

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

FRANK D. LANTERMAN REGIONAL CENTER

OAH No. 2020080277

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconferencing on September 15, 2020. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by her mother.¹

Jessica Franey, Esq., represented the Frank D. Lanterman Regional Center (service agency).

¹ Titles are used for claimant and her family to protect their privacy.

ISSUE

Was the service agency's intake and assessment of claimant's eligibility for regional center services complete and in conformity with the law?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 1-9; claimant's exhibit A; and the testimony of Maria Tapia-Montes, Michele Johnson, Da Vonna Jenkins, Dr. Roxana Rabadi, and claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The service agency determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is an 11-year-old girl referred to the service agency for an eligibility assessment. (Ex. 2.) As described in greater detail below, the service agency conducted an intake of claimant, obtained and reviewed pertinent records, and referred claimant for an assessment by a licensed clinical psychologist. (Exs. 1 & 2.)

3. On June 30, 2020, the service agency issued a Notice of Proposed Action, advising claimant's mother that claimant did not have a qualifying condition and therefore was not eligible for regional center services. (Ex. 2.)

4. On or about July 24, 2020, claimant's mother submitted a Fair Hearing Request, which contained a demand for a hearing because claimant's mother disputed the validity of the service agency's assessment of claimant. (Ex. 3.) The relief requested by claimant's mother is that the service agency either complete the prior assessment by addressing her various concerns with it or conduct a new assessment.

5. On August 21 and 29, 2020, the parties participated in a telephonic informal meeting concerning claimant's Fair Hearing Request. (Ex. 4.)

Service Agency's Intake and Assessment of Claimant

6. The service agency's consumer transaction notes indicate claimant's mother contacted the service agency for an eligibility evaluation of her daughter on or about February 5, 2020. (Ex. 8, p. 7.) At or about this time, claimant's mother was given a standardized intake packet.

7. On March 2, 2020, a service agency vendor, Roxana Cruz, conducted a psychosocial assessment of claimant at claimant's home.² (Ex. 5.) Ms. Cruz interviewed claimant and her mother about claimant's family history, developmental history, medical and educational history, and current functioning in various domains. In her report, Ms. Cruz recommended that the service agency review available medical and educational/psychological records; refer claimant for a psychological evaluation; and

² The service agency had scheduled an earlier psychosocial assessment but it did not have enough staff available to conduct it. On February 26, 2020, the service agency decided to use a third party vendor to conduct the psychosocial assessment. (Ex. 8, p. 7.)

present claimant's case to a Multidisciplinary Assessment Team for an eligibility determination. (*Id.*, p. 4.)

8. Service Coordinator Maria Tapia-Montes oversaw claimant's intake process. She communicated with claimant's mother and obtained pertinent documentation for review, including medical, psychological, and school records.

9. A. Claimant was referred to licensed clinical psychologist Roxana Rabadi for an assessment.

B. The assessment was conducted at the service agency's office by Dr. Rabadi on March 9, 2020. (Ex. 6.) Dr. Rabadi interviewed claimant's mother in order to get a full history of claimant's background and developmental history. Dr. Rabadi observed claimant and asked her questions. Dr. Rabadi also reviewed claimant's medical and educational records obtained by the service agency. (*Id.*, pp. 1-4.)

C. Dr. Rabadi administered the following assessment measures: Autism Diagnostic Observation Schedule, Second Edition (ADOS); Autism Diagnostic Interview, Revised (ADIR); Adaptive Behavior Assessment System, Third Edition (ABAS); and the Wechsler Intelligence Scale for Children, Fifth Edition (WISC). Dr. Rabadi was not able to complete the WISC, ADOS, or ABAS during the assessment meeting because claimant became extremely aggressive and non-compliant. However, Dr. Rabadi was able to complete the ADIR and, during a telephone conversation with claimant's mother in May 2020, the ABAS. (Ex. 6, pp. 4-6.)

D. On or soon after June 22, 2020, Dr. Rabadi issued her report, which contains the information described above. (Ex. 8, p. 3.) Based on the results of the above activity, Dr. Rabadi diagnosed claimant with Other Specified Trauma-and Stressor-Related Disorder (Complex Developmental Trauma Disorder with emotional

dysregulation) (per history) and Unspecified Neurodevelopmental Disorder. Dr. Rabadi also recommended that Disruptive Mood Dysregulation Disorder be substantiated or ruled out. Dr. Rabadi specifically concluded claimant did not have intellectual disability or autism spectrum disorder (ASD). (Ex. 6, pp. 6-9.)

E. Dr. Rabadi testified during the hearing that she was able to make a full and complete assessment and diagnoses for claimant even though she was unable to complete the ADOS and WISC. Dr. Rabadi conceded that it would have been preferable to have the results from those two tests. However, she was clear in her testimony that her other test results, as well as medical and educational records containing the results of prior testing and information, allowed her to make the appropriate diagnoses of claimant.

10. On June 24, 2020, the service agency convened a Multidisciplinary Assessment Team to consider claimant's eligibility for services. (Ex. 1.) The team concluded claimant was not eligible because she does not have a qualifying condition. Service Coordinator Tapia-Montes testified that the team relied on Dr. Rabadi's assessment report, and had no question of the report's validity.

Claimant's Concerns with the Assessment

11. Claimant's mother questions the service agency's intake and assessment of claimant because she has various concerns with the validity of Dr. Rabadi's assessment.

12. One of claimant's mother's concerns is that Dr. Rabadi failed to complete the ADOS. Because Dr. Rabadi testified that the ADOS is the gold standard of ASD testing, claimant's mother concludes that Dr. Rabadi's failure to complete that test renders her assessment subject to question. However, as Dr. Rabadi testified, the tests

she completed (ADIR and ABAS), as well as prior psychological testing done by claimant's school and other healthcare providers (including an ADOS completed by another psychologist), were sufficient to properly complete the assessment.

13. Claimant's mother also is concerned that Dr. Rabadi did not complete the WISC. The WISC measures a child's cognitive abilities. Dr. Rabadi testified that she had enough information from testing done by claimant's school to make the required determinations in that regard. Claimant's mother also testified that she believes claimant is gifted and does not have a cognitive delay, so it is not clear why she believes that test result is necessary for a valid regional center intake and assessment.

14. A. Claimant's mother also is concerned that Dr. Rabadi formed an overly optimistic impression of claimant's ability to engage in reciprocal activity, which in part led her to conclude claimant was not autistic.

B. Claimant's mother believes her daughter appears to have better reciprocal skills because she has been working for six months with Elizabeth Fraines, a board certified behavior analyst (BCBA). Claimant's mother presented a letter from Ms. Fraines (ex. A) which explains claimant's maladaptive behaviors and skill deficits, including problems reciprocating with others. Ms. Fraines also recommends that claimant be reassessed for purposes of ruling out ASD.

C. Dr. Rabadi reviewed Ms. Fraines' letter and did not find it helpful. In fact, she disagrees with many of Ms. Fraines' conclusions, noting that Ms. Fraines does not have the qualifications or experience necessary to make an ASD diagnosis. Moreover, Dr. Rabadi testified that while an autistic child can improve her behavior after working with a BCBA, that improvement still will not hide the fact that the child has autism.

15. Finally, claimant's mother is critical of Dr. Rabadi's report because she believes Dr. Rabadi made many conclusions without providing in detail their factual underpinnings, particularly some related to the ABAS testing.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. A. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.)³ This includes a fair hearing "for resolving conflicts between the service agency and . . . applicants for [...] service." (§ 4705, subd. (a)(1).)

B. Under the Lanterman Act, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . ." (§ 4706, subd. (a).) As discussed in more detail below, any person believed to have a developmental disability shall be eligible for "initial intake and assessment services in a regional center." (§ 4642, subd. (a)(1).) Therefore, a fair hearing should be available to an applicant who challenges the intake and/or assessment service provided.

C. Because a faulty regional center intake or assessment could lead to an incorrect determination concerning an applicant's eligibility for services, an appeal of just the intake and/or assessment is warranted without also considering the regional

³ Undesignated references are to the Welfare and Institutions Code.

center's ultimate determination regarding an applicant's eligibility for services. Deciding otherwise could lead to inequitable cases where an applicant is forced to dispute the ultimate eligibility determination even though the underlying prerequisites were invalid and/or subject to legitimate dispute.

D. In this case, claimant's mother requested a hearing to contest only the service agency's intake and assessment service provided to claimant. As explained above, there is jurisdiction for this appeal of just that conflict between the parties. (Factual Findings 1-5.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant's mother contends that the service agency's intake and assessment was not performed in accordance with the law and requests that the service agency either complete its prior assessment by addressing her concerns or conduct a new assessment. Claimant therefore has the burden of proving by a preponderance of the evidence that she is entitled to that relief.

Service Agency's Intake and Assessment Obligations

4. A. An initial intake shall be performed within 15 working days following the request for assistance. (§ 4642, subd. (a)(2).)

B. The initial intake shall include, but need not be limited to, information and advice about the nature and availability of services provided by the regional

center and by other agencies in the community, including guardianship, conservatorship, income maintenance, mental health, housing, education, work activity and vocational training, medical, dental, recreational, and other services or programs that may be useful to persons with developmental disabilities or their families. (§ 4642, subd. (a)(2).) Intake shall also include a decision to provide assessment. (*Ibid.*)

C. Standardized information packets shall be provided to any person seeking services from a regional center, including at intake. (§ 4642, subd. (a)(3)(A) & (a)(3)(B).)

5. A. Section 4643, subdivision (a), provides that, if an assessment is needed, the assessment shall be performed within 120 days following initial intake. "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs." (*Ibid.*)

B. In determining if an individual is eligible for regional center services, a regional center "may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (§ 4643, subd. (b).)

Disposition

6. Claimant does not challenge the service agency's initial intake. Nor would a challenge be warranted. Although the initial intake was completed more than 15 days after claimant's mother first contacted the service agency, due to a staffing issue, a comprehensive psychosocial intake assessment was conducted and relevant records

for claimant were obtained by the service agency. Claimant's mother was also provided with a standardized information packet for her use in the process. The result of the initial intake was the decision to refer claimant for an assessment by a licensed clinical psychologist. Based on the above, the service agency's initial intake complied with section 4642. (Factual Findings 1-15.)

7. A. The gravamen of the appeal pertains to Dr. Rabadi's assessment of claimant.

B. Dr. Rabadi's assessment was completed in less than 120 days from claimant's initial intake, and therefore timely, even while facing delays caused by claimant's behavior during the assessment meeting and the COVID-19 pandemic. In further compliance with section 4643, Dr. Rabadi reviewed claimant's records, including prior testing and assessments, and performed her own assessment testing. As the service agency correctly noted in closing argument, section 4643 gives a regional center the discretion to decide how to conduct an assessment and what information to consider. While claimant's mother has concerns about Dr. Rabadi's testing, Dr. Rabadi provided a satisfactory explanation as to the overall validity of her assessment. Under these circumstances, the service agency's assessment of claimant complied with section 4643.

8. Based on the above, the service agency's intake and assessment of claimant's eligibility for regional center services was complete and in conformity with the Welfare and Institutions Code. (Factual Findings 1-15; Legal Conclusions 1-7.)

9. Since the service agency's intake and assessment was done in conformity with the Lanterman Act, what remains is the potential conflict between the parties over the service agency's determination that claimant is not eligible for regional center

services remains. For the reasons discussed above, claimant's mother should now be able to challenge that determination. In the interests of justice, the order below will establish the mechanism and procedure for such a challenge, should claimant's mother decide to go forward with it.

ORDER

The service agency is not required to complete its prior assessment of, or reassess, claimant's eligibility for regional center services.

Within 30 days of the date of this order, the service agency shall reissue the Notice of Proposed Action concerning claimant's eligibility for regional center services and claimant shall have the time prescribed by law to file a Fair Hearing Request challenging that Notice of Proposed Action.

DATE:

ERIC SAWYER

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.