BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

FAR NORTHERN REGIONAL CENTER,

Service Agency

OAH No. 2019090235

DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 10, 2020, in Redding, California.

Amanda Uhrhammer, Attorney at Law, represented Far Northern Regional Center (FNRC).

Claimant's mother appeared on claimant's behalf.

Evidence was heard on March 10, 2020. The record remained open to allow claimant to submit additional documentation and FNRC to respond. Claimant's records were marked E and F and admitted as administrative hearsay. No response was

received from FNRC. The record closed and the matter was submitted on March 18, 2020.

ISSUE

Does claimant qualify for services from FNRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., because she is an individual with autism, an intellectual disability, or a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability?

SUMMARY

Claimant's mother applied with FNRC for services based on a developmental disability. An FNRC eligibility intake team reviewed claimant's records, including medical, educational, and cognitive testing records, and determined that claimant's records show that there is no reason to believe she has a developmental disability that entitles her to regional center services. FNRC denied claimant's request for services, and claimant's mother appealed. Claimant failed to prove that she qualifies for regional center services based on an autism diagnosis, an intellectual disability, or a disabling condition similar to an intellectual disability.

FACTUAL FINDINGS

1. Claimant was born in June 2015, and is nearly five years old. She lives with her adoptive parents and two siblings. When claimant was born, she tested

positive for opiates, marijuana, and alcohol. Claimant was placed at birth with her maternal grandparents, but was temporarily removed at two years due to domestic violence and their drug use. She was returned to their care after two weeks, but removed again, in July 2018, when she was three years old. She has been with her adoptive parents since the July 2018 removal. Her adoption was finalized in April 2019.

2. In early 2019, claimant's mother applied with FNRC for services based on her suspicion of claimant's intellectual disability. On February 2, 2019, Intake Specialist Nancy DiBella of FNRC administered a Social Assessment. Following that assessment, claimant was referred to Bob Boyle, Psy.D., staff psychologist for FNRC, for a cognitive evaluation. Dr. Boyle concluded claimant did not have an intellectual disability. Following an informal meeting to discuss Dr. Boyle's results, FNRC and claimant's mother agreed to have claimant evaluated for Autism Spectrum Disorder (ASD).

3. On October 11, 2019, Patricia L. Owen, Ph.D., evaluated claimant. She concluded claimant does not have ASD. FNRC held an informal meeting with claimant's mother to inform her of its decision regarding claimant's ineligibility for regional center services. Claimant's mother appealed and requested a fair hearing.

4. During the fair hearing, claimant argued that she was eligible for FNRC services under the Lanterman Act because she is an individual with: (1) autism; (2) an intellectual disability; and/or (3) a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability (also known as the "fifth category").

Dr. Boyle's Assessment

5. On July 1, 2019, Dr. Boyle met with claimant and her mother for a psychological evaluation. His purpose was to "clarify the level of [claimant's]

intellectual abilities and adaptive functioning." To that end, he interviewed claimant's mother, administered the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI-IV), and the Adaptive Behavior Assessment System – Second Edition (ABAS-II). Dr. Boyle submitted a report and testified at hearing.

6. Through his interview with claimant's mother, Dr. Boyle learned claimant has diagnoses of "probable Fetal Alcohol Syndrome [FAS] and Anxiety Disorder." Claimant's mother also reported claimant needs assistance with using utensils, toileting, bathing, hygiene, and dressing. As of the time of the interview, claimant could not tell time, could not recognize but one letter, could sing the alphabet with some help, and could say numbers up to 13. Claimant was attending childcare at church, and getting along with her peers. Her "challenging behaviors" were hitting, kicking, and biting when anxious. She also had several emotional outbursts per week.

7. Claimant's mother also reported claimant was born addicted to opiates, marijuana, and alcohol. Claimant witnessed and experience verbal and physical abuse prior to being placed with her adoptive family.

WPPSI-IV

8. The WPPSI-IV is a test to "quickly and reliably" assess young children's cognitive functioning." While IQ testing on young children is not entirely reliable, the WPPSI-IV is one of the best testing instruments. Dr. Boyle observed claimant had good attention and concentration and adequately focused on the WPPSI-IV tasks. Claimant gave a good effort in responding to the WPPSI-IV stimuli, which caused Dr. Boyle to conclude her performance was a "reasonably accurate estimate of her actual intellectual abilities."

9. Claimant's WPPSI-IV scores were as follows:

Verbal Comprehension: 108 (70th percentile)[1]

Visual Spatial: 118 (88th percentile)

Fluid Reasoning: 100 (50th percentile)

Working Memory: 116 (86th percentile)

Processing Speed: 112 (79th percentile)

Full Scare IQ: 110 (75th percentile)

Dr. Boyle explained claimant's scores fall within the average/high average range. She also displayed strength in visual-spatial processing.

ABAS-II

10. Dr. Boyle also administered the ABAS-II, which measures an individual's adaptive functioning. Claimant's ABAS-II results were "significantly low" in these areas: communication, home living, health and safety, leisure, self-care, self-direction, and social. She scored borderline in community use and functional pre-academics. Dr. Boyle noted claimant's adaptive functioning appeared to be significantly lower than her intellectual ability scores.

[1] A percentile is a number where a certain percentage of scores fall below that number. Here, claimant scored higher than 70 percent of individuals her age.

DR. BOYLE'S CONCLUSION

11. Dr. Boyle explained that to meet the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for a diagnosis of Intellectual Disability, each of the following three criteria must be met:

> 1) Deficits in intellectual function, e.g. reasoning, problem solving, planning, abstract thinking, judgment, academic learning, etc.;
>
> 2) Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility; and
>
> 3) Onset of intellectual and adaptive deficits during the developmental period.

12. Dr. Boyle concluded that claimant's IQ scores on the WPPSI-IV were in the average to high-average range, and there was little "scatter" in her scores, meaning the scores are reliable. Because claimant does not meet the first factor, she does not qualify for a diagnosis of Intellectual Disability. He acknowledged claimant's adaptive scores were lower than what one would expect considering her IQ scores, but explained the environmental stressors she experienced early in her life (domestic violence, drug-exposed at birth) may impact those scores. He recommended claimant continue her psychotherapy treatment.

Dr. Owen's Evaluation

13. Dr. Owen evaluated claimant on October 11, 2019, to determine whether claimant qualified for FNRC services, particularly based on an ASD diagnosis. Dr. Owen

interviewed claimant's mother, therapist, and church-based childcare teachers. She also administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 2, and the Adaptive Behavior Assessment System – Third Edition (ABAS-3). She reviewed Dr. Boyle's report as well as certain of claimant's medical records. Dr. Owen submitted a report, but did not appear at hearing. Her report was considered as administrative hearsay, to the extent allowed under Government Code section 11513, subdivision (d).

14. Based on claimant's mother's reports, Dr. Owen noted that claimant attended a "mom group" at a local park and a church nursery twice per week for a total of four hours. Claimant tended to favor adults, and was slow to warm to children. She engaged in parallel play, rather than direct play. She appeared to exhibit anxiety by asking questions excessively, pinching, twisting, or picking at her skin, and needing a routine. Claimant's mother also reported claimant does not appear to notice others' emotions and sometimes appears uncomfortable with them.

15. Dr. Owen reported claimant was a "relatively healthy child," though noted she was diagnosed with FAS, has absent seizures, and was undergoing genetic testing, the results of which were not available at the time of Dr. Owen's evaluation. Claimant's mother reported claimant does not appear to feel her bowels or urinary tract, and has had a number of urinary tract infections. She also gorges on food to the point of vomiting. Dr. Owen noted claimant is participating in mental health counseling.

16. Dr. Owen interviewed claimant's therapist, Haley Sadler, Licensed Marriage and Family Therapist, whom claimant had been seeing with her mother weekly for two months. Ms. Sadler stated the therapy sessions were focused on bonding between claimant and her mother. Ms. Sadler had not seen extreme behaviors in claimant, but had observed her "amped up," jumping or rolling on the

floor, lacking personal boundaries, picking or twisting her skin, and fidgeting. She observed it is difficult for claimant to calm down, and claimant has a short attention span, though she seems smart. Ms. Sadler found claimant to have good eye contact, be capable of conversations, show interest in activities, and respond to her name. Overall, Ms. Sadler was unsure whether claimant's struggles are trauma-related, or neurological.

17. Dr. Owen interviewed claimant's church-nursery teachers. Generally, the teachers described claimant as shy at first, but she warmed up to play with other children when she chose. Claimant had difficulty with transitions and focusing. She engaged in conversation and sometimes made eye contact, and engaged in parallel play with other children. They observed claimant could be rigid regarding rules and routines, and, overall, described claimant as "a good kid."

18. Dr. Owen observed claimant playing during the evaluation. She described claimant appropriately playing with toy pots and pans, including "[banging] a toy egg against the pot as if cracking it open." Dr. Owen observed claimant singing or humming to herself, presenting her toys to her mother, although not always with eye contact, and engaging in the activities offered. After some time, claimant began to be more comfortable with Dr. Owen.

ABAS-3

19. Dr. Owen explained claimant "participated meaningfully in the tasks and activities" during the evaluation. The first assessment was the ABAS-3, which is "a standardized measure of adaptive behavior – the things that people do to function in their everyday lives." The categories evaluated include conceptual, social and practical areas of claimant's life. The results were based on claimant's mother's reporting.

Claimant's ABAS-3 results indicated claimant's overall level of adaptive function is in the "Extremely Low Range," compared to other children her age. These scores suggest a need for significant adult support in claimant's everyday life.

ADOS-2

20. Dr. Owen also administered the ADOS-2, which is a "semi-structured, standardized assessment of an individual's language and communication, reciprocal social interaction, play, stereotyped behaviors, and restricted interests." The ADOS-2 is one of the tools Dr. Owen uses to determine whether an individual has ASD. She administered the ADOS-2 with claimant's mother present.

21. Dr. Owen reported on the following categories the ADOS-2 measures: Language and Communication; Reciprocal Social Interaction; and Imagination. In each area, claimant demonstrated some level of proficiency. She used sentences with three or more words, exhibiting "appropriately varying intonation, reasonable volume, and normal rate of speech." She made eye contact, used appropriate gestures, and engaged in back-and-forth exchanges with Dr. Owen.

22. Claimant had a limited range of facial expressions, though she did express pleasure by brightening her eyes while gasping and smiling or giggling with bright affect. She showed a range of appropriate responses through the course of engaging with Dr. Owen, and displayed "an extensive use of verbal and non-verbal behaviors for social interchange." She was able to engage in "imaginary play," including cooking food with Play-Doh, taking pictures with a toy phone, and creating a game of soccer with toys. She showed no unusual sensory-seeking behaviors.

DR. OWEN'S CONCLUSION

23. Dr. Owen concluded claimant's scores on the ADOS-2 were "not consistent with an ADOS-2 autism spectrum classification," nor did her scores "meet or exceed autism or autism spectrum cutoff scores." Thus, claimant's ADOS-2 classification was "Non-Spectrum with Minimal to No Evidence of autism-spectrum-related symptoms" as compared with children her age who have ASD.

24. Dr. Owen recommended claimant and her family continue psychotherapy sessions. She opined claimant would benefit from an occupational therapy evaluation. She also believes some of claimant's behavioral issues can be attributed to the stress brought on by the change in her living situation, as well as the trauma she experienced in her early life.

Claimant's Evidence

25. Claimant's mother explained claimant "came to [her] at three years old." Claimant has been diagnosed with post-traumatic stress disorder, FAS, and generalized anxiety disorder.[2] Claimant's mother is able to stay at home with her children, and home schools them. She and her husband were told very little about claimant and her history prior to the placement. They noticed claimant was anxious all the time at first, but expected that to dissipate as claimant became more comfortable. The anxiety, however, has continued.

[2] These diagnoses, and whether they are confirmed, was not clear. Though claimant's mother stated claimant is scheduled for additional appointments, including psychological testing.

26. Claimant exhibited several concerning behaviors including repetitive sounds, angry outbursts, aggressive physical responses, and anxiety. Her pediatrician suggested claimant's mother inquire with FNRC regarding services to address these behaviors.

27. Claimant's mother explained that claimant feels pressure when she meets someone new, and especially during evaluations. Consequently, she "puts her best foot forward" during the interaction, but "melts down" when she gets home because she is "exhausted from the performance." Claimant's mother does not believe Drs. Boyle or Owen saw the "true" claimant, as they did not witness claimant's standard behavior at home.

28. Claimant's mother agreed that claimant's cognitive abilities "have strength." But in social settings, claimant has difficulty. Her mother continues to address claimant's behaviors at home, but consistently experiences setbacks. Because claimant's mother is able to work from home, she can focus on claimant and work through some of these difficulties, such as making eye contact.

29. Claimant's mother reported that the medical professionals claimant has seen have recommended claimant be evaluated for ASD. Each has observed or learned of behaviors they believed were symptoms. Claimant's mother was surprised at Dr. Owen's conclusion because following the evaluation, Dr. Owen seemed to indicate she was "leaning toward" an ASD diagnosis. She also expressed frustration with Dr. Owen's report because it did not accurately describe claimant's behaviors or interactions. For example, rather than "crack an egg on a plate," she "banged a block aggressively on the plate." And claimant was not "humming to herself," but was making a repetitive "buh buh buh" noise that she does when she is anxious.

30. On August 28, 2019, claimant and her mother saw Shailesh M. Asaikar, M.D., for a neurology consultation. His office visit notes were admitted as administrative hearsay. Dr. Asaikar noted claimant has a history of angry outbursts, self-harm, poor focus, obsessive behaviors, and impulse control issues. He described claimant as: "Alert. Shy. Anxious. Hyperfocuses. Intermittent explosive behaviors. SIB.[3] Obsessive. Features of Autism." Dr. Asaikar's report does not establish the bases of this description or his conclusive assessment. There is no indication of testing completed, psychological evaluations performed, or Dr. Asaikar's own processes.

31. Claimant's mother submitted a variety of scientific or medical journal articles focusing on FAS (also referred to as "Fetal Alcohol Spectrum Disorder," or FASD). The articles were admitted as administrative hearsay.

32. A 2018 Journal of Neurology and Clinical Neuroscience article explained FASD is a "common cause of intellectual disabilities," but standardized intelligence tests do not detect cognitive defects FASD causes. Individuals with FASD may score in the average or above average range on intelligence tests, but they are limited in their abilities to perform everyday tasks, and may have learning disabilities. Other articles discuss the presence of multiple diagnosis, some of which, like ASD, can be masked under FAS symptoms.

33. Dr. Asaikar's diagnoses were lengthy and included: attention deficit hyperactivity disorder, anxiety, ASD, and FAS. He recommended claimant undergo an MRI, see a child psychiatrist to address her behaviors and manage medications, and request regional center services.

[3] Self-injurious behaviors.

PRINCIPLES OF LAW

34. 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.) Claimant requested a fair hearing to appeal a denial of eligibility for regional center services. The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.) Claimant, who is seeking government benefits or services, has the burden of proof in this case. (See, e.g., *Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161 (disability benefits); compare *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9; Evid. Code, § 500.)

35. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. Under the Lanterman Act, regional centers provide services to individuals with developmental disabilities.

36. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability includes "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*.)

37. California Code of Regulations, title 17, section 54000, provides:

(a) “Developmental Disability” means a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of

educational performance and which is not a result of generalized intellectual disability, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for intellectual disability."

38. Pursuant to Welfare and Institutions Code section 4512, subdivision (l):

"Substantial disability" means the existence of 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:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

> (a) "Substantial disability" means:
>
> (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
>
> (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
>
> (A) Receptive and expressive language;
>
> (B) Learning;
>
> (C) Self-care;
>
> (D) Mobility;
>
> (E) Self-direction;
>
> (F) Capacity for independent living;
>
> (G) Economic self-sufficiency.

ANALYSIS

39. The evidence does not support a finding that claimant has an intellectual disability, ASD, or a disabling condition "found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." Dr. Boyle's findings were persuasive. Claimant scored average or above average in all categories of the WPPSI-IV. She engaged in the process, and the test was found to be reliable. Similarly, Dr. Owen concluded claimant does not have ASD. Dr. Owen's evaluation was lengthy and comprehensive. She evaluated claimant based on criteria in the DSM-V, her interactions with claimant, and claimant's participation in the process.

40. Claimant's mother persuasively contended claimant has behavioral difficulties, some social difficulties, and diagnoses of FAS, anxiety, and possible post-traumatic stress disorder. She presented articles explaining the FAS and ASD diagnoses can overlap, and traditional markers of intelligence are not always accurate for individuals with FAS. Claimant's mother's reports of claimant's behavior to both Dr. Boyle and Dr. Owen were far worse than either doctor observed. She believed the reason for this is claimant's anxiety during "performance" situations. Claimant's evidence, however, did not sufficiently counter Drs. Boyle and Owen's diagnoses, or establish claimant has a substantial disability, as defined above.

LEGAL CONCLUSION

41. Based on the Factual Findings as a whole, claimant did not establish, by a preponderance of the evidence, that she qualifies for regional center services under the Lanterman Act based on intellectual disability, ASD, or the fifth category.

ORDER

1. Claimant's appeal from Far Northern Regional Center's decision is denied. Far Northern Regional Center's denial of services to claimant under the Lanterman Act is sustained.

DATE: March 25, 2020

HEATHER M. ROWAN
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.