

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

In the Matter of:

CLAIMANT

and

FAR NORTHERN REGIONAL CENTER, Service Agency

DDS No. CS0022548

OAH Case No. 2024120014

DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, acting as a hearing officer, conducted a fair hearing on February 5, 2025, by videoconference and telephone from Sacramento, California.

Larry Withers, Associate Director of Client Services, represented Far Northern Regional Center (FNRC).

Claimant's mother and authorized representative (Mother) represented Claimant.

Evidence was received, the record closed, and the matter submitted for decision on February 5, 2025.

ISSUE

Is Claimant eligible for services from FNRC under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

FACTUAL FINDINGS

Jurisdiction

1. Mother requested that FNRC assess Claimant to determine eligibility for services under the Lanterman Act. After completing the assessment process, FNRC issued a Notice of Action dated October 31, 2024, which deemed Claimant ineligible for such services.

2. Mother timely filed an appeal request. Consequently, the matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

FNRC's Evidence

3. Claimant was born in November 2016 and is eight years old. He resides in Chico with his parents. He is in second grade and receives educational services from the Chico Unified School District under an Individualized Education Program (IEP). His

most recent IEP dated November 12, 2024, identified his primary disability as an emotional disability and his secondary disability as a specific learning disability.

4. On October 10, 2024, Claimant underwent a psychological evaluation by licensed psychologist Bob Boyle, Ph.D.¹ Dr. Boyle diagnosed Claimant with attention-deficit hyperactivity disorder, combined type, provisional; oppositional defiant disorder; and speech-sound disorder. Dr. Boyle found that Claimant did not meet the criteria for a diagnosis of autism, intellectual disability, or a condition closely related to intellectual disability. His profile was suggestive of a learning disability.

5. Claimant has also been seen by a pediatric neurologist, Leon Grant, D.O.,² for complaints of seizures. According to the treatment notes offered at hearing, Dr. Grant diagnosed Claimant with childhood absence epilepsy. Trial of a medication, ethosuximide, was unsuccessful due to emotional side effects. Dr. Grant recommended a chaperone whenever Claimant was at heights, in water, or participating in speed-based activities.

6. FNRC's Medical Director, Christine Austin, M.D.,³ testified at hearing. She has been a physician for 25 years and FNRC's Medical Director for the last 17 years. She oversees FNRC's clinical team and frequently evaluates children for developmental disabilities.

¹ Ph.D. is an abbreviation for Doctor of Philosophy.

² D.O. is an abbreviation for Doctor of Osteopathy.

³ M.D. is an abbreviation for Doctor of Medicine.

Dr. Austin explained that absence seizures typically develop in younger children. They are brief and usually involve some eye and mouth movement. The child lacks awareness and may be confused about what happened but usually does not lose balance or fall. For the majority of children, absence seizures go into remission around the age of 9 to 10. Thus, it is not a condition that is expected to be permanent and is not substantially handicapping.

Claimant's Evidence

7. Mother testified at hearing. She is a qualified neurology nurse. She does not understand why FNRC evaluated Claimant for autism or intellectual disability. She is not claiming eligibility on those grounds. Instead, she contends that Claimant is eligible on the basis of epilepsy.

8. Mother explained that Claimant's epilepsy resulted from a vaccine injury. According to Mother, Dr. Grant diagnosed Claimant with absence seizures because he stated that he would lose his medical license if he were to assess a vaccine injury.

9. Claimant's behavior at school is worsening. He has crying episodes due to his seizures, cannot take care of himself, and gets lost. The school frequently calls Mother to pick Claimant up early.

10. Mother contests the accuracy of Claimant's IEPs. The Chico Unified School District never properly considered Claimant's epilepsy and improperly labeled him as having an emotional disability and a learning disability. Mother currently has a lawsuit pending against the Chico Unified School District, and a mediation has been scheduled in the near future.

11. Mother recently started paying for applied behavior analysis (ABA) therapy for Claimant herself. It provides him with appropriate tools to help him cope with the anxiety of his epilepsy. It has also increased his self-esteem. Mother believes that Claimant should be deemed eligible under the Lanterman Act on the basis of his epilepsy and that he would greatly benefit from ABA services funded by FNRC.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, regional centers are responsible for providing or coordinating services for persons with developmental disabilities. A developmental disability is defined as:

a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall 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, but shall not include other handicapping conditions that are solely physical in nature.

(Welf. & Inst. Code, § 4512, subd. (a)(1).)

“Substantial disability” means:

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).)

2. As the applicant, Mother bears the burden of proving by a preponderance of the evidence that Claimant is eligible for Lanterman Act services from FNRC. (See Evid. Code, §§ 500 [“Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that [she] is asserting”] & 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].) A preponderance of the evidence means “evidence that has more

convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Based on the Factual Findings as a whole, Mother has not established that Claimant's epilepsy constitutes a substantial disability. Although Mother credibly and heartfully testified regarding her own behavioral observations, no medical professional has opined that Claimant's epilepsy is substantially disabling or that Claimant's behavior and issues result from his epilepsy as opposed to his other diagnoses of attention-deficit hyperactivity disorder, oppositional defiant disorder, or learning disability. By contrast, Dr. Austin testified that absence seizures are not substantially handicapping.

4. Moreover, Mother failed to establish that the absence seizures could be expected to continue indefinitely. Dr. Austin persuasively explained that absence seizures go into remission for the majority of children at age 9 to 10.

5. Finally, there is no evidence that Claimant has any other qualifying condition under the Lanterman Act. Dr. Boyle persuasively opined that Claimant did not meet the criteria for autism, intellectual disability, or a condition closely related to intellectual disability, and Mother does not dispute his opinion. There is also no evidence of cerebral palsy.

6. Based on the present record, Mother failed to meet her burden of showing that Claimant is eligible for regional center services under the Lanterman Act. Thus, her appeal must be denied. However, nothing in this Decision precludes Mother from reapplying for eligibility in future on the basis of an opinion from a neurologist or other qualified provider indicating that Claimant's epilepsy constitutes a substantial disability that can be expected to continue indefinitely.

ORDER

Mother's appeal of Far Northern Regional Center's denial of Lanterman Act services to Claimant is DENIED. The non-eligibility determination is AFFIRMED.

DATE: February 7, 2025

WIM VAN ROOYEN

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.