

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

In the Matter of:

CLAIMANT

vs.

CENTRAL VALLEY REGIONAL CENTER, Service Agency

DDS No. CS0023771

OAH No. 2025010800

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings (OAH) State of California, heard this matter on March 4, 2025, at the Central Valley Regional Center (CVRC), in Merced, California.

Jacqui Molinet, Appeals and Compliance Coordinator, represented CVRC.

Claimant was present at the hearing and represented by his mother.

Evidence was received, the record closed, and the matter submitted on March 4, 2025.

ISSUE

Does claimant's epilepsy condition qualify him for services from CVRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

FACTUAL FINDINGS

1. Claimant was born in 2007. He is currently 17 years old. Claimant lives with his parents and three adult siblings in Delhi, California. Claimant began having seizures when he was approximately 14 years old. Thereafter he was diagnosed with juvenile myoclonic epilepsy. He takes medication to control his seizures.

2. In early 2024, claimant sought services from CVRC under the Lanterman Act, for epilepsy. On November 20, 2024, CVRC denied his request, asserting that claimant was not eligible for regional center services because he does not have a qualifying disability under the Lanterman Act. Claimant appealed the denial. A fair hearing was held on his appeal.

February 2024 Intake Assessment

3. On February 21, 2024, Anya Mohan, Contract Intake and Assessment Services for CVRC, conducted an intake interview of claimant, at the CVRC office in Merced. Claimant's mother and sister were also present. Ms. Mohan prepared an Intake Assessment report. She did not testify at hearing. Ms. Mohan obtained information from claimant and his mother about claimant's medical history and level of current functioning.

4. Claimant reported he had his first seizure when he was 14 years old. Claimant's mother explained that Giancarlo Lugo, M.D., from Valley Children's Hospital, diagnosed claimant with epilepsy when he was 15 years old. Claimant was prescribed medication. Claimant explained that as a result, seizures "don't really happen that often anymore because of the medication."

Regarding his level of current functioning for independent living, claimant takes care of all his own self-care needs such as bathing, brushing his teeth, and dressing independently. Claimant's mother reported that claimant is given chores such as taking out the trash, feeding the cats, and mowing the lawn. However, he does not complete chores regularly. Claimant explained "completing tasks had become more difficult due to the side effects of his medication."

5. Concerning claimant's level of social and emotional functioning, Ms. Mohan noted claimant "made strong eye contact but did not smile or verbally respond" when they first met. During the interview, claimant reported that he enjoys playing video games. He does not have any close friends, only "acquaintances." Claimant's mother explained that living with claimant is like "living with a zombie" due to the epilepsy medication. She further explained that claimant's "mood was consistently low, and he became less responsive."

6. Ms. Mohan also obtained information concerning claimant's education history, level of cognitive function and communication. Claimant attended high school. He was in the 11th grade. In January 2024, claimant received a "504 plan" for his epilepsy diagnosis. The "Individual Health Care Plan" required that "his teachers and nurses were trained to appropriately respond to [claimant's] seizures." Claimant did not receive early intervention services or special education services. However, claimant's mother explained that claimant "had difficulties with academics since he

was a younger child.” He also “struggled globally with academics” since the 4th grade, due to “difficulties maintaining attention.”

7. After Ms. Mohan finished the Intake Assessment, she forwarded her report to the CVRC Multidisciplinary Eligibility Determination Team to determine eligibility. She also noted that a “psychological evaluation will be scheduled to rule out seizure disorder and to obtain [claimant’s] current cognitive and adaptive functioning.”

Psychological Evaluation

8. On July 16, 2024, Paul Moench, Psy.D., performed a psychological evaluation of claimant. The purpose of the evaluation was to “review the nature and extent of [claimant’s] disability, if any. Clarification regarding diagnosis, specifically a rule out or confirm an intellectual disability, and obtain levels of cognitive and adaptive functioning, was requested to assist in determining eligibility for CVRC services.”

As part of the evaluation, Dr. Moench reviewed claimant’s CVRC Intake Assessment, medical records, and his 504 Plan, and administered several tests including the Wechsler Adult Intelligence Scale, Fourth Edition; the Adaptive Behavior Assessment System, Third Edition, completed by claimant’s mother; and the Kaufman Functional Assessment of Skills Test. Dr. Moench issued a report concerning his findings. He did not testify at hearing.

9. Dr. Moench noted that throughout the evaluation claimant “consistently had good eye contact, but continued with a flat affect, not changing his expression once.” Dr. Moench opined that claimant “engaged to the best of his ability in the cognitive testing.” He had “no inappropriate behavior, was polite, and there were no signs of any aggressive behavior or poor emotional responses. His use of language

was appropriate, and he did manage a brief conversation with this examiner that involved building on what each has said." Dr. Moench further explained that claimant's "general demeanor remained reserved, and not at all inquisitive."

10. Claimant's testing on the Wechsler Adult Intelligence Scale demonstrated his Verbal Comprehension Index is 102, Perceptual Reasoning Index is 75 and Full-Scale intelligence quotient (IQ) is 82, which is in the "low average range." However, Dr. Moench noted that "[t]he domain scores are not evenly distributed, making for significant differences. Thus, the Full Scale Index is not necessarily an accurate indicator of [claimant's] functioning."

Dr. Moench explained that the Adaptive Behavior Assessment System "is a measure of adaptive behavior based on an average of three different areas of functioning: Conceptual, Social and Practical. Within these areas are ten skill areas, which include: Communication, Community Use, Functional Pre-Academics, Home Living, Health & Safety, Leisure, Self-Care, Self-Direction, and Social." Claimant scored 87. Average scores range from 90 to 110. Dr. Moench explained that "using the parent report, [claimant's] current functional independence is below average."

11. Dr. Moench diagnosed claimant with juvenile myoclonic epilepsy, "by history." However, based on "a record review, direct observation, adaptive functioning assessments, and the cognitive testing," Dr. Moench opined that claimant did not qualify for a diagnosis of intellectual disability.

Opinions of Marie David, M.D., and Kao Yang, Ph.D.

12. Marie David, M.D., has worked as a medical consultant for CVRC for approximately 20 years. In her medical practice she treats patients with various conditions including epilepsy. Her duties with CVRC include reviewing information to

determine whether a claimant is eligible for services from CVRC under the Lanterman Act.

13. In making the eligibility determination, Dr. David reviewed claimant's medical records, including a medical record documenting a follow-up appointment claimant had with Dr. Lugo on September 10, 2024. Dr. Lugo noted that respondent had not had a seizure since December 2023. Claimant informed Dr. Lugo that he wanted to learn how to drive a vehicle. Dr. Lugo agreed and provided claimant an authorization to allow him to drive.

14. Dr. David explained epilepsy is a qualifying condition under the Lanterman Act. However, to be eligible for services, the qualifying condition must constitute a substantial disability, which causes significant functional limitations in three or more major life activities. Dr. David noted that Dr. Lugo opined that claimant had not suffered any seizures for an extended period and was safe to drive a vehicle. Dr. David found no evidence in records that claimant's epilepsy causes substantial disability. Therefore, she concluded that claimant is not eligible for services under the Lanterman Act.

15. Kao Yang, Ph.D., also testified at hearing. Dr. Yang is a licensed clinical psychologist. For 18 years she has been employed as a staff psychologist with CVRC. Part of her duties as a staff psychologist is to serve on the CVRC Multidisciplinary Eligibility Determination Team to determine eligibility. Dr. Yang was involved in reviewing claimant's request for eligibility. Dr. Yang reviewed information including the Intake Assessment, Psychological Evaluation, claimant's 504 Plan, medical records, and information provided by claimant's mother. This information assisted in identifying claimant's current functioning and adaptative skills.

16. Dr. Yang determined that based on the Psychological Evaluation testing, claimant's IQ and adaptive functioning scores demonstrate that he does not meet the criteria for intellectual disability. Additionally, his adaptive scores demonstrate that his epilepsy condition does not cause substantial disability. Claimant scored 87 on the Adaptive Behavior Assessment System. A score below 70 would demonstrate difficulties with adaptive functioning.

17. Additionally, Dr. Yang explained that claimant and his mother reported the cause of claimant's adaptive functioning struggles, which involve communication and concentration, relate to the adverse effects of the medication he takes to treat his epilepsy. Dr. Yang explained that to be eligible for Lanterman Act services, claimant's qualifying condition must be the cause of the substantial disability.

18. Based on all the information Dr. Yang reviewed, she determined claimant does not have a qualifying condition that causes functional limitations in three or more major life activities. As a result, his epilepsy is not substantially disabling. Therefore, he does not qualify for Lanterman Act services.

Additional Testimony

19. Claimant testified at hearing that the medication he takes to treat his epilepsy has affected his ability to concentrate. He struggles to make friends and socialize with his peers. His medical condition has also affected his goals. Claimant had planned to join the military but cannot do so because of his condition. He also cannot play contact sports.

20. Claimant's mother testified at hearing that she is requesting CVRC eligibility so that claimant qualifies for Medi-Cal when he turns 18 years old. Claimant's mother explained that she and her husband are self-employed. They cannot afford the

monthly cost of claimant's prescription medication. She is not requesting any CVRC services for claimant, but without being found eligible for Lanterman Act services, claimant will not be eligible for Medi-Cal.

Analysis

21. When all the evidence is considered, claimant did not establish he is eligible for services from CVRC based on his epilepsy condition. Although there is no dispute claimant suffers from epilepsy, the evidence did not establish that his condition constitutes a substantial disability that significantly limits him in at least three major life activities. Claimant may suffer from adverse effects of the medication he must take to treat his condition, but the adverse effects are not caused by his medical condition and do not rise to the level of substantial disability.

22. The legislature made the determination that only individuals with one or more of the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. In addition, the legislature provided that, in order for an individual to qualify for services under the Lanterman Act, the individual's developmental disability must be substantially disabling and must be the cause of the adaptive deficits as to which the requested services relate. Although the result may seem unfair, particularly given the struggle claimant and his family may face paying for the cost of his medical treatment, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the eligibility criteria.

23. Because claimant did not show that his epilepsy condition qualifies him for services from CVRC under the Lanterman Act, his request for services from CVRC must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act “seeks to integrate developmentally disabled Californians into mainstream life and to ensure they are accorded equal access to programs receiving state funds.” (*Tri-Counties Association for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137; see also Welf. & Inst. Code, §§ 4501, 4502.)

2. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700–4716.) The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant has the burden of proving he has a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means proving something is more likely to be true than not true. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Applicants are eligible for services under the Lanterman Act if they suffer from at least one substantial developmental disability based on intellectual disability, cerebral palsy, epilepsy, autism, or “the fifth category.” (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category is a disabling condition closely related to an intellectual disability or requiring treatment like that required for individuals with an intellectual disability. (*Ibid.*) A qualifying condition must start before the age of 18, continue

indefinitely, and constitute a "substantial disability." (Welf. & Inst. Code, § 4512; Cal. Code Regs., tit. 17, § 54000, subd. (b).)

4. California Code Regulations title 17, section 54001, subdivision (a) defines a "substantial disability" as:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

5. The “substantial disability” assessment “shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client,” including a program coordinator, a physician, and a psychologist. (Cal. Code Regs., tit. 17, § 54001, subd. (b).) After receiving consent, that group consults with potential clients and other relevant parties. (*Id.*, at subd. (c).)

6. As set forth in the Factual Findings as a whole, claimant did not show that his epilepsy is a qualifying disability. He did not provide evidence that shows this condition independently causes him significant functional limitations in at least three or more major life activities. As a result, claimant is not eligible for CVRC services under the Lanterman Act.

ORDER

Claimant’s appeal is DENIED. Central Valley Regional Center’s denial of services to claimant under the Lanterman Act is SUSTAINED.

DATE: March 7, 2025

MARCIE LARSON
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.