

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2018010676

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on March 26, 2018, in San Jose, California.

Claimant's mother advocated at the hearing on claimant's behalf. Claimant was present.

James F. Elliott represented service agency San Andreas Regional Center (SARC).

The matter was submitted on March 26, 2018.

ISSUE

Does claimant have a developmental disability that qualifies him for services from SARC under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)?

FACTUAL FINDINGS

1. Claimant was born in 1995, at 33 weeks' gestation. He had numerous health challenges as an infant. He has cystic fibrosis and a connective tissue disorder; throughout claimant's life, these physical illnesses have caused him to fatigue easily.

2. Claimant received Early Start services from SARC, but did not continue as a SARC consumer after he became too old for the Early Start program. On one or more occasions in childhood or adolescence (the evidence did not establish the dates), claimant applied again to SARC. SARC's evaluation team deemed him ineligible for Lanterman Act services.

3. In 2017, claimant again asked SARC to evaluate his eligibility under the Lanterman Act for SARC services. SARC determined again that claimant was not eligible. Claimant timely requested a hearing.

4. Although claimant has had seizures in the past, he does not allege that he is eligible for Lanterman Act services because of epilepsy. Likewise, despite some motor weakness, claimant does not allege that he is eligible for Lanterman Act services because of cerebral palsy.

5. Beginning in early childhood and continuing throughout his primary and secondary education, claimant received special education services. Educational records consistently show claimant's cognitive abilities to have been in the low average to average range. Until he was in high school, however, his academic performance was weaker than his cognitive ability might have predicted. Teachers and other professionals who observed and evaluated claimant attributed this academic weakness to physical health problems that limited claimant's stamina, to psychological trauma, and to learning disabilities.

6. Claimant completed high school, and also has completed a four-year post-secondary special education program through San Jose City College. One of his teachers from that program provided a letter describing claimant as "bright and smart," with strengths in mathematics, programming languages, and puzzles.

7. Claimant's teacher's letter also says that claimant "finds it difficult to initiate communication with others." An evaluation of claimant's classroom performance

from March 2016, however, states that he “can be found in class having conversations with his fellow peers,” and that he will “initiate conversation, ask others about their weekend experiences, [and] make inferences.” Overall, reports regarding claimant’s performance in this post-secondary program state that he displayed social competence with classmates and teachers, that he used public transportation independently and safely, and that he identified possible vocational programs to pursue.

8. Claimant manages a complex medication regimen independently, although he needs assistance interacting with pharmacists and other medical providers. He can shop independently and can cook simple meals. He lives with his grandmother and his brother, and relies on his grandmother’s help to manage household chores and to manage his money.

9. Michael B. Jones, Ph.D., evaluated claimant for SARC. Claimant met with Dr. Jones on December 19, 2017, for an interview and for psychological testing. In addition, Dr. Jones reviewed medical, educational, and psychiatric records regarding claimant.

10. As part of evaluating whether claimant has autism spectrum disorder, Dr. Jones used the Autism Diagnostic Observation Schedule, Second Edition. Dr. Jones used Module 4, which is appropriate for adolescents and adults who speak fluently. According to Dr. Jones, claimant’s “performance on the ADOS-2 was not similar to that of individuals” with autism spectrum disorder. Based as well on his observation of claimant during unstructured interaction, Dr. Jones concluded that claimant does not have autism spectrum disorder.

11. Dr. Jones also administered the Wechsler Adult Intelligence Scale IV, a standardized test measuring cognitive ability. Claimant’s cognitive abilities tested in the average to low average range; his weakest cognitive functions were in working memory and processing speed.

12. Finally, Dr. Jones asked both claimant and one of claimant's teachers to rate claimant's daily living skills using the Adaptive Behavior Assessment System, Third Edition. They scored claimant at least "average" in every adaptive skill area (communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction, and social relations).

13. Since he was about 7, claimant has received mental health care through the Lucile Packard Children's Hospital Psychiatry Clinic. A psychiatrist who has treated him, Shashank V. Joshi, M.D., provided a letter stating that he has treated claimant for Pervasive Developmental Disorder, Post-Traumatic Stress Disorder, Bipolar Affective Disorder Not Otherwise Specified, and an expressive language delay. Dr. Joshi provided no explanation or supporting evidence for the diagnosis of Pervasive Developmental Disorder, other than to say that it occurred "in 2005 after a full assessment."

14. Claimant has taken psychotropic medication for many years. He noted in his interview with Dr. Jones that his medication dulls his emotions, and may make him less empathetic than he would be without it.

15. The only thorough evaluation by a medical doctor or clinical psychologist addressing whether claimant has a developmental disability is Dr. Jones's evaluation, which concludes that claimant does not have autism spectrum disorder. In addition, the evidence established that claimant has significant physical and mental health problems that have contributed strongly to his current challenges. In light of all this evidence, Dr. Joshi's simple statement that someone diagnosed Pervasive Developmental Disorder in claimant in 2005 is not persuasive evidence that claimant has autism spectrum disorder.

16. SARC staff clinical psychologist Brenda Hart, Ph.D., reviewed all documentary evidence available to SARC about claimant. She concluded that claimant had not established either that he has a developmental disability, as the Lanterman Act

defines that term, or that he suffers substantial impairment in daily activity because of any such disability. Her conclusions are persuasive.

LEGAL CONCLUSIONS

1. Claimant would be eligible under the Lanterman Act for SARC's services only if he had a "developmental disability." (Welf. & Inst. Code, § 4501.) Claimant bears the evidentiary burden in this proceeding of demonstrating his eligibility.

2. Disabilities that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (Welf. & Inst. Code, § 4512, subd. (a).) The Lanterman Act also covers persons with "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) As set forth in Findings 4, 5, 6, 11, and 15, claimant did not establish his eligibility with reference to any of these disabilities.

3. A qualifying disability must be "substantial," meaning that it causes "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." (Welf. & Inst. Code, § 4512, subds. (a), (j)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The evidence, as summarized in Findings 6, 7, 8, 12, and 16, did not establish that claimant has such "substantial" disability.

ORDER

Claimant's appeal from SARC's determination that he is ineligible for services under the Lanterman Act is denied.

DATED: April 2, 2018

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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