

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs

NORTH BAY REGIONAL CENTER.

OAH No. 2013010088

DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on February 14, 2013, in Santa Rosa, California.

Karen Thompson, Attorney at Law, represented Claimant Tara M., who was not present at the hearing.

Nancy Ryan, Attorney at Law, represented North Bay Regional Center (NBRC).

The record was left open until February 20, 2013, to permit the parties to file briefs. The submissions were timely received and marked for the record as Claimant's Exhibit "G" and NBRC's Exhibit "13." The record was closed and the matter deemed submitted on February 20, 2013. On February 28, 2013, an Order Vacating Submission and Reopening Record for Further Evidence was issued, to allow Claimant to submit her Social Security records, should she be able to obtain them. No records were submitted. The record closed and the matter was submitted for decision on April 1, 2013.

ISSUE

Is Claimant eligible for regional center services because she is mentally disabled, or has a condition that requires treatment similar to that required for individuals with mental retardation?

FACTUAL FINDINGS

1. In October 2012, Claimant was arrested for marijuana possession and contributing to the delinquency of a minor. On October 17, 2012, the Sonoma County Superior Court referred Claimant to NBRC for assessment to determine her eligibility for services. Claimant was assessed for eligibility for services, and in a Notice of Proposed Action dated December 14, 2012, Claimant was informed that she was not eligible for NBRC services. Claimant appealed, and this hearing followed. Claimant was incarcerated at the time of the hearing.

CLAIMANT'S EVIDENCE

2. Claimant is a 42-year old woman who has been homeless for most of her adult life. Because she was unavailable to testify, and because a dearth of medical and educational records could be identified, information about her history prior to age 18 came from her adoptive mother, interviews with NBRC personnel conducted with Claimant, and the scattered records that were available.

3. Claimant was born to a 19-year old woman who suffered from alcoholism, and it is likely Claimant had fetal alcohol syndrome. Her birth mother gave her up for adoption when Claimant was three years of age, and after a temporary placement, she was adopted into a Native American family. The adoptive mother left the home. When she was about five years old, Claimant was removed from this family

and placed in a home for emotionally disturbed children called Children's Garden. She was the youngest person ever placed in that setting.

4. While at Children's Garden, she functioned below her age level. She was unable to communicate in complete sentences, but spoke in fragments that were difficult to understand. Whenever any woman entered a room where she was present, she would run up to her, wrap her arms around her, and call her "mommy."

5. Claimant's second set of adoptive parents, (hereinafter referred to as Claimant's mother and father), adopted her at age seven. Her mother also worked at Children's Garden. Claimant's Children's Garden file included information stating that at a very early age "neurological damage" was noted, including poor control and coordination of her hands. At some point in her early years, Claimant may have been sexually abused. At age six, when walking with her mother, she picked up a phallic shaped object from the ground, placed it in her mouth, and engaged in an act resembling fellatio. She began puberty in the third grade.

6. Claimant was in special education classes and alternative schools in Marin County during her student years. Claimant's mother related to NBRC staff that Claimant's IQ was tested at age seven or eight, at which time it was "two points higher than the mentally disabled range." She was unable to read prior to sixth grade. Claimant's mother believes Claimant graduated from a private high school, but no school records were available. Her math, reading, writing and reasoning skills were very weak. At age 14 she got into an argument with her father and ran away. She refused to return to the home and was placed in juvenile hall and various group homes until age 18. At approximately age 19 she began receiving Supplemental Security Income for what Claimant's mother described as a "mental disability."

7. Claimant was treated at the University of California, San Francisco in 2004 for "complex partial seizures and generalized convulsions." The record contains a

note that the seizures started as a child, but early medical records were not available. The next date for which medical records were obtained was for treatment in February 2011. At that time the seizure disorder was noted, but Claimant was not taking seizure medication. She was taking antipsychotic medications and pain medication for her back. The pain relievers also have an anti-convulsive effect. When not on medication, she would have seizures every four or five days. Claimant takes Metformin for her diabetes.

8. Claimant has had at least two children. One of them died from sudden infant death syndrome, and the other was given up for adoption. She advised a social worker in 1997 that she had given birth to two additional children.

9. Claimant has some ability to write, but her handwriting is at best childlike, and her sentences difficult to understand.

10. The Sonoma County Superior Court requested Albert J. Kastl, Ph.D., to evaluate Claimant to determine if she was competent to stand trial. Following an examination, he determined:

Overall, the mental status examination reveals serious deficiencies in abstract thinking, calculation, articulation, and storage of information over time. She is readily confused by verbal communication. Therefore, she could not cooperate fully in preparing her own defense or in assisting [the public defender.]

In summary, [Claimant] has a marginal understanding of the personnel connected with the criminal justice system. She confuses the roles of the public defender, district

attorney, and judge, assuming in a childlike way that they are 'all trying to help me.' There are marked cognitive deficits, which are apparently of a lifelong nature, secondary to maternal substance abuse during pregnancy. She has an apparent history of specialized educational services, and mental status examination revealed significant impairments today such that she could not effectively cooperate with her attorney.

REGIONAL CENTER'S EVALUATION OF CLAIMANT

11. At the court's request, Claimant was also evaluated by NBRC to determine her eligibility for regional center services. The assessment was performed by a team that included Christina Sinohui, a social worker, Todd Payne, Psy.D, a psychologist, and Patrick Maher, M.D., a pediatrician. The eligibility team has extensive experience in assessing individuals for regional center eligibility. The team determined that Claimant did not qualify for regional center services because it could not be determined she was mentally retarded prior to age 18 and that her low level of intellectual functioning has been exacerbated by illness, drug and alcohol abuse and homelessness.

12. Dr. Maher reviewed claimant's medical records and noted that claimant had never been diagnosed with a developmental disability. He did not meet directly with Claimant.

13. Sinohui assessed Claimant on a number of factors, including, among others, her developmental functioning, independent living skills, and her emotional, cognitive and communication abilities. Claimant is able to use a microwave oven to cook simple meals, but does not use the stove. She does not seem to understand the

danger posed by fire, as she told Sinohui she thinks the “flames are pretty” and that “it will not burn me.” She is able to wash her clothes, but often wears dirty clothes. She does not understand how to budget and cannot make change. Claimant has a long history of drug abuse, having taken methamphetamine, cocaine, and heroin, and presently smokes marijuana for her back pain. Claimant reports she can follow simple instructions, but cannot perform simple math calculations. Sinohui found Claimant lacked judgment and appeared impulsive and childlike, but provided a good history of her abuse.

14. Payne met with Claimant on October 24, 2012 and November 26, 2012. He found that in addition to her drug use, Claimant reported she abused alcohol in her early twenties, and that her medical records indicated she has been treated for depression, bipolar disorder and psychotic disorder. She reported hearing voices. Payne confirmed that since age 18 she has generally been homeless.

15. As part of Claimant’s assessment, Payne also considered her competence to stand trial, which is a separate issue from her eligibility for Regional Center services. Payne found “she clearly understands the nature of the accusation,” but when considering Claimant’s total understanding of the proceedings, he did not think she could fully cooperate with her defense counsel:

She has a limited understanding of the criminal legal process. . . .[Claimant] gained insufficient benefit from attempts to educate her. While each observed deficit, when considered individually, might be insufficient to consider [Claimant] incompetent, the number of areas where there is poor comprehension suggests she will have substantial difficulty in rationally communicating the counsel.

16. Payne administered the Wechsler Adult Intelligence Scale – IV test of general intelligence to Claimant, which tests verbal comprehension, working memory, perceptual reasoning and processing speed. Claimant’s overall score was 65, which falls “in the very low range,” that is, the “lowest one percent of the population.” This is a level “often associated with persons diagnosed with mental retardation (or intellectual development disorder.)” Payne expressed concern that “Claimant may not have given her best effort on all of the tasks presented,” but nonetheless concluded with 90 percent certainty that her present “Full Scale I.Q. Score would fall between 62 and 69.”

17. Even with this low I.Q. score, Payne did not believe there was sufficient information to determine Claimant has mental retardation. He felt that Claimant’s history, which included sexual abuse, diabetes, bipolar disorder, drug use and alcohol abuse, could collectively, over the long term, “damage [Claimant’s] cognitive function.” Payne concluded:

This condition [mental retardation] requires the onset of very low intellectual functioning to occur prior to the age of 18. The information on hand indicated that [Claimant] was not considered to have mental retardation as a child and as an adult she has acquired a number of conditions which might further impair her intellectual functioning.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services

Act (Act). (Welf. & Inst. Code, § 4500, et. seq.)¹ 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. (§§ 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. As defined in the Act, a developmental disability is a “disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.” (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).) Under the Act, the term “developmental disability” shall include mental retardation, cerebral palsy, epilepsy, autism, and what is commonly referred to as the “fifth category.” (*Ibid.*) The “fifth category” includes “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.” (*Ibid.*)

3. Under the Act, conditions that are solely psychiatric in nature, or solely learning disabilities, are not considered developmental disabilities. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1)(2).) Similarly, physical conditions that stem from “faulty development” but “which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation” are not considered developmental disabilities. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

¹ All citations are to the Welfare and Institutions Code unless otherwise indicated.

4. The term "substantial disability" is defined as a condition which "results in major impairment of cognitive and/or social functioning." (Cal. Code Regs., tit. 17, § 54001, subd. (a).) In addition, a disabling condition is substantial if it results in "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: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency." (§ 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001, subd. (a).)

5. Cognitive ability is defined by Title 17, California Code of Regulations, section 54002 as "the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience."

6. In this case, the evidence showed that Claimant presently has a substantial disability, as that term is defined by the Act. (§ 4512, subd. (l).) While drug and alcohol abuse have certainly been a contributing factor in Claimant's "lifetime of homelessness," they are by no means the only ones, and were not the basis for Claimant's disabilities as a child. The evidence showed that Claimant's cognitive ability, as evidenced by her limited ability to read and write, and to reason and to apply simple logic, are extraordinarily weak. She can use a microwave oven to heat up food, but cannot cook with a stove and lacks safety awareness, as she does not appreciate the danger of fire. She wears dirty clothes. Even though she has had an income by virtue of receiving SSI since the age of 19, she has been homeless during this entire period, at least in part due to her inability to budget or handle money. She was deemed incompetent to provide assistance to her counsel to defend against the pending charges. Most tellingly, Payne determined with 90 percent certainty that Claimant's present I.Q. is between 62 and 69, which is clearly within the range of mental retardation.

7. In order to qualify for regional center benefits, however, it is not sufficient that Claimant presently suffers from a disabling condition; Claimant must also prove that this condition manifested itself prior to reaching age 18. NBRC contends this not been demonstrated, and asserts that Claimant's extensive alcohol and drug abuse, diabetes, seizures and homelessness are such substantial factors that, in the absence of more records from her childhood, it is not possible to prove substantial disability under section 4512 prior to age 18. For example, NBRC suggests that Claimant's placement in special education classes may have been because of learning disabilities, rather than mental retardation. If this is the case, this placement would not support a finding that she suffered from mental retardation or a condition similar to it prior to age 18. It further asserts that Claimant's low level of functioning is a result of the cumulative effects of her addictions and diabetes, suggesting she once had greater cognitive capacity than she does today.

8. NBRC's position is plausible, but goes against the weight of the evidence that could be assembled from her earliest childhood days and youth. Neurological damage was observed before age five. She was in special education throughout her school years, and never learned to write at more than the most basic level. Claimant has never demonstrated mature or even reliable reasoning skills, as she fails to appreciate every day risks. At age seven her I.Q. was only two points above the mentally retarded range. By age 19 Claimant was receiving SSI and has never been employed. All her adult life, she has been homeless. The evidence demonstrated that claimant's impairments in cognitive and adaptive functioning stem from her developmental disability as well as from other problems. No one of these factors would qualify her for regional center services, but taken as a whole, it must be concluded that Claimant's current disabling condition was also present prior to the time she was 18 years old, and the condition is expected to continue indefinitely.

Accordingly, claimant's condition is substantially disabling, as that term is defined by the Act. (§ 4512, subd. (l).)

9. The evidence also established that, as a result of Claimant's disabling condition, she requires treatment similar to that typically required for mentally retarded individuals. Claimant's service needs are similar to someone with mental retardation because, like someone who is mentally retarded, she has significant limitations in adaptive functioning. The evidence established that claimant's condition impairs her to the degree that she requires training in the areas of vocation, social skills and other independent living skills, and is eligible for regional center services.

ORDER

Claimant's appeal is affirmed. Claimant is eligible for regional center services.

DATED: April 10, 2013

KIRK E. MILLER
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.