

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2015070135

DECISION

This matter was heard by Irina Tentser, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on December 9, 2015.

Julie A. Ocheltree, Attorney at Law, represented South Central Los Angeles Regional Center (Regional Center or Service Agency).

Claimant's mother (Mother), represented Claimant.¹

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act,

¹ Party titles have been used to protect the privacy of Claimant and his family.

Welfare and Institutions Code² section 4500 et seq. (Lanterman Act)?

FINDINGS OF FACT

1. Claimant is seven years old, resides with his mother and two of his siblings.
2. In 2009, when Claimant was two years old, he was referred for Regional Center assessment by Miller Children's Hospital due to concerns with his development. He was assessed by Clinical Psychologist Ann L. Walker, PhD. upon referral from the Regional Center. (Exh. 5 at p. SCLARCS000016.) Dr. Walker diagnosed Claimant with Disruptive Behavior Disorder NOS (Frequent Temper Tantrums). (Exh. 4 at p. SCLARC000011.)
3. In 2011, in order to address his behavior, Claimant began seeing Dr. Lenore Iverson, Child Psychiatrist from the Los Angeles Child Guidance Clinic. He was re-evaluated by Dr. Iverson and received the following diagnoses: Disruptive Behavior NOS and Autistic Disorder with Attention Deficit Hyperactive Disorder (ADHD) symptoms. (Exh. 4 at p. SCLARC000011 and Exh. 5 at p. SCLARC000016.)
4.
 - a. Subsequent to Dr. Iverson's diagnosis of Claimant, he was assessed by the Infant and Preschool Support Services Unit at Webster Elementary School within the Los Angeles Unified School District. The suspected eligibilities at the time of assessment were Autism and Developmental Delay. Based on the January 26, 2011 assessment results, Claimant was eligible to receive special education services as a student with a Developmental Delay (DD) and was offered placement in a Pre-School Mixed program at 112th St. Elementary School. (Exh. 5 at p. SCLARC000017.)
 - b. Claimant attended the Pre-school Mixed Program at 112th St. Elementary

² All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

School in 2011 and remained there until he became a kindergarten student and left the program in September 2013. In October 2013, Claimant was enrolled in the lower grade special day program for students with specific learning disabilities at Flournoy Elementary School. (Exh. 5 at p. SCLARC000017.)

5. a. Claimant's April 12, 2013 Individual Education Program (IEP) indicated that Claimant was eligible for services under the category of Developmentally Delayed. (Exh. 4 at p. SCLARC 000011.)

b. The Los Angeles Unified School District (District) conducted a comprehensive re-evaluation of Claimant in 2014. The purpose of the re-evaluation was to re-determine special education eligibility, determine learning strengths and weaknesses, and to help determine the most appropriate eligibility and educational placement to meet Claimant's academic and behavioral needs. (Exh. 5 at p. SCLARC000016.) Claimant's areas of suspected disability included specific learning disability and autism.

6. a. The District's psycho-educational educational assessment from March 27, 2014 included input from a school psychologist, an educational specialist, Mother, and Claimant's teacher. (Exh. 5.)

b. Claimant's cognitive ability was measured in the high average range through the Cognitive Assessment System (CAS). Results from the Kindergarten Readiness-II (DKTR-II) were in the average range for the acquired knowledge factor (student's ability to count and name numbers, demonstrate one to one correspondence, and identify alphabet letters); in the above average range for body concepts-awareness tasks and average range for auditory association, body concepts-use, and relational concepts (student's ability to point to body parts upon verbal directions from the examiner, explain the function of basic body parts, supply missing words in statements of analogy and comparison, and recognize concepts presented in visual and auditory

form); and in the average range for visual discrimination, visual memory, and visual motor (student's ability to select a form that looks just like the model presented, select a form from memory after a model has been presented, and copy forms presented.) (Exh. 5 at p. SCLARC000022.)

c. In order to assess auditory processing, evaluators administered the Test of Auditory Processing Skills-Third Edition (TAPS-3). Claimant's overall performance in the area of auditory processing was within the low average range, with Claimant demonstrating below average performance within the area of auditory memory (student's ability to retain and manipulate simple sequences of auditory information using numbers, words, and short phrases) and average performance in the area of auditory reasoning (student's ability understand implied meanings, inferences, and logical conclusions.) (Exh. 5 at p. SCLARC000023.)

d. The Test of Visual Perceptual Skills-3rd Edition (TVPS-3) was administered by evaluators to assess the ability to remember and give meaning to information that is seen. Claimant's overall visual processing ability on this assessment was within the low average range. (Exh. 5 at p. SCLARC000024.)

e. The Bender Visual-Motor Gestalt Test Second Edition (Bender Gestalt II) was administered by evaluators to assess sensory-motor ability and provide a measure for visual-motor integration skills. Claimant demonstrated low average performance within this assessment. However, the report noted, "There appear to be no significant sensory-motor concerns at this time." (Exh. 5 at p. SCLARC000024.)

f. With regards to Claimant's gross motor ability, as reported by his teacher, the report noted, "Gross motor ability does not appear to be an area of concern at this time." (Exh. 5 at p. SCLARC000024.)

g. Per the education specialist report, Claimant demonstrated academic performance in the average range in the areas of: letter and word recognition, math

reasoning, math computation, and written expression. (Exh. 5 at p. SCLARC000025.) Claimant's performance was in the lower extreme in the area of phonological awareness.

h. In order to assess social, emotional and behavioral issues, evaluators administered the Behavior Assessment System for Children, Second Edition (BASC-2), the Gilliam Autism Rating Scale-Second Edition (GARS-2), the Asperger Syndrome Diagnostic Scale (ASDS), and the Autism Spectrum Rating Scales (ASRS), each based on parental and teacher reports. (Exh. 5 at pp. SCLARC000026 - SCLARC000031.) Based on both parent and teacher ratings, interviews, and observations, the report concluded that Claimant displayed behaviors consistent with the presence of Autism.

i. As noted in the report, "[Claimant] displays restricted interests; [Claimant] only watches Disney cartoons on television and will only play with Mickey or Disney toys. He has a restricted diet consisting of the same food. [Mother] reports that he will only eat home baked chocolate chip cookies, pizza, rice, ceviche (seafood), and Lunchables. [Claimant] displays ritualistic behavior, his mother must pick him up at exactly the same time, buy him an ice-cream cone after school, and take him straight home. When [Mother] deviates from this routine [Claimant] throws a tantrum, he screams and becomes aggressive. [Mother] reported that [Claimant] becomes anxious when he is out in crowds. Per parent report, Claimant is sensitive to light, sound and smells. Per teacher report, [Claimant] does not like to be wrong or make mistakes. He has difficulty transitioning from one activity to the next. He must finish a task before he can move on to another one. He prefers to be around adults [*sic*] than children. Although he is able to display appropriate peer interactions, [Claimant's teacher] has observed that [Claimant] does not like to play with others during recess time. Both parent and teacher reported that [Claimant] avoids eye contact, prefers the company of adults over peers, has difficulty adjusting to routine changes, he displays a sensitivity to noise, lacks organizational skills, flapping his hands or flicking his fingers, avoids eye

contact, and acts as if he understands more than he does.” (Exh. 5 at p. SCLARC000031.)

j. Evaluators concluded that Claimant was eligible for special education services due to meeting two or more of the eligibility criteria for Autism under Title 5 of the California Code of Regulations, section 3030, subdivision (g), and determined that “it appears that the eligibility of autism better represents [Claimant’s] needs at this time.” (Exh. 5, at pp. SCLARC000033 - SCLARC000034) Specifically, Claimant was determined to exhibit a history of extreme withdrawal or relating to people inappropriately and demonstrated continued impairment in social interaction from infancy through early childhood; showed an obsession to maintain sameness such as resistance to environmental change or change in daily routine; exhibited extreme preoccupation with objects or inappropriate use of objects or both; demonstrated extreme resistance to control; displayed peculiar motoric mannerisms and motility patterns such as repetitive activities and stereotyped movement; and engaged in self-stimulating, ritualistic behavior. (Exh. 5 at p. SCLARC000033.)

7. a. Following the District’s March 2014 evaluation results, Mother requested Service Agency complete an evaluation and eligibility re-determination of Claimant due to the suspected presence of Autism Spectrum Disorder.

b. As part of the evaluation, Service Agency noted that Claimant was administered the following medications: Clonidine three times a day and 20 mg of Strattera a day for ADHD symptoms, Montelukast Sodium tablets every night for asthma, 20 mg of Citalapram HBR for anxiety, and daily Miralax for constipation. (Exh. 3 at pp. SCLARC000007 – SCLARC000009.)

8. a. On February 10, 2015, Roberto De Candia, Ph.D. (De Candia), performed an evaluation for Service Agency to assist in the determination of eligibility. The purpose of Dr. De Candia’s evaluation was to attempt to diagnose for the presence or absence of developmental delays which may be attributable to Intellectual Disability

and/or Autism Spectrum Disorder. (Exh. 4.)

b. Dr. De Candia's February 10, 2015 evaluation was based on his clinical observations and mental status examination of Claimant and review of Claimant's records. In addition, Dr. De Candia administered the Vineland Adaptive Behavior Scales, Second Edition (Vineland II), the Wide Range Achievement Test, Revision 4, and the Wechsler Intelligence Scale for Children, Fourth Edition (WISC 4.)

c. In clinically observing Claimant, Dr. De Candia reported that Claimant "made good eye contact with [Dr. De Candia]. . ." (Exh. 4 at p. SCLARC000012.) Dr. De Candia further reported that Claimant was pleasant, cooperative, engaging, inquisitive, and active. Mother confirmed to Dr. De Candia that Claimant's behavior during his February 10th evaluation was representative of Claimant's usual and typical behavior.

d. Results from the Communication domain of the Vineland II place Claimant in the below average range. Results from the Vocabulary subtest of the WISC 4 place him in the average to high average range. (Exh. 4 at pp. SCLARC000012 and SCLARC000015.) Adaptive skills were scored in the below average range in the daily living skills and socialization domains of the Vineland II, based on parental report. (Exh. 4 at p. SCLARC000013.)

e. A sample of Claimant's academic ability was obtained through Dr. De Candia's administration of the Wide Range Achievement Test, Revision 4. In Word Reading, Claimant achieved a standard score of 77, which corresponds to a grade level of K.3. In Math Computation, Claimant achieved a standard score of 104, which corresponds to a grade level of 1.9. (Exh. 4 at pp. SCLARC000012 and SCLARC000015.)

f. Intelligence measures were obtained through the administration of the WISC 4. Claimant achieved a Verbal Comprehension IQ score of 104, a Perceptual Reasoning IQ score of 82, and a General Ability Index score of 94, which placed Claimant in the average range of intelligence and ruled out cognitive delays (Exh. 4 at p.

SCLARC000012.) Dr. De Candia noted that the 22 point discrepancy between Claimant's Verbal Comprehension score and Perceptual Reasoning scores suggested that Claimant was better able to understand problems through the use of verbal language, but had greater difficulty with tasks that required visual perceptual and visual motor skills. Dr. De Candia opined that the test result could have been affected by the fact that Claimant had been prescribed eyeglasses that he typically refused to wear, according to parental report. (Exh. 4 at p. SCLARC000013.)

g. In evaluating affective and behavioral issues, Dr. De Candia noted that the Los Angeles Child Guidance Clinic had diagnosed Claimant with Disruptive Behavior Disorder, with Autistic Disorder and with Attention Deficit Hyperactivity Symptoms. (Exh. 4 at p. SCLARC000013.) He further noted that the public school categorized Claimant for special education services under Autistic Like Behaviors. However, Dr. De Candia opined that based on his clinical observations of Claimant during their February 10th session, in which Claimant was very pleasant, did not show any difficulties with reciprocal social interaction, cooperated well, did not show any hesitation or aloofness, answered questions, asked questions, was easily engaged in reciprocal interactions, easily shared personal information, briefly sucked on his hand without difficulty with social interaction or unwillingness to interact, that Dr. De Candia "did not have any reason to suspect that [Claimant] may present with autism spectrum disorder." (Exh. 4 at pp. SCLARC000013 - SCLARC000014.)

h. Dr. De Candia diagnosed Claimant with ADHD, Combined Presentation (as diagnosed by his ongoing psychiatrist), and Specific Learning Disorder with impairment in reading.

8. a. Service Agency's interdisciplinary core staffing team reviewed Claimant's case on April 14, 2015. In reviewing Claimant's case, Service Agency's team considered the Claimant's psychological assessment completed by Dr. De Candia on

February 10, 2015; the psychosocial assessment completed by Service Coordinator Rocio Duran (Exh. 3.); Claimant's April 12, 2013 District IEP; Claimant's March 27, 2014 District Psycho-Educational Assessment; records from Los Angeles Child Guidance; and the entire case file. (Exh. 2.)

b. Service Agency's interdisciplinary team found that Claimant did not meet the definition of developmental disability in section 4512 and 4644 of the Welfare and Institutions Code and section 54000, 54001, and 54010 of Title 17 of the California Administrative codes. The bases for the team's finding of ineligibility were that Claimant was diagnosed with ADHD-combined presentation and Learning Disorder with impairment in reading; that Claimant did not have mental retardation; that Claimant had no history of seizures, therefore no epilepsy; that Claimant showed no evidence of cerebral palsy; and that Claimant was not diagnosed with Autism. (Exh. 2.)

c. The team further determined that Claimant did not have a substantial disability found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. (Exh. 2.)

9. Based on its re-evaluation, on April 14, 2015, Service Agency issued a Notice of Proposed Action, informing Claimant that he was not eligible for services under the Lanterman Act. (Exh. 2.) Mother filed a Fair Hearing Request on June 30, 2015. (Exh. 1.)

10. Subsequent to the filing of the Fair Hearing Request, Service Agency's chief psychologist, Dr. Owen Fudim (Dr. Fudim), requested that Dr. De Candia conduct a second session with Claimant and Mother for additional review for the presence of Autism Spectrum Disorder and administration of the ADOS 2, a semi-structured observation instrument used to assess social and communicative behaviors. (Testimony of Dr. De Candia and Dr. Fudim; Exh. 9.)

11. a. On November 6, 2015, Dr. De Candia conducted a second session

with Claimant and his mother per the request of the Service Agency. Claimant was seven years and zero months old at the time of the first session with Dr. De Candia. At the second session, on November 6th, Claimant was seven years and nine months old. (Exh. 9.)

b. Dr. De Candia's November 6th evaluation was based on his clinical observations, administration of the ADOS 2, and on parental report. During his observation of Claimant, Dr. De Candia found that Claimant made good eye contact, exhibited impulsive behavior, was unable to maintain a conversation, was easily distracted, was quick to anger, and was unable to remain seated. (Exh. 9 at p. SCLARC00018.)

c. According to Dr. De Candia's clinical observation of Claimant and parental report, Claimant did not exhibit "the presence of any stereotyped or repetitive behaviors." (Exh. 9 at p. SCLARC000119.) Specifically, Dr. De Candia considered Mother's report of Claimant's academic struggles at school, difficult behavior at school and at home, ease to anger when his needs were not immediately met, refusal to do his homework, resistance to going to school, desire to eat the same foods, watch the same television shows, wear the same clothes, look for a knife to cut his friends when they make him angry, and questioning of his mother regarding her age and who would care for him when she died. However, Dr. De Candia opined that the foregoing behaviors, while indicative of Claimant's need for special education and mental health services, did not lead him to an Autism and/or Autism Spectrum diagnosis. (Exh. 9 at p. SCLARC000120.)

d. Dr. De Candia's reported that, similar to his clinical observations and parental report, the ADOS 2 results did not support an Autism and/or Autism Spectrum diagnosis. Claimant's score on the ADOS 2 for Social Affect was a 6, which fell below the threshold to diagnose an Autism and Autistic Spectrum Disorder. On the Restrictive

Repetitive Behavior portion of the ADOS 2, Claimant scored a 0. (Exh. 9 at p. SCLARC000120.) Accordingly, Dr. De Candia opined that, while Claimant demonstrated several Social Affect signs or symptoms of Autism and Asperger's, these signs were insufficient, given his overall evaluation, to lead to an Autism and/or Autism Spectrum diagnosis as defined by the DMS 5.³

e. Based on the results of the November 6th evaluation, Dr. De Candia recommended that Claimant's treating psychiatrist review/rule out the possible presence of Disruptive Mood Dysregulation Disorder along with some characteristics of Generalized Anxiety Disorder. (Exh. 9 at p. SCLARC000120.) Dr. De Candia further recommended that the public school system consider a referral for Claimant to a Non Public School (NPS) funded program that would be able to offer Claimant additional behavioral support which Claimant required to benefit from classroom instruction. (Exh. 9 at p. SCLARC000121.) In conclusion, Dr. De Candia opined that "The fact that [Claimant] leaves the classroom may pose some danger if at some point he can also leave the school campus." (Exh. 9 at p. SCLARC000121.)

12. Mother testified that Claimant has deficits in social interaction, self-care, and learning. Claimant's older brother is deceased, yet Claimant frequently asks his mother where his older brother is, seemingly unable to grasp his older brother's death. He will not use the toilet at school to defecate and will not clean himself when he uses the toilet at school. Claimant's latest progress report indicates that he was "partially proficient" at accomplishing school tasks and showed "consistent effort." (Exh. A.) Claimant's November 1, 2015 IEP indicated continued developmental delays in most areas. Mother is concerned that the public school that Claimant attends has indicated to her that they cannot be responsible for Claimant's safety when he leaves the classroom

³ Diagnostic and Statistical Manual of Mental Disorder, 5th Edition.

without permission. It appears that Claimant's public school has not yet taken steps to re-evaluate Claimant for placement in an NPS school based on Dr. De Candia's recommendations, as outlined in factual finding number 11e.

13. Mother testified that she believed Claimant was eligible for Service Agency services because the public school had diagnosed him with Autism. However, as Dr. De Candia and Dr. Fudim testified, public school categories for special education services are defined by Special Education Laws and do not constitute clinical DMS 5 diagnoses. Regional Center eligibility, on the other hand, is determined by the Regional Center, as per the Lanterman Act.⁴ In light of Dr. De Candia's considered opinion, and the absence of any scientific evidence to the contrary, Claimant's concerns and the public school evaluation of Claimant as Autistic using Special Education Laws, are insufficient to call into question the validity of Dr. De Candia's evaluation.

LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as "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

⁴ To qualify for Regional Center services based on psychological findings, an individual must have Autism Spectrum Disorder, Intellectual Disability, or a disabling condition closely related or requiring treatment similar to that required for individuals with Intellectual Disability.

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.” (§ 4512, subd. (a).)

2. In this case, no evidence was presented to establish that Claimant has cerebral palsy or epilepsy, and there is no contention that he has either condition. The evidence of cognitive functioning indicates that Claimant does not have mental retardation, or a condition closely related to mental retardation or requiring treatment similar to that required by individuals with mental retardation. While Claimant has some adaptive skills deficits in daily living skills and in socialization, these are insufficient to establish the presence of a developmental disability.

3. Claimant has been diagnosed with Autism by the District and by Dr. Iverson. However, California Education Code section 56846.2, subdivision (b), specifically makes the distinction that the definition of a “pupil with autism” by a school “shall not apply for purposes of the determination of eligibility for services pursuant to the Lanterman Act. Accordingly, the public school’s diagnosis of Claimant as a “pupil with autism” does not make him eligible for Lanterman Act services. With regards to Dr. Iverson’s diagnosis of Claimant as Autistic, no specific evidence was presented by Mother regarding the basis of the diagnosis to warrant rejection of Dr. De Candia’s contrary opinion.

4. Mother reported some behaviors consistent with Autism Disorder, but these were not deemed sufficient by Dr. De Candia to lead to a diagnosis of Autism as established by the DMS5. As previously noted, the District provided a diagnosis of Autism based using the criteria established by Special Education Laws, not by the criteria established by the DMS5th Edition. The District’s diagnosis of Autism is insufficient to establish that Claimant has Autism or to warrant rejection of Dr. De Candia’s contrary opinion.

5. By reason of the foregoing factual findings numbers 1 through 13 and legal conclusions numbers 1 through 4, Claimant did not establish that he has a developmental disability that makes him eligible for services under the Lanterman Act.

6. Notwithstanding the current finding of Claimant's ineligibility for Service Agency services, Mother may submit any future evaluations and/or assessments of Claimant to Service Agency and request re-evaluation of Claimant by the Service Agency.

ORDER

Claimant's appeal is denied.

DATED: December 18, 2015

IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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