

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018040438

DECISION

Chantal M. Sampogna, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 24, 2018, in Los Angeles, California.

Karmell Walker appeared on behalf of the South Central Los Angeles Regional Center (SCLARC or Service Agency).

Foster father appeared on behalf of claimant, who was not present.¹

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

¹ Titles are used to protect privacy.

ISSUE

Whether claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.).²

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 8, and 10; claimant's exhibit A.

Testimony: Dr. Laurie McKnight Brown, Service Agency Consulting Psychologist; foster father; Diana Barrera, social worker.

FACTUAL FINDINGS

1. Claimant is an 18-year old male, who resides with his foster father and four foster siblings in California. He was removed from his biological mother's care when he was approximately seven-years-old due to neglect and emotional abuse. He was placed with his oldest sister, who became his legal guardian, where he also lived with two younger sisters and a niece. Approximately two-years ago, claimant was removed from his legal guardian's care and placed in the home of his foster father. Based on claimant's significant challenges in major life activities, claimant seeks a finding that he has a developmental disability as defined in the Lanterman Act under the eligibility category of Autism Spectrum Disorder (ASD).³ (§ 4512, subd. (a).)

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

³ Foster father stated generally that he would like claimant considered for all eligibility categories. However, the evidence presented by the parties only addressed claimant's eligibility under ASD.

2. The Service Agency intake team determined claimant does have ASD, but concluded that he does not have a developmental disability as defined by the Lanterman Act because claimant's autism is not substantially disabling.

3. The Service Agency sent a March 9, 2018 Notice of Proposed Action to claimant informing him of its determination. Claimant submitted a fair hearing request on April 3, 2018.

EDUCATIONAL HISTORY

October 2012 Psycho-Educational Evaluation

4. Prior to conducting claimant's October 2012 psycho-educational evaluation to assess any ongoing need for special education services, Susan Williams, school psychologist, reviewed claimant's educational history. Claimant was initially assessed for special education services in second grade (May 2007). At the time of the 2007 assessment, claimant had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Claimant qualified for special education services under the category of Other Health Impairment, an Individualized Education Plan (IEP) was created, and he was placed in a special day class. This finding and placement continued after his triennial IEP review in 2010. Claimant had been referred for the 2007 assessment based on the following behaviors: during classroom activities claimant was significantly distracted and did not participate; he had trouble working independently, rarely followed directions, and had difficulty forming relationships with peers; he had multiple referrals to the school dean for sexually offensive behavior towards female students, including hitting them on their buttocks, pulling their hair, gyrating his hips, and using provocative language; and claimant did not understand why his behavior caused concern.

5. A. On October 3, 2012 (claimant's seventh grade year), Dr. Williams conducted a psycho-educational evaluation of claimant to determine if he needed a

change in his special education placement. Claimant had a history of taking Ritalin and Adderall, but had stopped taking the medication four years prior.

B. During the prior two years, claimant had been arrested twice for inappropriate sexual behavior, was placed on probation, and was ordered to complete 60 hours of community service and sexual awareness class. He had received poor grades during the prior two years, failing all but two of his courses. At the time of this assessment, claimant was reading and performing math at second grade level and had deficits in auditory processing. Claimant behaved aggressively and impulsively, and often lied and stole from others.

C. Dr. Williams found claimant still eligible for special education services, but now under the category of Emotional Disturbance (ED), under two of the possible ED definitions: his inability to maintain satisfactory interpersonal relationships with peers and teachers, and his inappropriate behaviors and feelings under normal circumstances exhibited in several situations, namely his sexualized behavior. Dr. Williams found that though his ADHD characteristics adversely affected claimant's educational performance, this was secondary to the indicators of ED. Based on this assessment, claimant began receiving Educationally Related Mental Health Services and was placed in a non-public school.

December 2016 Psycho-Educational Evaluation

6. On December 18, 2016 (claimant's tenth grade year), Melanie Crane, school psychologist, conducted a psycho-educational assessment of claimant to determine if claimant continued to qualify for special education services. During his eighth and ninth grade years, claimant had failed all but one of his courses. Dr. Crane reviewed claimant's most recent school behavior which included ignoring teacher directions, yelling and cursing at a teacher, and threatening a staff member by stating "I have two people who are going to blow your head off." (Ex. 6.) Claimant continued to be

easily distracted and would not follow directions; he had marked isolation and social impairments, e.g., he would engage with peers, but was withdrawn and lacked motivation, and would also sit idly at his desk. Claimant had not demonstrated sexual aggression since 2012. Dr. Crane determined claimant continued to qualify for special education services under ED, but found him also eligible under a different ED definition, general pervasive mood of unhappiness or depression, rather than under the qualifying characteristics that Dr. Williams found in 2012. Dr. Crane also found claimant eligible for special education services due to his auditory memory deficit and weakness in phonological memory, and ADHD, but found these to be secondary to his ED eligibility.

August 2017 SCLARC Psycho-Social Report

7. In August 2017, Jacqueline Aranda conducted a psycho-social report of claimant, who had earlier contacted the Service Agency for an eligibility evaluation. Claimant self-reported that he was able to dress and feed himself, and to brush his teeth, wash his hands, and bathe and toilet. Claimant further reported that he enjoys video games and television, and that his chores include cleaning the restroom, washing dishes, vacuuming, and taking out trash. Foster father was also present, and reported the behavioral and functional deficits noted in claimant's subsequent psychological evaluation (see Factual Finding 12).

PSYCHOLOGICAL EVALUATION

8. Based on a referral from SCLARC, on November 3, 2017, and January 5, 2018, Cynthia A. Davis, Psy.D., LMFT, Psychological Assistant, under the supervision of Gabrielle du Verglas, Ph.D., conducted a psychological evaluation of claimant to assess his cognitive and adaptive levels of functioning and to assess for ASD. At this time, claimant was in the twelfth grade and attending a non-public school.

9. A. Drs. Davis and du Verglas administered the following assessments and interviews: Wechsler Adult Intelligent Scale - Fourth Edition (WAIS-IV), Wide Range Achievement Test - Fourth Edition (WRAT-4), Vineland Adaptive Behavior Scales Second Edition (VABS-II), Autism Diagnostic Observation Schedule -2, Module -4 (ADOS-2), clinical interviews of the foster father and biological mother (whom claimant continued to have contact with), behavioral observations of claimant, and record review.

B. Claimant obtained the following scores on the WAIS-IV: verbal comprehension index 81 (10th percentile), low average; perceptual reasoning 98 (45th percentile), average; working memory 77 (sixth percentile), borderline range; processing speed 74 (fourth percentile), borderline range; and full scale intellectual quotient (FSIQ) 80 (ninth percentile), below average.

C. Claimant obtained the following scores on the WRAT-4: reading composite 66, lower extreme range; word reading 71, low range; spelling 80, below average; sentence comprehension 67, extremely low range; and math computation 68, extremely low range.

D. Based on information from the foster father, claimant received the following scores on the VABS-II: communication 68 (second percentile), low; daily living 68 (second percentile), low; socialization 68 (second percentile), low; adaptive behavior composite 66 (second percentile), low.

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E. Claimant scored a 9 on the ADOS-2, within the range suggesting ASD.

F. Referencing the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), Drs. Davis and du Verglas diagnosed claimant with ASD, level one, requiring support in social communication and social interaction, and in repetitive, restricted patterns of behavior.

SERVICE AGENCY'S DETERMINATION

10. Dr. Laurie McKinght Brown, a consulting psychologist with the Service Agency, explained in her testimony that claimant met the following eligibility requirements for ASD as required in the DSM-5. Claimant has persistent deficits in social communication and social interaction across multiple contexts as demonstrated by his deficits in social-emotional reciprocity and difficulty interacting with peers and adults, atypical conversation topics, and failures to engage in conversation; deficits in nonverbal communication behaviors used for social interaction, ranging from poorly integrated verbal and nonverbal communication to abnormalities in eye contact and body language; deficits in developing, maintaining, and understanding relationships; and his deficits in understanding boundaries leading to inappropriate contact with peers. Claimant demonstrated restricted repetitive patterns of behavior and interests in two ways: first, through his stereotypical or repetitive motor movements, as seen when he constantly picks at his skin to the point that he bleeds and leaves scars; second, through his highly restricted, fixated interests in unusual topics such as superheroes and gods. Claimant's deficits and behaviors were present in early development, as his biological mother reported when she was interviewed by Drs. Davis and du Verglas, stating that claimant isolated and played by himself when younger, and received developmental program interventions at home. Finally, Dr. Brown explained that claimant's deficits and behaviors cause him clinically significant impairment in social, occupational, or other important areas of current functioning, as shown by his school reports and current reports by his foster father.

11. Dr. Brown concluded that claimant is not eligible for services under the Lanterman Act in the category of ASD because she found records show claimant demonstrates strength in self-care, an ability to be polite and kind, and to learn from supportive services. Dr. Brown further explained that claimant does not have significant functional limitations in self-care, capacity for independent living, and economic self-

sufficiency for the following reasons: claimant is able to get in and out of the shower, at times bathe himself, and is able to dry himself; he is able to feed himself, clean his room, and prepare basic meals; he can carry and store money safely; and he can walk himself to the laundromat, use the machines, and bring his laundry home. Dr. Brown acknowledged claimant's adaptive delays are significant and he will require additional teaching to acquire better levels of life skills.

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CLAIMANT'S HISTORIC AND CURRENT BEHAVIORS

12. A. The Service Agency asserts claimant has significant functional limitations in self-direction and learning, but not in any other major life activity. Therefore, the Service Agency concluded claimant's ASD is not a substantial disability and he is not eligible for services under the Lanterman Act. The following behaviors are representative examples of behaviors observed by claimant's foster father, mother, legal guardian, evaluators, and service providers over the course of claimant's life, and as recently as the day of hearing. These behaviors demonstrate claimant has significant functional limitations in the following major life activities: self-care, learning, self-direction, capacity for independent living, and economic self-sufficiency, as appropriate to his age of 18-years-old.

B. Claimant's significant functional limitations in learning, self-care, self-direction, capacity for independent living, and economic self-sufficiency can be found in the following behaviors. Though claimant can perform basic self-care tasks, he cannot gauge the timing, purpose, or effect of these self-care tasks, making his performance of these tasks minimal and sometimes harmful, and not appropriate to his age. For example,

claimant is able to get into the shower, at times bathe himself, and get out of the shower and dry himself. However, he stays in the shower for upwards of 90 minutes, in part because he likes the feeling of water on his skin; he does not always bathe himself, and cannot understand his foster father's repeated directions that he needs to finish his shower sooner, or the concepts of wasting water and a high water bill. Similarly, though claimant can functionally feed himself, he does not stop eating unless his foster father reminds him to stop eating, and he often burns his mouth eating hot food, even after being reminded he needs to let the food cool down before eating it. Claimant sleeps excessively, and cannot get himself ready in the morning in time for the bus that picks him up at his home. Claimant is able to dress himself, but he wears the same pair of shorts all week, not changing his clothes. Though claimant can go to the laundromat and use the machines, his clothes return wet, smelly, and he does not wash his socks. Claimant is able to prepare basic meals, and help clean up after eating, but it took his foster father over one year to teach claimant how to do this, and claimant continues to need constant direction to maintain this skill.

C. Claimant's significant functional limitations in self-care, capacity for independent living, and economic self-sufficiency can also be found in the following behaviors. Claimant lacks social skills necessary to interact appropriately with peers and adults, i.e., claimant is fixated on girls and sex, often staring at females inappropriately, will pick at his face and arms, causing bleeding and leaving scars, and speaks to himself quite often. His relationships with others are strained due to inappropriate boundaries and taking the belongings of others without permission, and his inability to complete chores and follow rules despite consequences.

D. Additional examples of claimant's significant functional limitations in his capacity for independent living and economic self-sufficiency were provided by his psychiatrist, therapists, and social worker, Diana Barrera. Claimant has been treated by

Elizabeth Coward, M.D., his psychiatrist, who has diagnosed claimant with Major Depressive Disorder. Claimant refuses medication and is not able to schedule appointments for himself. Since October 2016, claimant has been receiving therapeutic services from Jennifer Barrios, LMFT Intern, and Jennifer Yates, clinical supervisor, LMFT, through Masada Homes. His therapists have observed that claimant bangs his head against the wall or door when receiving in-home services, and does not understand what it means to live on his own and does not understand that he cannot live with his foster father forever. These service providers have observed that claimant speaks about atypical themes such as having superpowers, wanting to have 100 kids and an occupation as a male stripper, and believing himself to be a Demigod of Creation and Destructions, the son of God, and brother of Jesus. Claimant can carry and store money safely. However, claimant does not understand monetary bills and is not able to consistently count change accurately after a purchase. Claimant is not able to use public transportation to a familiar or unfamiliar destination independently, because he cannot understand how to use the public transportation or ask for directions, fears getting lost, and does not like being around strangers.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

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 Lanterman Act services. (Evid. Code, § 115.)

3. A developmental disability must originate before an individual turns 18-years-old. The disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, autism, an intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with an intellectual disability. Developmental disabilities do not include other handicapping conditions that are solely physical in nature. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

4. A substantial disability is the existence of significant functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency, as appropriate to the person's age. (§ 4512, subd. (j); Cal. Code of Regs., tit. 17, § 54001, subd. (a).)

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5. Claimant has a substantial disability as defined under section 4512, subdivision (j), and California Code of Regulations, title 17, section 54001, subdivision (a). Claimant's ASD symptoms pose significant functional limitations in five major life activities: self-care, learning, self-direction, capacity for independent living, and economic self-sufficiency, and are a substantial disability for claimant. The Service Agency's conclusion that claimant does not have significant functional limitations in self-care, capacity for independent living, and economic self-sufficiency as appropriate to claimant's age is without merit. Though claimant can perform essential basic self-care tasks, he cannot gauge the timing, purpose, or effect of these self-care tasks, making his basic performance

of these tasks minimal and sometimes harmful, and not appropriate to his age of 18-years-old. Claimant's limited capacities are rendered nearly purposeless where, for example, he takes 90 minute showers, returns from the laundromat with soiled clothes, does not stop eating and burns his mouth on food, and is unable to understand the concept of money. Claimant has met his burden and has proved by a preponderance of the evidence that he has a substantial disability. (Factual Findings 4-12.)

ORDER

Claimant is eligible for services under the Lanterman Act. Claimant's appeal is granted.

DATED:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings