

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014060417

CLAIMANT,

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard on October 9, 2014, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, at the Frank D. Lanterman Regional Center in Los Angeles.

Claimant and his ex-wife, claimant's authorized representative, were present.

Frank D. Lanterman Regional Center (regional center) was represented by Pat Huth, Waterson & Huth LLP.

The matter was submitted on October 9, 2014.

ISSUE

Is claimant eligible for services from the regional center?

FACTUAL FINDINGS

JURISDICTION

1. Claimant is a 39-year-old man who contends that he has autism. Claimant and his ex-wife have a seven-year-old son, who is a consumer of the regional center because of his diagnosis of autism. In January 2014, claimant requested services from the regional center.

2. On May 6, 2014, the regional center sent a letter to claimant, which stated that claimant was not eligible to receive services. On June 2, 2014, claimant filed a Fair Hearing Request, which appealed the regional center's decision denying eligibility and led to the instant hearing.

THE REGIONAL CENTER'S DETERMINATION

3. In order to determine claimant's eligibility, the regional center had to determine if claimant has one of the qualifying developmental disabilities, which are categorized as follows: mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. The last category is known as the fifth category. The regional center also had determine if claimant's disability originated before he attained age 18, is expected to continue indefinitely, and constitutes a substantial disability for claimant, as required by law and as more fully set forth in legal conclusions 3-4 below.

4. Upon receiving claimant's request for services, regional center staff obtained claimant's developmental, medical, and educational history. A psychosocial assessment, dated February 4, 2014 (exhibit 4), was prepared by Maria Tapia-Montes, a regional center intake specialist.

5. On February 18, 2014, claimant was evaluated by Ruzanna Agamyan, Ph. D. (Agamyan), a licensed clinical psychologist and a consultant for the regional center. Agamyan's evaluation focused on determining if claimant has a qualifying developmental disability, which originated before age 18, which could make claimant eligible for services.

6A. Agamyan prepared a report (exhibit 5) and diagnosed claimant as follows: Social Anxiety Disorder, Persistent Depressive Disorder, Borderline Intellectual Functioning, and Auditory Processing Difficulties.

6B. Agamyan considered the fifth edition of the Diagnostic Statistical Manual of Mental Disorders (DSM-5), which was published in May 2013. The DSM-5 is a generally accepted manual which contains the diagnostic criteria and identifying factors of most mental disorders. Agamyan applied the DSM-5's diagnostic criteria for Autism Spectrum Disorder (ASD) in her evaluation of claimant. Agamyan concluded that claimant has some symptoms which are characteristic of ASD, but that claimant's manifestations are not frequent or severe enough to meet the full criteria required for an ASD diagnosis. Agamyan found that claimant's current level of functioning is caused by his social anxiety and depression, rather than ASD or any other qualifying disability. Claimant has not received any medical treatment for his social anxiety and depression, both of which have persisted through most of his life.

6C. Agamyan also opined that there was insufficient evidence to conclude that claimant had a qualifying disability prior to age 18. Claimant and his mother provided claimant's background and developmental histories. Mother did not report that claimant had significant ASD behaviors before age 18.

FINDINGS REGARDING CLAIMANT

7. Claimant presented as an affable gentleman who is well-spoken despite his social anxiety. Claimant is employed as a security guard and lives with his brother. He sees his ex-wife and son on a regular basis.

8. Claimant did not establish that he has any of the five qualifying disabilities, or that any originated before age 18. Claimant did not offer sufficient evidence, such as a medical report or expert testimony, to support his contention that he has ASD.

LEGAL CONCLUSIONS

1. The state level fair hearing is referred to as an appeal of the regional center's decision throughout the applicable statutes and regulations (Welf. & Inst. Code §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964). When claimant seeks to establish his eligibility for services, the burden is on the appealing claimant to demonstrate that he is eligible, and that the regional center's decision to deny eligibility is incorrect. (See Evid. Code §§ 115 and 500.) In the instant matter, claimant had the burden of proof to establish his eligibility. (Factual Findings 1-2.)

2. The Lanterman Developmental Disabilities Services Act governs this case. (Welf. & Inst. Code § 4500 et seq.) With regard to the issue of eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and regional center professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.)

3. Welfare and Institutions Code section 4512, subdivision (a), defines the term "developmental disability" and lists the five disabilities, and other factors, which make a person eligible for regional center services.

“Developmental disability” means a disability that originates before an individual attains age 18 years, 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 mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include 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.

4. California Code of Regulations , title 17, section 54000, defines “developmental disability” and requires that the disability originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap. Handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature, are excluded.

5. Claimant did not establish that the regional center’s decision denying him eligibility is incorrect. Claimant did not establish that has a qualifying developmental disability which originated before age 18. (Factual Findings 3-9.)

ORDER

Claimant’s appeal of Frank D. Lanterman Regional Center’s decision finding claimant not eligible for services is denied.

DATED: October 23, 2014.

_____/s/

CHRIS RUIZ

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.