

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:
R.R.,

OAH No. 2012020739

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 16, 2012, in Pomona.

R.R. (claimant) was present; he was represented by his mother, A.A.¹

Daniela Martinez, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Oral and documentary evidence was received. The record was held open to allow claimant to submit additional medical records by November 6, 2012, and to allow the Service Agency to reply to those records by November 16, 2012. Claimant timely submitted additional medical records; they were collectively marked and admitted as Exhibit D. The Service Agency timely filed a reply; it was marked as Ex. 6.

The record was closed and the matter submitted for decision on November 16, 2012.

¹ Initials and family titles are used to protect the privacy of claimant and his family.

ISSUE

Whether claimant is eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-6; Claimant's exhibits A-D.

Testimony: Daniela Martinez; A.A.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 17-year-old male.
2. On October 11, 2011, claimant's mother asked the Service Agency to determine claimant's eligibility for services under the Lanterman Act. By letter dated January 10, 2012, the Service Agency replied that it had determined that claimant is not eligible for regional center services because he does not meet the eligibility criteria set forth in the Lanterman Act.
3. On January 17, 2012, claimant's mother filed a fair hearing request to appeal the Service Agency's determination regarding eligibility.

CLAIMANT'S BACKGROUND AND EVALUATIONS

4. Claimant lives at home with his mother and her fiancé, and with his three brothers, ages 22, 20, and 14.
5. Claimant currently attends high school in the Baldwin Park Unified School District, where he receives special education services under a diagnosis of "Other Health Impairment." (Ex. 5.) He plays trumpet in the school's marching band. A school nurse reported in March 2011 that a Kaiser Permanente psychiatrist, Dr. Joanne Davida Als, had diagnosed claimant with Obsessive Compulsive Disorder (OCD) and Attention Deficit

Hyperactivity Disorder (ADHD). Because of claimant's academic failure in some classes and because of the recent diagnoses by Dr. Als, a school psychologist, Karen Silberman, Ed.D., recommended in May 2011 that claimant qualify for special education services. Dr. Silberman reported that claimant's cognition is in the average range.

6. A social assessment report dated November 1, 2011, prepared by Virginia Rodriguez-Wintz, M.S., Intake Service Coordinator for the Service Agency, states that claimant's mother was concerned with claimant's academic performance, his social skills, and his need for prompting in daily activities. Claimant's mother reported that claimant receives special education services from his school district. She also reported that Dr. Tad Traina at Kaiser Permanente had, on March 29, 2011, diagnosed claimant with "Pervasive Developmental Disorder (High Functioning Autism)." (Ex. 3.)

7. Edward G. Frey, Ph.D., a licensed clinical psychologist, performed a psychological evaluation of claimant for the Service Agency to assist in determining eligibility. Dr. Frey met with claimant and claimant's mother on December 6, 2011. Dr. Frey reported administering the following tests: Autism Diagnostic Observational Schedule, Module IV (ADOS); Gilliam Autism Rating Scale-II (GARS); Vineland-II Adaptive Behavior Scales. (Ex. 4.) He also conducted a clinical interview and reviewed records.

8. Dr. Frey reviewed evaluations from the Baldwin Park Unified School District, and noted that:

[p]revious school testings have indicated [claimant] is of average intelligence. His grades however do not typically reflect this. He often does not turn his schoolwork in even if he has completed it. Previous academic assessments have indicated most skills in the average range.

(Ex. 4.) Dr. Frey wrote that claimant's mother reported that claimant had difficulties in socialization, both at school and outside school.

9. Dr. Frey obtained the following ADOS results for claimant:

Communication Total	3
Social Interaction Total	6
Total	9

(Autism Cutoff=10; Autism Spectrum Cutoff=7)

(Ex. 4.) Administering the GARS, Dr. Frey found that claimant's autism index score was 70, a result indicating that the probability of autism is "possible." (Id.) The Vineland-II Adaptive Behavior Scales yielded the following scores: Communication Domain, 71; Daily Living Skills, 66; Socialization, 64; Adaptive Behavior Composite, 65. (Id.)

10. Dr. Frey diagnosed claimant with Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS), and Reported Obsessive Compulsive Disorder. He concluded in his report that:

Current assessment with both the ADOS Module IV and the Gilliam Autism Rating Scale-II would not support viewing [claimant] as an adolescent with an autistic disorder. It is quite probable however that [claimant] is within the autism spectrum. [Claimant] has excellent communication skills which tend to argue against the presence of autism. The GARS-II also suggests minimal stereotyped behaviors noted. The area of most deficits with [claimant] is in social interaction. Autism is diagnosed in early childhood whereas other spectrum disorders i.e., PPP-NOS or Aspergers are frequently diagnosed at a later age.

[¶] . . . [¶]

In summary, examiner agrees that [claimant] is displaying Pervasive Developmental Disorder NOS and has probably displayed these features for several years. Currently however the clinical testing does not suggest he is presenting with an autistic disorder as defined in DSM-IV-TR.

(Ex. 4.) Dr. Frey recommended that claimant receive special education services and that he participate in social and recreational activities in addition to his involvement in the marching band. He also recommended continued psychiatric treatment and the development of an appropriate transition plan, perhaps including referral to the Department of Rehabilitation.

11. In medical records dating from February 2011 onward, Drs. Tad G. Traina and Joanne Davida Als, of Kaiser Permanente, have variously diagnosed claimant with PDD NOS or with Autism Disorder, in addition to other conditions. The medical documentation in the record does not provide substantial information as to the basis for those diagnoses. There is some narrative in the documents, but no indication of whether Dr. Traina or Dr. Als used the ADOS or any other instrument in reaching their diagnoses. Neither Dr. Traina nor Dr. Als testified at hearing. To the extent, therefore, that the diagnoses derived by Drs. Traina and Als are different from that of Dr. Frey, their diagnoses are less persuasive than that of Dr. Frey.

12. Claimant's mother testified that claimant is overweight, underachieves at school, and experiences depression. He is often late for school and, although he does his homework assignments, he is so disorganized that he does not turn them in; his high school has now assigned a peer counselor to assist him. She testified that his daily living skills are problematic, that he does not attend to personal hygiene without prompting, and that he breaks his glasses at least once per month. She is worried that claimant will not be able to function without help. All service providers to which she has been referred by the Service Agency have referred her back to the Service Agency.

13. A preponderance of the evidence establishes that claimant does not have autistic disorder. Nor has any evidence been presented to show that claimant has mental retardation or a disabling condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation. Rather, the evidence shows that he may have PDD NOS and psychological comorbidities, and that he would likely benefit from services designed to enhance his social skills.

LEGAL CONCLUSIONS

1. Cause does not exist to grant claimant's request for regional center services, as set forth in Factual Findings 1 through 13, and Legal Conclusions 2 through 4.

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, § 115.)

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that he suffers from a developmental disability that "originate[d] before [he] attain[ed] 18 years old, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for [him]." (Welf. & Inst. Code, § 4512, subd. (a).) "Developmental disability" is defined to include mental retardation, cerebral palsy, epilepsy, autism, and "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (*Id.*)

4. Claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act based on a diagnosis of autism. Dr. Frey diagnosed claimant with PDD-NOS, a diagnosis that does not satisfy the

eligibility requirement under Welfare and Institutions Code section 4512, subdivision (a). To be eligible for regional center services, an individual must be diagnosed with autistic disorder, as that condition is defined in the DSM-IV-TR. A diagnosis of Autistic Disorder from doctors at Kaiser is less persuasive than Dr. Frey's diagnosis. (Factual Findings 7-11.) Nor did claimant introduce evidence to show that he qualifies for regional center services under any of the other categories of eligibility. (Factual Findings 4-13.) It is not disputed that claimant could benefit from services tailored to mitigate the social and psychological effects of his disabilities. But SGPRC is not required to provide those services to claimant, because he has not been shown to have any of the qualifying diagnoses for regional center services.

ORDER

Claimant R.R.'s appeal is denied.

DATE: December 10, 2012



HOWARD W. COHEN

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.