BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: DEARRIONE G., Claimant, vs. SOUTH CENTRAL LOS ANGELES REGIONAL CENTER, Service Agency.	OAH No. 2012010245

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 14, 2012, in Los Angeles.

Dearrione G. (claimant) was present and was represented by his legal guardian and foster mother, Annie H.[1]

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (SCLARC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 14, 2012.

[1]Initials and family titles are used to protect the privacy of claimant and his family.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a diagnosis of epilepsy?

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EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-20; claimant's exhibits A-C.

Testimony: Anthony L. Mendoza, M.D.; Annie H.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1 Claimant is a six-year-old boy.

2 Annie H. asked the Service Agency to determine claimant's eligibility for services under the Lanterman Act. By letter dated December 7, 2011, the Service Agency notified Annie H. that it had determined that claimant is not eligible for regional center services because he does not meet the eligibility criteria set forth in the Lanterman Act and in relevant regulations. The Service Agency acknowledged that claimant has documented seizures, "but these are not substantially handicapping." (Ex. 1.)

3 Annie H. filed a fair hearing request dated January 4, 2012, to appeal the Service Agency's determination regarding eligibility, stating that claimant's health care providers and social worker "all disagree with the decision that [claimant's] seizures are not substantially handicapping." (Ex. 2.)

CLAIMANT'S BACKGROUND AND EVALUATIONS

4 Claimant lives with his older brother and two other foster children at the home of Annie H. and her husband. Claimant was placed in foster care due to alleged

neglect. Claimant's birth mother is reportedly a drug abuser; claimant may have been prenatally exposed to drugs and, according to Annie H., he has been sexually abused.

5 Claimant currently receives special education services at the 59th Street Elementary School.

6 On March 9, 2011, Anthony L. Mendoza, M.D., a board-certified family medicine physician who contracts with SCLARC, conducted an intake medical evaluation of claimant. In his intake medical evaluation report, Dr. Mendoza states that claimant was being "re-referred" to the Service Agency by his neurologist at Harbor-UCLA Medical Center, Dr. Agnes Chen, based on a concern that claimant "is developmentally delayed and he also reportedly has a seizure disorder. This evaluation is to first determine whether his seizure disorder is substantially disabling." (Ex. 10.) Dr. Mendoza also noted that Annie H. reported that claimant had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), although in evaluating claimant in response to a previous request for services in 2008, a SCLARC staff psychologist had not mentioned ADHD or developmental delay as possible diagnoses.

7 According to Dr. Mendoza's evaluation report, Annie H. said that claimant has had seizures since birth and that he experiences seizures two-to-three times per month. She said that the seizures are brief but that claimant loses consciousness, becomes incontinent of both stool and urine, trembles, vomits, and drools. After his seizures, claimant is fatigued and generally sleeps for about 20 minutes.

8 Dr. Mendoza's "impression" in his evaluation report, with respect to seizure disorder, was that claimant was "[b]eing followed by pediatric neurology department at Harbor-UCLA Medical Center, and is being treated with Depakote. Not substantially handicapping." (Ex. 10.) He noted that claimant was being treated for ADHD with a Daytrana transdermal patch, and that "a side effect of Daytrana is seizures." (*Id.*) Dr. Mendoza referred to the 2008 staff psychological evaluation report for information

about any developmental delay. Dr. Mendoza recommended following up with claimant's health care providers and re-determining regional center eligibility.

9 Dr. Mendoza provided his report to the Service Agency's core staffing team, which determines eligibility. After the core staffing team determined that claimant is not eligible for services, and the Service Agency sent its denial-of-eligibility letter dated December 7, 2011 (Factual Finding 2), Dr. Mendoza had an informal meeting with Annie H. At the meeting, Annie H. provided some of claimant's medical records; she supplemented those with other records after the meeting. The records refer to claimant's seizures and to behavioral challenges. The records included a letter dated February 7, 2012, from Angela M. Wilson, LMFT, senior clinical manager at Counseling4Kids. The letter listed various diagnoses for claimant, including ADHD, mixed receptive-expressive language disorder, and "convulsions in newborn." (Ex. 17.) Also included was a January 26, 2012, letter from Myra Cleary, DNP, CPNP, at Harbor-UCLA Medical Center, which states that claimant has been a patient in the pediatric neurology clinic since 2004. It further states that:

> He was a drug exposed infant and currently has Attention Deficit Hyperactivity Disorder, Learning Disabilities and Epilepsy. . . .
>
> [Claimant's] seizures are being treated with a generous dose of a drug named Depakote. His seizures can include blank staring, a fall, and soiling of his pants with fatigue after an attack.
>
> We feel that a program, such as the one Regional Center may be able to offer, would benefit [claimant's] quality of life in a positive manner.

(Ex. 18.)

10 Dr. Mendoza testified at hearing that this was the strongest statement of claimant's needs he had seen from a health care provider. He then called and spoke with Myra Cleary, and requested claimant's medical records from her. His notes of that conversation, dated March 21, 2012, state that he told Cleary that she had not stated in her letter whether claimant's seizures were controlled or uncontrolled, or severely handicapping. She said that claimant was not then being given the maximal dose of his anti-seizure medication, that claimant's seizures are not substantially handicapping, and that if they were he would be on at least two anti-epileptic medications and he would have a vagal nerve stimulator implant and a brain resection. She said she had written the letter at Annie H.'s request, and that she told Annie H. that she could not determine whether claimant qualifies for regional center services.

11 Among the medical records Dr. Mendoza received are a Pediatric Interval History and Physical from Harbor-UCLA Medical Center dated April 4, 2012, which includes the assessment that claimant's epilepsy is well controlled with Depakote. The records also include several reports by Cleary, who refers to claimant's seizure disorder and the medication he receives for that.

12 Nothing in the medical records caused Dr. Mendoza to alter his opinion that claimant's seizures are not substantially disabling. Nor did additional medical records produced by Annie H. One such record, dated April 27, 2012, concerns claimant's discharge from the emergency department, where he was taken for recurrent seizures. He was prescribed Topiramate Sprinkles (Topamax), to be taken once at bedtime for one month. Dr. Mendoza testified that this is the starting dose of that medication, not the maximal dose. He testified that one must wait to see whether the additional medication helps control claimant's seizures. Although claimant is now taking two anti-seizure medications, neither is at maximal dose. Claimant's dosages will

increase as he grows; the doses are based on his weight. Dr. Mendoza expects that claimant will have growth spurts, experience more seizures, get an increase in his dosages, and regain control. Claimant has difficulties getting from one classroom to another during the school day; Dr. Mendoza believes these difficulties may be attributable to ADHD, not his seizures. He also believes claimant's incontinence may be due to enuresis, for which claimant is being treated.

13 A Psycho-Educational Report dated April 29, 2011, was prepared by Jacqueline Lakey, the psychologist at claimant's school, for the purpose of determining his eligibility for special education services. Lakey noted claimant's use of Depakote for his seizures and of a Daytrana Ritalin patch for his ADHD. She found that, while claimant's cognitive ability falls within the average range, it might actually be higher, but his performance on assessment procedures "was adversely impacted by his inattention, poor concentration, his high level of distractibility, impulsive behaviors, and restlessness throughout the testing process." (Ex. 16.) Claimant's "ADHD behaviors adversely impact his ability to participate and progress in his general education setting, as well as negatively impact his interactions with others in the home and school environments." (*Id.*) She concluded that claimant "meets the eligibility criteria for special education services as a student with Other Health Impairment (OHI). He has a medical diagnosis of Attention Deficit Hyperactivity Disorder and exhibits characteristics of this disorder," including difficult behavior patters, inattention, impulsivity and hyperactivity. "In addition, [claimant] has been diagnosed with a seizure disorder . . . ." (*Id.*)

14 The most recent IEP, dated April 30, 2012, reflects claimant's placement in special education. Annie H. testified that claimant was removed from general education because he had fallen far behind academically, despite having normal intelligence. She does not believe claimant's seizures are controlled. She believes that claimant is having more seizures than she knows about, based on his degree of confusion. She does not

believe that the confusion is just a lack of focus due to ADHD. Although the ADHD sometimes causes claimant to wander, she believes claimant's difficulties in getting from classroom to classroom are due to the disorientation and confusion he experiences as a result of his seizures. Claimant stops walking when he has a seizure, and then does not know where he is supposed to be; he becomes disoriented and fatigued, and wants to sleep. Claimant has been missing a lot of classroom time. He has seizures during the night, loses sleep, wakes up with a terrible headache, and misses school. Two days before the hearing he had a seizure where he collapsed after shaking. Annie H. took claimant to the emergency room at Harbor-UCLA Medical Center for his last incident because he was more disoriented than usual. She testified that the physician who prescribes ADHD medication for claimant has noted that the seizure activity did not increase when the dosage of the medication increased, so the medication is not causing the seizures.

LEGAL CONCLUSIONS

1 Cause does not exist to grant claimant's request for regional center services, as set forth in Factual Findings 1 through 14, and Legal Conclusions 2 through 4.

2 The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (*See* Evid. Code, § 115.)

3 The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that he suffers from a developmental disability that "originate[d] before [he] attain[ed] 18 years old, continues, or can be expected to continue indefinitely, *and*

constitutes a substantial disability for [him]." (Welf. & Inst. Code, § 4512, subd. (a); italics added.) "Developmental disability" is defined to include mental retardation, cerebral palsy, epilepsy, autism, and "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (*Id.*)

4 Claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act based on a diagnosis of epilepsy, at least at this time. Although it is uncontested that claimant has seizures, little medical evidence was presented of their effect on claimant's ability to function and the degree to which they remain uncontrolled by medication; the evidence that was presented was insufficient to establish that the seizures are substantially disabling. (Factual Findings 4 through 14.) Further evidence from health care providers that claimant's seizures do have the effect of substantially disabling him, and that his condition cannot be adequately controlled by his medications, will be pertinent if this matter is revisited.

ORDER

Claimant Dearrione G.'s appeal is denied.

DATE: June 4, 2012

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HOWARD W. COHEN

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.