. Code, § 4512, subd. (a).)

3. It is claimant’s burden to prove that he has a developmental disability, as that term is defined in the Lanterman Act.

4. Although claimant has been diagnosed with ASD, an eligible condition, SARC questions the legitimacy of the diagnosis. The ASD diagnosis was provided by a developmental pediatrician. Although there was some evidence in the record calling the diagnosis into question, a preponderance of the evidence established that claimant does have ASD, an eligible condition.

5. The evidence established that claimant has significant functional limitations, relative to his peers, in self-direction. He is receiving supports in school and ABA therapy at home for his tantrums, impulsivity, social skills deficits, and aggression. Although claimant’s behavioral challenges might also relate to his other diagnoses, a preponderance of the evidence established that claimant’s ASD contributes to his significant functional limitations in self-direction. It is unclear at this time whether these limitations will be lifelong.

6. The evidence failed to establish that claimant has significant functional limitations in any other relevant area of major life activity under the Lanterman Act. There was no evidence that respondent has any limitations in his mobility. The evidence did not establish significant functional limitations in expressive and receptive language, learning, or self-care.

7. The evidence did not establish that claimant has significant functional limitations in his capacity for independent living or economic self-sufficiency, relative to other children his age.

8. Claimant has not established that he is substantially disabled by ASD, within the meaning of the Lanterman Act. Claimant is not eligible for regional center services at this time.

ORDER

Claimant's appeal is denied.

DATE:

KAREN REICHMANN

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.