

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

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2023080005

DDS No. CS0008432

DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 27, 2024, at Frank D. Lanterman Regional Center (Service Agency).

Cindy Lopez, Fair Hearings Coordinator, represented Service Agency.

Claimant was represented by her mother (Mother). Claimant did not attend the hearing. Names are omitted to protect the privacy of claimant and her family. Mother used the services of a Spanish language interpreter.

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision on February 27, 2024.

During the hearing, Mother presented a six-page document, marked for identification and admitted as Exhibit 13. At the ALJ's request, Service Agency uploaded a copy of Exhibit 13 to Case Center. The copy is on pages Z1 through Z5 in Case Center and is missing one page from the original document. The ALJ uploaded a full copy of the original document to Case Center, on pages A93 through A98.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of autism?

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 13 and the testimony of Caroline Garabedian, Service Agency's Early Childhood Unit Regional Manager; Edward Perez, Service Agency's Early Intervention Unit Regional Manager; Yadira Navarro, Psy.D.; and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is five years old and lives with Mother. Mother seeks regional center services for claimant because she suspects claimant has autism.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

3. On June 21, 2023, Service Agency sent Mother a Notice of Proposed Action indicating claimant was ineligible for regional center services because she did not meet the criteria for a developmental disability under the Lanterman Act.

4. On July 18, 2023, Mother filed a Fair Hearing Request. Following an informal meeting with Mother on August 10, 2023, and a review of additional records provided by Mother, Service Agency again determined claimant was ineligible for regional center services. This hearing ensued.

Claimant's Background

5. On January 8, 2019, when claimant was nine months old, Service Agency found claimant eligible for Early Start Services based on a communication developmental delay. Early Start eligibility ends at age three.

6. At Service Agency's request, when claimant was almost three years old, on January 29 and February 2, 2021, Denise Rockwell, Ph.D. assessed claimant to determine her levels of cognitive, adaptive, and social functioning and to rule out or substantiate a diagnosis of autism spectrum disorder. Dr. Rockwell concluded claimant did not meet diagnostic criteria for autism spectrum disorder and diagnosed claimant with a language disorder.

7. On May 18, 2022, when claimant was four years old, Service Agency found claimant provisionally eligible for regional center services based on impairment

in expressive and receptive language, mobility, learning, self-care, and self-direction. Provisional eligibility applies to three- or four-year-old children who do not meet the definition of a developmental disability, but have a disability that is not solely physical in nature and have significant functional limitations in at least two of the areas described above.

8. According to an Individualized Educational Plan (IEP) dated March 7, 2023, and amended November 3, 2023, claimant is eligible for special education services based upon a speech or language impairment, due to expressive language delays.

Service Agency's Denial of Eligibility

9. On February 23, 2023, and March 9, 2023, when claimant was almost five years old, Yadira Navarro, Psy.D., conducted a psychological evaluation to determine claimant's ongoing eligibility for regional center services. Dr. Navarro concluded claimant did not meet diagnostic criteria for autism spectrum disorder and diagnosed her with a language disorder. Dr. Navarro documented her findings in a report dated April 17, 2023.

10. On June 14, 2023, after claimant became five years old, Service Agency found respondent ineligible for regional center services because claimant does not present with a developmental disability. Service Agency based its decision on Dr. Navarro's 2023 evaluation of claimant, a review of claimant's Service Agency records, and Service Agency's 2022 statement of provisional eligibility.

Dr. Navarro's Evaluation and Testimony

11. Dr. Navarro obtained a Doctor of Psychology degree in 2012 and is licensed as a psychologist in California. Since 2016, she has conducted psychological evaluations for Service Agency, such as the evaluation she conducted of claimant. Between 1999 and 2017, she worked as an intake specialist for Service Agency.

12. During her 2023 evaluation of claimant, Dr. Navarro reviewed various records, including a 2018 psychosocial assessment of claimant, a 2018 physical therapy developmental evaluation, a 2019 Service Agency initial intake evaluation, a 2021 speech and language progress report, and Dr. Rockwell's 2021 assessment. She also observed claimant's behavior during two in-person sessions, interviewed Mother, and interviewed claimant's elementary school teacher.

13. Dr. Navarro administered claimant eight subtests from the Wechsler Preschool and Primary Scale of Intelligence-Fourth Edition (WPPSI). The assessment measure's ability across five areas of cognitive functioning and produces scores showing how well a person performed in these areas. Claimant's Full-Scale IQ, derived from six subtests and a summary of ability across a diverse set of cognitive functions, was 93, which is in the average range when compared to other children claimant's age.

14. Dr. Navarro administered the Vineland Adaptive Behavior Scales, Third Edition (Vineland) by interviewing Mother. The Vineland yields information about an individual's adaptive functioning, including everyday skills needed to function and negotiate environmental demands. Claimant's overall score was 83, falling within the moderately low range.

15. Dr. Navarro administered the Autism Diagnostic Observation Schedule-2 (ADOS), a standardized assessment of a child's communication, reciprocal social

interaction, and imagination and creativity. The assessment consists of socially referenced activities allowing the assessor to observe behaviors identified as important to the diagnosis of autism spectrum disorder. Dr. Navarro testified the ADOS is the “gold standard” in diagnosing autism spectrum disorder. The results of claimant’s assessment indicated her performance fell below the autism cutoff, meaning she does not meet the diagnostic criteria for autism spectrum disorder.

16. Dr. Navarro completed the Childhood Autism Rating Scale, Second Edition (CARS-2), a 15-item behavior rating scale used to identify children with autism. Claimant received a total score of 22, indicating minimal to no symptoms of autism spectrum disorder.

17. Dr. Navarro measured claimant’s social skills, social adaptation, and social appropriateness by the Social Responsive Scale, Second Edition (SRS-2), using information from interviews with Mother and claimant’s teacher. Based on the information provided by Mother, claimant’s total score of 77 is associated with the clinical diagnosis of autism spectrum disorder. However, based on the information provided by claimant’s teacher, claimant’s total score of 82 is not associated with the clinical diagnosis of autism spectrum disorder.

AUTISM SPECTRUM DISORDER DIAGNOSTIC CRITERIA

18. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), diagnostic criteria for autism spectrum disorder consist of two parts. The first set of criteria, Part A, requires persistent deficits in social communication and social interaction across multiple contexts, as manifested by all the following: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing,

maintaining and understanding relationships. The second set of criteria, Part B, requires restrictive, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence of sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behaviors; (3) highly restricted, fixated interests that are abnormal in intensity or focus; and (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment.

Part A

19. Dr. Navarro found claimant did not meet any of the criteria listed in Part A. Claimant did not exhibit deficits in social-emotional reciprocity because she initiated interactions with peers, responded to social approaches, and engaged in interactive play activities, as reported by Mother and claimant's teacher. Claimant was responsive to Dr. Navarro's requests during her evaluation. Claimant did not exhibit deficits in nonverbal communicative behaviors, as she used nonverbal gestures to regulate social interactions as reported by Mother and claimant's teacher. Dr. Navarro observed claimant using nonverbal communication appropriately. As reported by Mother and claimant's teacher, claimant showed interest in her peers and engaged in interactive play with others. Dr. Navarro also observed claimant engaged in imaginative play activities.

Part B

20. Dr. Navarro found claimant met two of the four criteria under Part B. Claimant exhibited stereotyped or repetitive movements, use of objects, or speech, based on Mother's report. Mother stated claimant engaged in lining up and grouping

toys, though claimant's teacher did not report repetitive activities and Dr. Navarro did not observe such behavior. Claimant did not exhibit insistence on sameness or an inflexible adherence to routines, as Mother reported she usually transitions easily between activities and is not routine bound. Claimant did not exhibit highly restricted, fixated interests, as Mother did not report such concerns and Dr. Navarro did not observe any particular preoccupations. As reported by Mother, claimant has sensory issues related to oral, smell, and tactile processing.

REVIEW OF ADDITIONAL INFORMATION PROVIDED BY CLAIMANT

21. After Dr. Navarro conducted her evaluation, Mother provided several additional documents to Service Agency for review: an independent educational evaluation report, dated August 1, 2023, issued by Oren R. Boxer, Ph.D.; an amended IEP dated November 3, 2023; a letter dated November 16, 2023, from Nancy Martinez Orellana, M.D., a Pasadena Unified School District psychiatrist; and a psychological evaluation report, dated December 21, 2023, issued by Bahareh Talei, Psy.D. Dr. Navarro reviewed each document, none of which changed her diagnosis of claimant.

22. The Pasadena Unified School District referred claimant for evaluation by Dr. Boxer to better understand reported dysregulated behaviors at home and in the classroom and difficulty related to sustained attention and following directions. Dr. Boxer concluded, "despite the fact that [claimant] has some characteristics typical of [autism spectrum disorder], this diagnosis is currently being ruled out." (Ex. 9, p. A60.) Dr. Boxer concluded these behaviors are likely related to other developmental differences, including language disorder and Attention-Deficit/Hyperactivity Disorder (ADHD).

23. Dr. Navarro testified the November 2023 amended IEP did not contain any information that changed her diagnosis of claimant. The information in the IEP did not indicate any issues with social skills, describing claimant as friendly and engaging in appropriate eye contact, body language, and sustained conversations. Concerns noted in the IEP included language delays and hyperactivity.

24. The November 2023 letter from Dr. Martinez Orellana stated Mother is interested in pursuing psychological testing, which may assist in diagnostic clarification. Dr. Martinez Orellana noted the ADOS is the “gold standard diagnostic tool used to assess for Autism.” (Ex. 11.) Dr. Navarro already administered the ADOS to claimant during her 2023 evaluation.

25. In December 2023, Dr. Talei evaluated claimant to determine whether she was eligible for Department of Social Services disability benefits. Dr. Talei’s report indicated she performed the WPPSI, a review of records, and a complete psychological evaluation. She did not administer the ADOS. Dr. Talei concluded “probable” DSM-5 diagnoses are ADHD, combined type; and autism spectrum disorder, level I without intellectual impairment, with language impairment. (Ex. 13, p. A98.) Dr. Navarro testified that although Dr. Talei diagnosed claimant with autism spectrum disorder, the report did not change her opinion because Dr. Talei did not administer the ADOS nor did she indicate what, if any, other tools she used to assess claimant for autism.

26. On cross-examination, Mother provided Dr. Navarro a list of the following symptoms exhibited by claimant: (1) late language acquisition, (2) late motor and mobility skills development, (3) late cognitive function development, (4) hyperactivity, (5) digestive problems, (6) difficulty in social settings, (7) sleeping problems, (8) repetitive behavior, (9) failing to respond when her name is called, and (10) requiring instructions to be repeated multiple times. Dr. Navarro testified some of

the listed symptoms can be related to autism spectrum disorder, but they are also present in many other disorders, such as ADHD.

Mother's Request for Continuance

27. During her testimony, Mother requested an "extension" to allow additional time to gather new assessments of claimant. She described the difficulty she experiences in caring for her daughter, her obligation to advocate for her daughter, and her frustration with the uncertainty remaining about claimant's diagnosis even after many different examinations over the years. Mother expressed concern about starting the appeal process over if this matter were closed.

28. The ALJ denied claimant's motion to continue as untimely because she did not make the motion until the hearing was well underway and because the matter had already been continued twice. However, Service Agency agreed to submit Dr. Talei's report to its interdisciplinary eligibility team for formal review. Service Agency received Dr. Talei's report only three business days before the hearing.

Analysis

29. Claimant did not prove she has autism spectrum disorder. Dr. Navarro found claimant did not meet the diagnostic criteria for autism spectrum disorder, as did Dr. Boxer. In her report, Dr. Talei stated autism spectrum disorder is a "probable" diagnosis. She did not administer the ADOS nor specify what other methods she relied upon. Dr. Talei did not testify at the hearing. Without additional evidence, Dr. Talei's findings do not outweigh Dr. Navarro's testimony and conclusions, bolstered as they are by Dr. Boxer.

30. Claimant did not argue she has any other qualifying developmental disability, specifically intellectual disability, cerebral palsy, epilepsy, or a condition similar to intellectual disability or requiring treatment similar to that required by individuals with intellectual disability. Dr. Navarro concluded based upon her evaluation claimant does not have an intellectual disability or a condition similar to an intellectual disability.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) 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 handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Department of Developmental Services is the public agency responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. Under the Lanterman Act, a developmental disability is 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 intellectual disability, cerebral palsy, epilepsy, autism, and other conditions similar to intellectual disability or requiring treatment similar to that required by individuals with intellectual disability, i.e., the fifth category. (Welf. & Inst. Code, § 4512, subd. (a).)

Determination of Claimant’s Ineligibility for Services

5. Claimant did not prove by a preponderance of evidence she is eligible for regional center services. As described in Factual Findings 29 and 30, claimant did not prove she has autism spectrum disorder or any other qualifying developmental disability. Although Dr. Talei concluded a “probable” diagnosis was autism spectrum disorder, claimant presented insufficient evidence to outweigh Dr. Navarro’s conclusion claimant did not meet the diagnostic criteria for autism spectrum disorder. Claimant is eligible for special education services because of a speech or language impairment, and not because of autism or another qualifying developmental disability. Although some symptoms described by Mother may be related to autism spectrum disorder, they are also present in other disorders, such as ADHD.

6. Because claimant did not prove she has a developmental disability as defined by the Lanterman Act, she is not eligible for regional center services. Claimant

may present further evidence to the regional center, at some later date, so that she can be re-assessed for her eligibility for services.

ORDER

Claimant's appeal is denied. Claimant is not eligible to receive regional center services.

DATE:

HARDEN SOOPER

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.