

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

In the Matter of:

CLAIMANT,

v.

CENTRAL VALLEY REGIONAL CENTER

OAH No. 2022120729

DECISION

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 4, 2023, from Sacramento, California.

Claimant represented herself.

Jacqui Molinet, Appeals and Compliance Coordinator, represented Central Valley Regional Center (CVRC).

Evidence was submitted, the record closed, and the matter submitted for decision on May 4, 2023.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act based on a qualifying developmental disability that originated before age 18?

FACTUAL FINDINGS

Background

1. Claimant is a 28-year-old woman. In 2022, claimant provided intake documents to CVRC, seeking to become eligible for regional center services.

2. CVRC's multidisciplinary team reviewed claimant's documents. Based on that review, CVRC determined that the documents claimant provided did not show she met the criteria for regional center eligibility. Effective November 9, 2022, CVRC sent claimant a Notice of Proposed Action (NOPA). The NOPA stated CVRC was closing claimant's regional center referral because she had not provided evidence that she had a developmental disability that began before the age of 18.

3. On an unknown date, claimant filed a fair hearing request challenging CVRC's eligibility determination. Claimant wrote that she requested a hearing "[t]o have the circumstances surrounding the late diagnosis of disorder certified officially and present current evidence of disorder entered into record existing in childhood." To resolve her complaint, she asked for "[a]cknowledgement of current diagnosis as a pre-existing condition of childhood, allowing eligibility for services." Claimant requested a hearing and this proceeding followed.

4. Claimant contends she is eligible for regional center services due to her adult diagnosis of autism spectrum disorder (ASD). At hearing, she also stated she is eligible based on epilepsy. CVRC contends that claimant did not provide documentation showing that she had a developmental disability that began before she turned 18. Thus, CVRC declined to complete an assessment to determine her eligibility.

Records Submitted for Eligibility Determination

5. During the intake process, claimant provided the following documents to CVRC. The first was a June 2022, Neuropsychological Evaluation performed by Lance Zimmerman, Ph.D. The evaluation listed claimant's correct date of birth but described her as a "24-year-old" "high school graduate" who "is currently disabled for multiple orthopedic and somatic concerns." The evaluation includes several tests that Dr. Zimmerman performed, as follows:

- The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) Self-Rated Level 1 Cross-Cutting Symptom Measure-Adult: Claimant had elevated scores on depression, anger, anxiety, somatic symptoms, suicidal thoughts, psychosis, memory impairment, repetitive thoughts, dissociation, and personality functioning.
- The Wechsler Adult Intelligence Scale III (WAIS-III): Claimant scored in the below average range of intellectual functioning with relative weaknesses in verbal and performance IQ.
- The Wechsler Memory Scales III (WMS-III): Claimant scored in the borderline range of auditory immediate memory and in the low average range for general memory and visual immediate.

- Mental Status Examination: Claimant struggled with concentration and focus.
- Autism Quiz: Claimant scored at the 34+ level, suggesting a likelihood of autism being present.

Dr. Zimmerman diagnosed claimant with (1) ASD, (2) Depressive Disorder Due to Multiple Physiological Disorders, and (3) Unspecified Personality Disorder. He opined that claimant has had ASD since childhood, along with a Depressive Disorder secondary to her various physical conditions. He wrote that “[t]hese conditions impact her social, vocational, psychological, and other areas of functioning.”

6. Claimant also provided results from a June 2022 Vineland Adaptive Behavior Scales III (VABS-III) test. Dr. Zimmerman interviewed claimant and determined that her overall adaptive functioning was 58. This put her below the first percentile. She had relative weaknesses in communication and socialization and relative strength in daily living skills.

Records Provided at Hearing

7. At hearing, claimant presented several additional documents. Those records included select pages from Tulare County Youth Services reports from 2004 to 2011; an April 2023 letter stating that Visalia Unified School District (VUSD) destroyed most of claimant’s records four years after her graduation; a June 2011 transcript from Visalia Charter Independent Study; counseling log entries from VUSD for September 2007 through April 2011; and a screenshot reflecting claimant called 11 phone numbers in Visalia and Fresno, California.

8. Nonnette Mosley, Psy.D., authored a February 2004 Youth Services report about claimant. There are at least seven pages of the report and claimant submitted

three of those pages. Dr. Mosley diagnosed claimant with Oppositional Defiant Disorder (ODD). ODD is diagnosed after an individual shows a pattern of angry, vindictive conduct for at least six months. Dr. Mosley also wanted to rule out a mood disorder and attention-deficit/hyperactivity disorder (ADHD). At the time, claimant was eight years old. The report states that claimant presented with problems such as argumentativeness, blaming others, impulsivity, distractibility, attention-seeking behavior, refusing to complete schoolwork, few friends, and lying. Her mother reported that claimant's behavior problems began in preschool. Her symptoms increased when she changed schools or moved. Claimant struggled to follow rules and needed constant prompts to complete tasks. She had difficulty forming and maintaining friendships.

Dr. Mosley wrote, "[a]cademically, she is bright, but often defies authority" and had assaulted her peers. She "was born healthy and she met all of her developmental milestones on time." Claimant had no learning problems and was not in special education. She received average grades. Dr. Mosley concluded claimant was "not progressing as developmentally appropriate given her symptoms of ODD exhibited at home and school." She recommended therapy to help claimant learn to tolerate negative emotions.

9. Sonja Hill, Licensed Marriage and Family Therapist (LMFT) at Tulare County Health and Human Services Agency, completed a January 2012 Consumer Wellness Plan for claimant. Claimant was 16 years old. Ms. Hill listed claimant's diagnosis as Depressive Disorder. Her symptoms included anxiety, nightmares, insomnia, disrespectful and defiant behavior, theft, irritability, and hopelessness. Her treatment goals were to understand the issues underlying her limited motivation and to express her feelings of anxiety safely.

10. Four months later, Tulare County discharged claimant from treatment. Her May 2012 Discharge Summary was three pages. Claimant submitted two of those pages. Treatment ended because claimant had not complied for several months. Her mother reported that claimant did not want treatment and refused to participate with county workers during home visits. Her mother also reported that the police asked claimant to leave the home in April 2012 and she did not return. Her mother sought to have claimant removed from her custody.

11. Claimant's June 2011 transcript includes grades for ninth and tenth grades. From 2009 to 2010, claimant attended Golden West High School and earned mostly failing grades. Her highest grade was a C in "Intro Metal Tech 1." In tenth grade, she transferred to Visalia Charter Independent Study. Her grades improved that fall, averaging a 2.92 GPA for the semester. She earned an A- in Health, three B's in English, History/Geography, and Writing, and two C's in Algebra and Physical Education. The next semester, she had a 3.20 GPA. Her grades included an A in "Choices for Life," B's in English and History/Geography, and F's in Algebra and Biology. In September 2011, she transferred to Crescent Valley Public Charter.

12. The VUSD Counseling Log Entries include dozens of entries over four years, beginning when claimant was in seventh grade. Her counselors documented that claimant was defensive to the suggestion that she receive tutoring. She misbehaved in class, got into a fight with a friend, and cried in class. In October 2009, a teacher told her counselor that he "noticed a significant change in [claimant's] behavior since the beginning of the semester." Claimant was suspended from class on several occasions and did not complete her work on time. She would arrive to class late and leave without permission. In April 2011, she was caught cheating off another student in English class.

Testimony of Lance Zimmerman, Ph.D.

13. Dr. Zimmerman first met claimant in February 2022. She was seeking general counseling services for her distress. He conducted a battery of tests to determine her diagnosis. He did not know that the tests would help determine her eligibility for regional center services. Had he known, he would have conducted different tests. For example, he referenced that the intelligence scale test he performed was "not the most up-to-date." He also acknowledged that the Autism Quiz is a screening tool, and he could arrange to perform more extensive ASD testing on claimant in the future. He suggested the Woodcock-Johnson test as one that could be supportive.

14. Dr. Zimmerman has been licensed with the California Board of Psychology for over 20 years. During this time, he has seen and treated many clients with ASD. He thinks that claimant's ASD began in infancy and has impaired her socialization. She is sensitive to social rejection. Dr. Zimmerman did not detail how claimant's ASD substantially impairs her in three or more major life activities.

15. According to Dr. Zimmerman, claimant's DSM-5 symptoms include difficulty processing, reading other people's emotional states, and working in groups. She is very detail-oriented and concrete, and she can miss the big picture.

Testimony of Pean Lai, Ph.D.

16. Pean Lai, Ph.D., has worked at CVRC as a staff psychologist for over eight years. Previously, she worked at several other regional centers. She received her psychologist license from the Board of Psychology in 2001. Over her career, she has performed over 2,000 ASD assessments. When reviewing referrals, it is important that

Dr. Lai receives supporting documentation that the qualifying developmental disability began before the age of 18.

17. On the CVRC website, applicants can review an “Eligibility for Central Valley Regional Center” document. The document lists the types of records that CVRC requests when determining whether a person qualifies for an assessment. Those records include medical records, diagnostic testing, speech evaluations, occupational therapy, physical therapy, Individualized Education Programs, multidisciplinary psycho-educational reports, Rehabilitation Act section 504 plans, high school transcripts, elementary school report cards, mental health records, and psychological reports.

18. Dr. Lai relies on the DSM-5 to identify criteria for the diagnosis of ASD. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of ASD to qualify for regional center services based on autism.

19. Additionally, CVRC relies on the Department of Developmental Services (DDS) “Autistic Spectrum Disorders: Best Practice Guidelines for Screening, Diagnosis, and Assessment” (the Guidelines) in determining eligibility. The Guidelines recognize that diagnosing ASD in older children and adolescents is more complex than it is with younger children. The Guidelines recommend using the Autism Diagnostic Interview-Revised (ADI-R) during the parent interview, and then using the Autism Diagnostic Observation Schedule—Generic (ADOS-G) for behavioral observations of the child. The WAIS-III can help to assess cognitive skills and the VABS-III is useful to assess adaptive

functioning. Dr. Lai explained that the Woodcock-Johnson test is not a tool for diagnosing ASD.

20. In Dr. Lai's experience, ASD is evident in early childhood. Generally, parents first notice a child's disability because of delayed speech or poor eye contact. Additionally, many children with ASD require speech evaluations, exhibit repetitive behavior, or enroll in special education classes. Even if a parent has missed the symptoms of disabling ASD, teachers and school counselors will usually notice. Here, claimant's schools kept decent notes, none of which mention possible ASD.

21. Dr. Lai was concerned about several issues in claimant's documentation. Several pages were missing from the Neuropsychological Evaluation. At the top of the page, Dr. Zimmerman wrote the incorrect age for claimant, despite claimant's correct date of birth listed lines above. Additionally, Dr. Zimmerman is claimant's treating psychologist. He should have referred claimant out for an independent assessment to avoid interfering with the treating relationship. Most concerning was the fact that Dr. Zimmerman concluded that claimant has ASD based solely off the Autism Quiz, which is not an evidence-based tool. Furthermore, claimant's mental status evaluation was not consistent with symptoms of ASD. Dr. Lai concluded there was insufficient evidence to qualify claimant for an ASD assessment.

22. Reviewing the new records at hearing did not change Dr. Lai's opinion. The records were missing several pages and gave incomplete information. In claimant's Youth Services report, Dr. Mosley made no mention of a developmental delay when she diagnosed claimant with ODD at age eight. Similarly, when LMFT Hill evaluated claimant at age 16, her only diagnosis was Depressive Disorder. While it is possible for someone to have multiple disorders, there was no record of a possible

ASD diagnosis even after multiple mental health professionals evaluated claimant before age 18.

Claimant's Evidence

23. Claimant explained that this is her second referral to CVRC. CVRC denied her first referral because she did not provide evidence that her symptoms began before age 18. She explained that she "definitely did [qualify], especially because [she is] epileptic." She said that CVRC staff convinced her to rescind her first appeal because she did not have substantial evidence. Claimant then looked for a psychologist to do testing. This took months because no one would accept her Medi-Cal insurance. She finally found Dr. Zimmerman, who performed the above tests. She said he wrote her age incorrectly because she gave the office the wrong birth year in her first appointment.

24. Claimant agreed that the Autism Quiz was not meant for hearing. Had she known it would be used, she would have had Dr. Zimmerman perform more tests. After Dr. Zimmerman helped her with her treatment plan, claimant thought she could return to CVRC for a diagnosis. She is disappointed that CVRC never offered her a speech evaluation or testing. Claimant does not think that CVRC gave her adequate information prior to denying her eligibility application. She alleged her initial record submission was missing pages because a CVRC staff member scanned it incorrectly, missing the back of each page.

25. Claimant's cousin has ASD. Since ASD is genetic, claimant believes that should have been enough to prove she has ASD. She described symptoms of ASD she has experienced since childhood. She recalled being unable to adjust to new environments each time her family moved. She also reported being very upset when a

child would touch a block within a row she arranged. Claimant has never liked people touching her. Other children bullied her because she did not like socializing. She would assault other children if they touched her. As a child, she was also obsessed with animals and knew every dog breed. She frequently moves her hands around when she is focusing. She has various sensitivities to scents, light, and certain fabrics.

26. Claimant blames her mother for the fact she was not diagnosed with ASD as a child. She explained that her teachers told her mother that claimant was having problems, yet her mother would not get her help because she did not believe in mental health or developmental disabilities. She stated that she did not get more treatment from Youth Services because her mother was neglectful and did not take her to appointments. She attributed the statement about having average grades to a lie from her mother. She explained that she got better grades in tenth grade because she cheated in every class.

27. Claimant struggled to find her school records for the hearing. She switched schools frequently and VUSD destroyed her cumulative record. She tried to call every school she attended with little success. Around high school, claimant recalled being homeless because her mother moved to Fresno, leaving her in Visalia. She attributed many of her low grades during those years to having to leave class early so that she would have somewhere safe to spend the night.

28. Claimant also explained why her hearing records were missing pages. Those pages contained "delicate information" that dealt with events claimant found triggering. She does not want others to read about the events and discuss them in court. She believes that her childhood records incorrectly attribute her feelings of overwhelm to seeking attention. She thinks teachers labeled her as disobedient and defiant because of a lack of eye contact.

29. Claimant testified that she told CVRC that she has epilepsy. She thinks CVRC should have considered that during her intake evaluation. She did not provide any medical records to substantiate the diagnosis, before or after she turned 18. She said her seizures had stopped but came back when she was 24, after an accident.

30. Claimant was in a serious accident in September 2019. The accident injured her head and leg, but a hospital missed the extent of her injuries. Because the doctors did not immediately find the leg fracture, her leg did not heal properly. She still deals with nerve damage and pain from the accident, as well as migraines she has had since childhood.

31. Before the accident, claimant lived independently with her daughter. She worked in a pharmacy as a “designated hitter” and hoped to become a pharmacy technician. She did not qualify for that license, however, because she lacks a high school diploma. After claimant healed from her accident and returned to work, the COVID-19 pandemic began. The pharmacy cut her hours. Claimant sent her daughter to live with her grandparents, left her rental, and became homeless. She is still homeless. She receives monthly Social Security Disability Insurance and Supplemental Security Income payments because of her disabilities.

Analysis

32. Mental health professionals evaluated claimant on at least two occasions before she turned 18. At age eight, she was diagnosed with ODD. At age 16, she was diagnosed with Depressive Disorder. Additionally, between 2007 and 2011, claimant regularly met with school counselors. None of the records indicate that any of the professionals with whom claimant interacted suspected she had ASD. Similarly, there is no mention that claimant has experienced a seizure or was diagnosed with epilepsy.

33. Claimant relies on Dr. Zimmerman's Neuropsychological Evaluation. Dr. Zimmerman diagnosed claimant with ASD based on a screening tool when she was 27 years old. He did not engage in evidence-based testing to support the diagnosis. Moreover, his report contains several obvious errors that show a lack of attention to detail. He listed claimant's age incorrectly, even though her correct date of birth is only a few lines above. Additionally, he errantly described her as a high school graduate. Finally, his report states her disability is based on orthopedic and somatic concerns, not ASD. He did not detail how claimant is functionally limited in any major life activity because of ASD.

34. Conversely, Dr. Lai has extensive experience in evidence-based testing for ASD. She was familiar with the DSM-5 diagnostic criteria for ASD, the DDS Guidelines for diagnosing and assessing ASD, and the legal criteria CVRC must meet in finding an individual to be eligible for services. Her opinion that claimant did not provide enough evidence that she had a qualifying developmental disability before age 18 receives substantial weight. Claimant knowingly withheld portions of records CVRC needed to perform a full evaluation.

35. Given claimant's September 2019 head injury, her post-accident assessments may not provide an accurate indication of her abilities and limitations when she was a minor. To qualify for Lanterman Act services, claimant must show she had a qualifying developmental disability before age 18. That disability must have been permanent and not caused by solely by a psychiatric disorder, learning disability, or physical disability. Moreover, her qualifying developmental disability must have significantly limited her ability to function in at least three major life activities. The current evidence does not carry this burden.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Claimants have the burden of proving that they have a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means proving that something is more likely to be true than not true. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (the Act). (Welf. & Inst. Code, § 4500, et seq.) "The Act seeks to integrate developmentally disabled Californians into mainstream life and to ensure they are accorded equal access to programs receiving state funds." (*Tri-Counties Association for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137; see also Welf. & Inst. Code, §§ 4501, 4502.)

3. Applicants are eligible for services under the Act if they suffer from at least one substantial developmental disability based on intellectual disability, cerebral palsy, epilepsy, ASD, or "the fifth category." (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category is a disabling condition closely related to an intellectual disability or requiring treatment like that required for individuals with an intellectual disability. (*Ibid.*) A qualifying condition must start before the age of 18, continue indefinitely, and constitute a "substantial disability." (Welf. & Inst. Code, § 4512; Cal. Code Regs., tit. 17, § 54000, subd. (b).) Developmental disabilities do not include conditions where the

applicant is impaired solely because of a psychiatric disorder; a learning disability; or a physical disability caused by disease, accident, or faulty development not associated with neurological impairment. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

4. Regulations define a "substantial disability" as:

(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.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

5. "Any person believed to have a developmental disability ... shall be eligible for initial intake and assessment services in the regional centers." (Welf. & Inst. Code, § 4642, subd. (a)(1).) 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. Intake shall also include a decision to provide assessment." (*Id.* at subd. (a)(2).)

6. If an applicant qualifies for an assessment, the assessment shall take place within 120 days following initial intake. (Welf. & Inst. Code, § 4643, subd. (a).) Assessment may include collecting and reviewing available historical diagnostic data, providing or procuring necessary tests and evaluations, and summarizing developmental levels and service needs. (*Ibid.*) It is conditional upon receipt of the release of information. (*Ibid.*) In determining if an individual meets the definition of developmental disability, the regional center may consider evaluations and tests, including intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations. (*Id.* at subd. (b).) Any individual found to be ineligible for regional center services may appeal the decision under Welfare and Institutions Code sections 4700 through 4716. (Cal. Code Regs., tit. 17, § 54010, subd. (c).)

7. As set forth in the Factual Findings as a whole, claimant did not show that she had a qualifying developmental disability before age 18. CVRC's closure of her referral is affirmed.

ORDER

Claimant's appeal is denied.

DATE: May 11, 2023

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.