

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

N.D.,

Claimant,

v.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH Case No. 2012030055

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on April 17, 2012, in Los Angeles, California.

Tim Jon Runner, Advocate, represented N.D. (Claimant).¹ Claimant was not present.

Paula Noden represented the Regional Center of Orange County (Service Agency).

The parties submitted the matter for decision on April 17, 2012.

STATEMENT OF THE CASE

Claimant contends she is eligible for services from the Service Agency as a person with a developmental disability.

¹ Initials identify Claimant and family title identifies her mother herein to preserve Claimant's confidentiality.

The Service Agency contends Claimant has no developmental disability that would make her eligible under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

The parties focused their cases on the question of whether Claimant has autism.

FACTUAL FINDINGS

1. Claimant is a 15-year-old girl; she lives with her parents and one sibling. She has asperger's disorder, cyclothymic disorder, and impulse control disorder, not otherwise specified. Her diagnoses also include a "rule out" of schizoaffective disorder.

2. No one has diagnosed Claimant with autism.

3. According to her mother, as a baby and toddler (before the age of three), Claimant was colicky and defiant. As she grew, she did not like clothes or noisy toys. At the age of four, Claimant arranged her toys in a particular order. She always loved books, except "touch and feel" books; she had a tactile aversion toward paper. Claimant has never interacted well around peers. She has been depressed since the end of the sixth grade. She has a dog that serves as her service animal; the dog has a particularly calming affect on her. Claimant has a particular routine that she follows in most of her daily activities.

4. On June 26, 2008, Caroline Paltin, Ph.D., evaluated Claimant (age 11). The evaluation was done to assess the "question of Asperger's/Autism." Claimant's mother informed Paltin that Claimant demonstrated socially inappropriate conduct, anger, problems with other children, and general unhappiness. Additionally Claimant was prone to bullying and aggression toward peers that resulted in suspensions and detentions at school. Paltin noted that Claimant appeared to understand the inappropriate nature of these actions but did not possess the insight and problem solving skills necessary to adequately diffuse her anger. Paltin further noted that Claimant showed "high levels of ability in all educational and cognitive domains," and "high levels of achievement in a variety of academic subjects." Ultimately, Paltin

diagnosed Claimant with asperger's disorder. Claimant has seen Paltin weekly since 2008.

5. Claimant has undergone four psychiatric hospitalizations between December 2009 and March 2010 at Del Amo Hospital (Del Amo) in Torrance, California, and the University of California at Irvine Medical Center (UCI) due to suicidal ideation and cutting herself.

6. The records regarding Claimant's psychiatric hospitalizations show significant psychiatric problems. For example, Claimant was admitted to Del Amo on December 9, 2009, on a psychiatric hold because she presented as a danger to herself. She admitted to a history of suicide attempts by trying to hang herself, hit herself, or slitting her wrists. She admitted having increased anxiety, a lack of motivation, and generalized feelings of hopelessness. At discharge, on December 14, 2009, Del Amo staff diagnosed Claimant with major depression, recurrent, severe without psychotic behavior, and a "rule out" diagnosis of bipolar disorder.

7. UCI also diagnosed Claimant with psychiatric conditions following two hospitalizations. In February 2010, UCI diagnosed Claimant with major depressive disorder; in March 2010, it diagnosed Claimant with mood disorder, not otherwise specified.

8. Claimant is eligible for special education through the Tustin Unified School District (TUSD) due to her diagnosis of asperger's disorder. In 2010, TUSD referred Claimant to the Orange County Health Care Agency for a mental health assessment. TUSD referred Claimant because of socially inappropriate conduct, anger, bullying, aggression, and self-injurious behavior (cutting). A TUSD assessment, dated August 9, 2010, noted that Claimant admitted to thoughts of hurting others, including putting rat poison in the coffee of others and threatening to burn down her school. The assessment recommended, among other things, individual and family therapy.

9. Claimant has above average verbal cognitive and overall intellectual abilities. She has received and currently obtains mostly "A" grades in school. Her intelligence is considered to be above average, with many cognitive scores in the superior range. She does well academically, but dislikes the schools she has attended to date.

10. Diane Stein, M.D., Diplomate of the American Board of Psychiatry and Neurology and a board certified Child and Adult Neurologist, wrote a letter dated April 2, 2012, wherein she stated that Claimant is diagnosed with "Autism Spectrum Disorder and Sensory Motor Integration Dysfunction and disabling Synesthesia." Synesthesia is a rare neurological condition in which stimulation of one sensory or cognitive pathway leads to automatic involuntary experiences in a second sensory or cognitive pathway. According to Stein, synesthesia can be immensely painful or anxiety provoking. Claimant argued that persons with autism often have a diagnosis of synesthesia. The Service Agency did not deny that synesthesia can co-exist with autism. The evidence, however, did not establish that a person who has synesthesia must also have autism.

11. There was no evidence of significant impairments in Claimant's motor skills or mobility, learning, or receptive or expressive language. There was no evidence of a diagnosis of mental retardation, cerebral palsy, epilepsy, a condition closely related to mental retardation, or a condition requiring treatment like a person with mental retardation.

12. Claimant can prepare some simple foods, and make purchases from a store, but does not like to go to any store when it is busy. She goes to the store with her dog. She is meticulous about her grooming, hygiene, and bathing, although she will not change her bed sheets often. She can do laundry, and can care for her dogs. She can use a cellular telephone. She is excited about learning to drive an automobile. Claimant plays the bass and wishes to be a bass player in a band. She has a love of horses and

other animals. She becomes animated and talkative when discussing her music or animals. She has a fascination with certain television shows and she will repeat scenes to her mother three or more times per day for several days. Claimant's mother hopes and believes Claimant can eventually get a job if she finds an understanding boss and if her job requires little or no contact with the public. Claimant often makes inappropriate comments in public. Claimant's mother believes that Claimant will always need help to live on her own. Claimant's mother explained that Claimant sees the world differently, but if she can be accommodated with explanations and understanding, Claimant might be able to function appropriately in the community. She emphasized, with great emotion, that Claimant is not a bad person; she just does not understand common issues of propriety. Claimant's mother was credible in her descriptions of Claimant.

13. Claimant's representative argued that the Service Agency has defined autism too narrowly and that because asperger's disorder is on the autism spectrum, a diagnosis of asperger's disorder should qualify Claimant for regional center eligibility under the Lanterman Act.

14. No health care professional testified on behalf of Claimant.

15. The Service Agency did not deny that asperger's disorder is on the autism spectrum, but argued that only autism is a qualifying condition under the Lanterman Act. These assertions were supported by the testimony of Peter Himber, M.D., Chief Medical Officer for the Service Agency, and Kyle D. Pontius, Ph.D., Staff Psychologist for the Service Agency. The educational and professional background and training of Himber and Pontius were more than adequate to support their opinions. Neither Himber nor Pontius evaluated Claimant, but both opined, based on their review of the records in evidence, that Claimant met the diagnostic criteria for asperger's disorder, but not autism. Himber and Pontius further opined that Claimant is not substantially disabled, pursuant to the applicable statute and regulation.

LEGAL CONCLUSIONS

1. As Claimant seeks eligibility, Claimant bears the burden of proof. The standard of proof is a preponderance of the evidence.

2. Welfare and Institutions Code section 4512 states in part:

(a). "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 mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include 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.

[¶] . . . [¶]

(1) "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

3. California Code of Regulations, title 17, section 54001, states in part:

(a) "Substantial disability" means:

(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.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parent . . . educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

4. Contrary to the opinions of Himber and Pontius, Claimant's asperger's disorder and other psychiatric disabilities are sufficiently severe to meet the substantial

disability criteria in the applicable statute and regulation. Claimant's disabilities create significant functional limitations for Claimant in her ability to provide for her self-care, self-direction, her capacity for independent living, and her capacity for economic self-sufficiency. Claimant has and, without amelioration of the current symptoms of her disabilities, will continue to have, significant difficulty in each of these areas. With functional limitations in more than three areas, Claimant is substantially disabled by asperger's disorder and her psychiatric disabilities. (Welf. & Inst. Code, § 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001.) However, Claimant does not have autism or any other qualifying condition.

5. Contrary to the arguments of Claimant's representative, asperger's disorder does not qualify Claimant for regional center eligibility. Of pertinence to this case, the Legislature has mandated that an autism diagnosis qualifies a person for regional center eligibility. (Welf. & Inst. Code, § 4512, subd. (a).) No one has diagnosed Claimant with autism. With no diagnosis of autism or any other qualifying condition, Claimant cannot be eligible for regional center services. The Legislature does not list asperger's disorder as an eligible condition. (*Ibid.*) Disallowing asperger's disorder as a qualifying condition is not a narrow interpretation of the law, as Claimant's representative argued, but a straightforward reading of the statute. That asperger's disorder is on the autism spectrum is of no moment. The Legislature does not list the autism spectrum as an eligible condition either. (*Ibid.*)

6. Claimant's condition is serious and concerning. It is hoped that she can find treatment and services that will help her; but she is ineligible for treatment and services from the Service Agency, as she does not have a qualifying condition, as defined in Welfare and Institutions Code section 4512, subdivision (a).

7. Cause exists to deny Claimant's appeal, as set forth in Factual Findings 1-15, and Legal Conclusions 1-6.

ORDER

Claimant's appeal is denied in case number 2012030055.

Dated: April 23, 2012

DANIEL JUAREZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.