

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2018070952

DECISION

This matter was heard by Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), on September 11, 2018, in Lancaster, California.

Claimant¹ was present and represented himself at the hearing. Stella Dorian, Fair Hearing Manager, represented the North Los Angeles County Regional Center (Service Agency or NLACRC).

Claimant was provided until October 11, 2018 to submit a psychiatric report and other medical records. The Service Agency was provided until November 2, 2018, to review the records and submit a rebuttal.

Claimant failed to submit any medical records. The record was closed and the matter was submitted for decision on November 2, 2018.

¹ Claimant's name is omitted to protect his privacy.

ISSUE

1. Is Claimant eligible to receive regional center services within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act), due to autism?

EVIDENCE RELIED UPON

Documents: Exhibit 1 through 9

Testimony: Heike Ballmaier, PsyD.; Randy Miller; Claimant

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 43-year old unconserved male who lives within the Service Agency's catchment area. He seeks to be eligible for regional center services under a diagnosis of autism.

2. On April 10, 2018, Claimant submitted an intake application to the Service Agency requesting services for adults with autism. (Exhibit 3.)

3. On June 29, 2018, the Service Agency issued a Notice of Proposed Action (NOPA) notifying Claimant of its determination that Claimant is not eligible for services because he does not meet the criteria set forth in Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, sections 54000 and 54001.

4. Claimant filed a fair hearing request on July 11, 2018, resulting in this hearing.

CLAIMANT'S BACKGROUND

5. According to Claimant's intake application, concerns regarding his development began when he was three years old. Claimant had not been able to speak until he was seven years old and received speech therapy until he turned 11 years old. In

his application, Claimant noted that he had recently been diagnosed with Autism Spectrum Disorder (autism) by Roy B. Del Rosario, M.D, and attached a medical history from an undisclosed source.

6. Following submission of his application, the Service Agency attempted to obtain Claimant's medical and school records. The records they were able to obtain were, however, limited. Though they made repeated attempts, the Service Agency was unable to obtain records from Dr. Del Rosario.

7. The initial evaluation was conducted by the Service Agency's interdisciplinary team which reviewed records and information submitted by Claimant. The interdisciplinary team determined that a comprehensive assessment was not needed since the records prior to age 18 did not suggest the presence of a developmental disability. (Exhibit 8.) The evaluation was completed on August 27, 2018.

RECORDS REVIEWED

8. Along with his application, Claimant submitted a medical history which indicates he has been diagnosed with a number of medical conditions including, chronic obstructive pulmonary disease, Diabetes Type II, high blood pressure, osteoarthritis, restless leg syndrome, sleep apnea, Attention Deficit Hyperactivity Disorder, Bipolar Disorder and Obsessive Compulsive Personality Disorder.

9. The records the Service Agency received from Antelope Valley Medical Health Professionals consisted of medical notes of visits made by Claimant to License Clinical Social Worker (LCSW) Ellen Zuravel, during the period between May 2017 and February 2018. Claimant was receiving individual sessions in order to decrease his anxiety and to improve his social functioning and coping skills. According to these records, Claimant has been diagnosed with schizoaffective disorder and Obsessive Compulsive Disorder (OCD). Claimant's functional status was limited in that his age appropriate self-

care was minimal; he had deficits in his interpersonal relationships; and his participation in social/community activities was “impaired/severe”. (Exhibit 5.)

10. The records from Antelope Valley Special Education Local Plan Area included the triennial assessment dated February 21, 1985, (1985 assessment) conducted by school psychologist Tom St. Pierre and an Individual Education Program Report from April 18, 1989 (1989 IEP).

11. The 1985 assessment was administered to Claimant when he was in the fourth grade. According to the assessment, Claimant had attended the County Aphasia Program since he was three and a half years old due to his severe delays in language acquisition. Claimant transitioned to a special day class (SDC) in the first grade with modified physical education and remedial speech and language. It was noted that Claimant has had extensive behavioral difficulties throughout his school history and though he had been medicated for hyperactivity, it had not proved effective in improving his behavior. Other than his severe language delay, Claimant had passed all the developmental milestones at appropriate ages.

12a. As part of the assessment, Claimant was administered the Wechsler Intelligence Scale for Children (Wechsler, 1974) (WISC-R), Brigance Inventory of Basic Skills, the Bender Gestalt Visual Motor Test, the Draw-A-Person Test, the Peabody Picture Vocabulary Test and Burks Behavior Rating Skills.

12b. The results of the WISC-R testing indicated that Claimant was functioning in the low average to average range of intellectual ability. However, it was noted that the scores were somewhat depressed due to Claimant’s impulsiveness and difficulty in remaining on task.

12c. The Brigance Inventory of Basic Skills was used as part of the assessment. Academic testing yielded the following grade equivalents: math, 4.5; reading recognition, 6.0; reading comprehension, 5.0; and spelling 5.0.

12d. On the Peabody Picture Vocabulary Test, Claimant obtained a standard score of 74, which is the age equivalent of seven years and two months. On the Bender Gestalt Visual Motor Test, a standardized measure of visual motor integration which offers insights into a person's work habits and general affective characteristics, Claimant was within age expectancy with emotional indicator. On the Draw a Person Test, he demonstrated signs of weak impulse control.

12e. On the Burks Behavior Rating Scale, using Claimant's SDC instructor as the rater, Claimant scored in the very significant problem area in the following: excessive aggressiveness; excessive resistance poor anger control; poor impulse control; poor attention and poor intellectuality.

13. Following the assessment, Claimant continued to receive special education services from the school district. The 1989 IEP was also reviewed. The IEP noted that Claimant's intellectual ability was in the average range and that Claimant would meet the school district's regular proficiency standards. In addition, though Claimant's SDC teacher indicated Claimant's behavior had improved, it continued to be a problem. The 1989 IEP also discussed the possibility of setting up peer relationship sessions. (Exhibit 7.)

EVIDENCE/TESTIMONY AT FAIR HEARING

14. Claimant began living in the home of a friend, Randy Miller, after Claimant's father died in September 2016 and his mother and brother moved out of state. According to Claimant, he "pretty much wore his family out and if his friend had not taken him in [at the time], he would be homeless." (Exhibit 5.)

15. Mr. Miller testified on Claimant's behalf at the hearing. Mr. Miller has known Claimant for the past 25 years. According to Mr. Miller, he recognizes the signs of autism in Claimant because he has two children with autism. One child is a regional center client. The other child is high functioning and was determined not to have a

substantial disability. Based on his observations, Mr. Miller strongly believes Claimant has autism.

16. Mr. Miller described Claimant as being insistent on sameness and having highly restricted, fixated interests. Claimant's routine daily activities are monotonous, consisting of eating, sleeping, and spending 60 hours a week on the computer. Significant effort is required to have Claimant engage in any cleaning or personal care activity. Mr. Miller described Claimant as being "socially blind" and unable to read social cues, often bringing up inappropriate topics during social conversation. Claimant does not choose clothing appropriate to the weather, seemingly insensitive to the cold but is, at the same time, highly sensitive to auditory stimuli.

17. Claimant agreed with Mr. Miller's testimony regarding his behavior, adding that as a child, he would have repetitive behaviors and disliked loud noises. Claimant would scream and yell, running outside when there were loud noises, when he was being corrected or for "no reason at all at times." Claimant acknowledges that he is unable to read social cues on people's faces which have caused him significant issues. Prior to injuring his back, he was extremely orderly and would get irate when anyone tried to change his routine. Since injuring his back, however, he has had to change some of his behaviors.

18. At the hearing, Heike Ballmaier, Psy.D., BCBA, testified credibly on behalf of the Service Agency. Dr. Ballmaier had been part of the interdisciplinary team that reviewed Claimant's records. Dr. Ballmaier noted that, despite some of Claimant's documented behaviors, including his speech delay, his inability to complete tasks on a regular basis and his struggles with social interactions were not exclusively symptomatic of autism.

19. Dr. Ballmaier also testified that the Service Agency, understanding that records are often difficult to obtain for adult applicants, will also attempt to interview

significant others in a Claimant's life. In Claimant's case, however, this was not done as there was no one available to interview.

20. Based on their review of the records, the interdisciplinary team determined Claimant did not present with any evidence of a developmental disability which would require a comprehensive assessment to be completed.

21. Dr. Ballmaier, however, did concede that Claimant and Mr. Miller's testimonies did raise concerns that Claimant has autism.

LEGAL CONCLUSIONS

JURISDICTION

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established.

STANDARD OF PROOF

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is a preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to demonstrate that the Service Agency's decision is incorrect. Claimant did not meet his burden.

APPLICABLE STATUTES AND REGULATIONS

3. In order to establish eligibility for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" 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. . . . [T]his 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.”

4. Pursuant to Welfare and Institutions Code 4512, subdivision (l), a “substantial disability” is one which constitutes “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.

5. California Code of Regulations, title 17, section 54001, subdivision (a), also defines “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.

6. In addition, a claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512, and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled with a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does *not* have a developmental disability would not be eligible.

7. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when determining

eligibility for services and supports on the basis of autism, that qualifying disability has been defined as congruent to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5)² definition of "Autism Spectrum Disorder."

8. The DSM-5, at section 299.00, discusses the diagnostic criteria which must be met to provide a specific diagnosis of Autism Spectrum Disorder, as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Deficits in social-emotional reciprocity, ranging, for example from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in

² The DSM-5, published by the American Psychiatric Association, is a widely accepted manual, was utilized by the Service Agency in making its eligibility determination, and was referenced in the hearing. The ALJ took official notice of its provisions pursuant to Government Code section 11515.

understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

[¶] . . . [¶]

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or

preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement)

[¶] . . . [¶]

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by ID (intellectual development disorder) or global developmental delay. ID and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and ID, social communication should be below that expected for general developmental level.

(DSM-5 at pp. 50-51.)

9. In this case, though the evidence does indicate that Claimant has significant functional limitations in several major life activities, there was no medical evidence submitted which would indicate that these limitations are due to any one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. Though Claimant believes that Dr. Del Rosario has diagnosed him with having autism, a copy of Dr. Del Rosario's report with its accompanying rationale was not submitted into evidence. The only medical evidence indicates that Claimant has had a number of diagnoses, none of which include a clinical diagnosis of autistic disorder (under the DSM-IV, the prior edition of the DSM) or Autism Spectrum Disorder (under the DSM-5) by a qualified psychologist.

10. Based on the forgoing, the preponderance of the evidence did not establish that Claimant is eligible to receive regional center services.

ORDER

Claimant's appeal is denied. The Service Agency's determination that Claimant is not eligible for regional center services is upheld. Should additional evidence come to light that might indicate eligibility, he may reapply for eligibility and services at that time.

DATED:

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.