

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of;

CLAIMANT,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2019010302

DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 19, 2019, in Pomona, California.

Claimant¹ was not present at the hearing. She was represented by her father, who is her authorized representative.

Pomona/San Gabriel Regional Center (Regional Center) was represented by Daniel Ibarra, Fair Hearing Specialist.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision

¹ Names are omitted and family titles will be used to protect Claimant's privacy.

ISSUE

The sole issue in this case is whether Claimant had a substantially handicapping condition prior to age 18 which would render her eligible to receive Regional Center services.

EVIDENCE REPLIED UPON

1. Regional Center's Exhibits 1 through 14
2. Claimant's Exhibits A and B
3. Testimony of Daniel Ibarra; Claimant's father; Claimant's mother; and Brian Patrick, Division Chief, City of Monrovia Fire Department

FACTUAL FINDINGS

1. Claimant is a 30-year-old woman seeking Regional Center services. She resides with her parents in Monrovia, California. Claimant suffers from a severe, progressive neurodegenerative brain disorder manifested by severe seizures and cognitive and psychiatric decline. Claimant has severe and intractable complex partial temporal lobe epilepsy, resulting in multiple seizures per day despite multiple medications and implantation of a vagal nerve stimulator. Complicating her condition, Claimant has progressive hemispheric atrophy related to chronic encephalitis, for which she is being treated with plasma exchange therapy. She has also developed psychosis, is sometimes aggressive and combative, and has catatonia and depression. Claimant has difficulty moving the left side of her body, necessitating the use of a walker or wheelchair.

2. Claimant did not receive special education services when she attended school. She graduated from high school in 2010, and attended Citrus College for four years, taking general education classes. Claimant was employed in retail settings, including Ross and Sam's Club, but stopped working due to seizure activity. Currently,

Claimant has six to 10 seizures per day. She cannot take care of the basic activities of daily living and requires constant care and supervision. She was involuntarily hospitalized five times between April and May 2018, and receives 188 hours of In-Home-Supportive-Services provided by her parents. The resources of the City of Monrovia have been severely strained by multiple daily 9-1-1 calls for emergency medical assistance for Claimant. In the first five weeks of 2019, paramedics responded to her home 28 times. The parties do not dispute that Claimant's condition is substantially disabling.

3. Claimant's first seizure occurred in February 2010, when Claimant was 21 years old. Claimant was walking up the stairs and fell. Her father found her on the ground convulsing.

4. Jane Y. Hwang, M.D., is an epileptologist in the Neurology Department at Kaiser Permanente in Los Angeles. Dr. Hwang is highly regarded in her field and has been Claimant's treating physician since 2012. In a letter dated April 23, 2018, Dr. Hwang opined that "Even though [Claimant's] first seizure occurred at age 21, the condition was very likely present at a younger age (prior to age 18.) This is because her head CT and MRI's had shown scar tissue in the right side of brain (temporal lobe) and shrinkage going back to 2011. That type of finding takes many years to develop and that is the reason why I think her condition was present before the age of 18." (Exhibit 9, p. 23.)

5. On August 2, 2018, Claimant sought Regional Center services on the basis of epilepsy or intellectual disability (ID). Her medical records were reviewed by Larry Yin, M.D. Claimant was evaluated by neurologist Arthur Partikian, M.D., on September 26, 2018. Dr. Partikian noted that there is "no history of any clinical spells concerning for seizures prior to [Claimant's] early 20's." (Exhibit 6, p. 17.) In his report, Dr. Partikian states that, "While I have no doubt that [Claimant] suffers from disabling epilepsy, the onset of her seizures was clearly after 18 years of age. . . . [E]ven if [Claimant] had pre-

existing evidence of an inflammatory or autoimmune process noted on her brain MRI prior to the onset of her seizures (ie [sic], hippocampal sclerosis can take years to develop), we still do not diagnose epilepsy until a person has had at least one unprovoked seizure. Therefore, [Claimant] does not qualify for eligibility for regional center services for her diagnosis of epilepsy which began after 18 years of age." (*Id.*, p. 18.) Dr. Partikian states that, "If there are medical records to document onset of epilepsy prior to age 18 [years old], then further review would be warranted." (Exhibit 7.)

6. A psychological evaluation of Claimant was conducted by psychologist Edward Frey, Ph.D., on October 23, 2018, to assess for the possibility of ID. He reviewed Claimant's records, conducted a diagnostic interview, and administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS) and the Vineland Adaptive Behavior Scales, Third Edition (Vineland Scales). Claimant's scores on the WAIS were in the mild delay range. The Vineland Scales showed substantial deficits in adaptive functioning. However, since Claimant did not exhibit substantial delays prior to age 18, Dr. Frey opined that Claimant does not meet the criteria for a diagnosis of ID. He concluded that there has been a clear decrease in Claimant's overall functioning from a previously normal level. Dr. Frey diagnosed Claimant with Major Neurocognitive Disorder with Behavioral Disturbance, and Neurocognitive Decline related to onset of Epilepsy after age 18, neither of which is a qualifying condition for Regional Center services. (Exhibit 5.)

7. Following the completion of the intake assessment, a Regional Center interdisciplinary team met on December 12, 2018, and determined that Claimant does not have a developmental disability that originated prior to age 18. The Regional Center sent a Notice of Proposed Action, dated December 14, 2018, stating that Claimant's case was being closed because there is no evidence that Claimant suffered a substantially handicapping condition prior to age 18. Claimant submitted a timely Fair Hearing Request and this matter ensued.

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LEGAL CONCLUSIONS

1. Because Claimant seeks to establish eligibility for services, the burden is on Claimant to demonstrate by a preponderance of the evidence that the Regional Center's determination is incorrect and that claimant is entitled to the requested benefits and services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156; Evid. Code, § 115.)

2. In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or uncontradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322 at p. 329.)

3. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (citations omitted) The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) (Emphasis in original.)

4. Claimant failed to sustain her burden of proof that she is eligible for Regional Center services because she did not present sufficient evidence to establish that she had a substantially disabling condition prior to age 18.

5. Welfare and Institutions Code section 4512, subdivision (a) states:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

6. California Code of Regulations, title 17, section 54000 contains the same criteria as Welfare and Institutions Code section 4512 but adds two exclusions:

(c)(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 mental retardation.

7. Based on the evidence presented, Claimant is ineligible for Regional Center services solely by virtue of her age at the time of onset of her disability. Once she

turned 18 years of age, Claimant was precluded from becoming a Regional Center client pursuant to Welfare and Institutions Code section 4512, subdivision (a). The evidence reflects that Claimant was in her early twenties at the time of onset of her seizures, and her mild ID was not present during the developmental period. (Factual Findings 3, 5 and 6.) Claimant did not offer any evidence that she suffers from any other qualifying condition, i.e., autism, cerebral palsy or a condition similar to intellectual disability or requiring services similar to those required by persons suffering from intellectual disability.

8. Claimant may be eligible for services from other agencies in federal, state, county, or local governments, but based upon the evidence presented at hearing, she is ineligible for services under the Lanterman Developmental Disabilities Services Act.

ORDER

Claimant did not establish her eligibility for Regional Center services. Claimant's appeal of the Regional Center's determination that she is not eligible for Regional Center services is denied.

DATED:

LAURIE R. PEARLMAN

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 ninety days.