

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

T.H.

Claimant,

v.

REGIONAL CENTER OF ORANGE

COUNTY,

Service Agency.

OAH Case No.: 2012030961

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on September 18, 2012, in Santa Ana, California.

T.H. (Claimant) represented himself.¹

Paula Noden, Fair Hearings Manager, represented the Regional Center of Orange County (Service Agency).

The parties submitted the matter for decision on September 18, 2012.

STATEMENT OF THE CASE

Claimant seeks eligibility for regional center services as a person with cerebral palsy. He contends that he meets the eligibility requirements, particularly those required to establish a substantial disability.

¹ Claimant's name is identified by initials to preserve Claimant's confidentiality.

The Service Agency does not dispute that Claimant has cerebral palsy, an eligible condition, but it contends that Claimant is not substantially disabled by the condition and therefore not eligible for services.

FACTUAL FINDINGS

1. In approximately January 2012, Claimant applied to the Service Agency for regional center eligibility. The Service Agency denied Claimant's application on February 16, 2012. Claimant requested an administrative hearing on March 14, 2012.

2. In denying Claimant eligibility, the Service Agency cited to Welfare and Institutions Code section 4512 and stated in its denial letter, "Although you do have mild Cerebral Palsy, this is not seen as being substantially disabling."

3. Claimant is a 24-year-old man with spastic diplegic cerebral palsy; he was diagnosed with the condition at six months of age. Cerebral palsy is a condition that will continue indefinitely.

4. According to the Service Agency's social assessment, dated January 3, 2012, Claimant is also diagnosed with cognitive disorder, not otherwise specified, mood disorder due to cerebral palsy, and obsessive-compulsive traits. The Service Agency became aware of these diagnoses from a comprehensive neuropsychological consultation, dated July 21, 2011. Neither party offered that consultation into the record. Claimant did not dispute these additional diagnoses.

5. The parties agree that the only eligible diagnosis at issue in this proceeding is cerebral palsy.

6. After meeting Claimant, Claimant's family members, and reviewing records in January 2012, Peter Himber, M.D. (Himber) and Kyle Pontius, Ph.D. (Pontius) completed a "transdisciplinary assessment report." Himber is the Service Agency's Chief Medical Officer; he is competent to assess and opine regarding an applicant's eligibility for regional center services. Pontius is a licensed staff psychologist for the Service

Agency and similarly competent. The Service Agency relied on the opinions of Himber and Pontius in denying Claimant eligibility.

7. Himber and Pontius each opine that Claimant is ineligible for regional center services because he does not meet the statutory requirements for establishing a substantial disability. (See Legal Conclusions 2 & 3.)

8. In their transdisciplinary assessment report, Himber and Pontius assessed each statutory criterion of substantial disability when evaluating Claimant's application for eligibility. The criteria are: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (Legal Conclusions 2 & 3.) Himber and Pontius reiterated their assessments at hearing.

9(a). Regarding self-care, Himber and Pontius acknowledged that Claimant takes an excessive amount of time to perform self-care tasks, but opined that his difficulty was related to "sequencing problems and certain obsessions," and not to his cerebral palsy. Himber noted that Claimant's records show that since childhood, Claimant has generally failed to initiate school and work tasks; his overall work ethic and personal care efforts have been lacking. According to the Service Agency's interviews and review of records, Claimant has a poor sense of time and "lives in the moment." Without constant reminders, he will engage in preferred activities. He requires prompts to keep up with his hygiene. Himber considered this in reaching his opinions and in assessing Claimant's skill deficits. Himber questioned whether Claimant is unable to do a task or whether he simply chooses not to do it. Ultimately, Himber and Pontius opined that Claimant is not substantially disabled in the area of self-care.

9(b). Claimant disagreed and asserted that he is unable to meet all of his self-care needs due to his cerebral palsy. In an undated letter to the Service Agency, Claimant explained that, due to his cerebral palsy, he has poor fine motor skills; he has trouble handling liquids, cutting his food, cleaning his living space, and completing his

hygiene tasks, like shaving. The ALJ observed Claimant's impaired gait when he entered and exited the hearing room at the instant proceeding, and observed his fine motor skills during the proceeding. The evidence, together with the ALJ's observations at hearing, established that Claimant's motor skills are impaired as he asserted in his letter.

9(c). The evidence established that Claimant is substantially disabled in his self-care abilities due to cerebral palsy.

10(a). Regarding mobility, Himber explained that he sees mobility as moving "intentionally and independently." While noting that Claimant uses crutches to ambulate, Himber opined that Claimant can move about intentionally and independently, and therefore, Himber opined that Claimant is not substantially disabled in his mobility. Himber explained that persons with cerebral palsy who are regional center eligible typically use wheelchairs. Himber noted that an orthopaedic outpatient consultation, dated September 12, 2005, described Claimant's ambulation as, "wonderful." However, that consultation was a post-surgical follow-up appointment. Thus, the description of Claimant's ambulation as "wonderful" is evidence of his post-surgical rehabilitation, not evidence of Claimant's general ambulation.

10(b). In Claimant's letter to the Service Agency, he described his mobility as independent, but with difficulty. He uses forearm crutches and struggles to carry items. He needs help to carry his groceries, books, or any significant item while walking. He has great difficulty walking with a backpack. He cannot stand unaided in the shower. For this reason, he has difficulty washing himself. Stairs are difficult for him. He cannot walk long distances. It is not apparent that he can walk moderate distances without significant strain.

10(c). The evidence established that Claimant is substantially disabled in his mobility due to cerebral palsy.

11. Himber and Pontius define self-direction as “one’s ability to take responsibility for life.” They include the following abilities within self-direction: the ability “to make independent choices concerning personal and social life, to effectively manage emotions, seek assistance when needed, and to demonstrate appropriate assertiveness and self-advocacy skills.” Himber and Pontius opined that Claimant has these abilities and is not substantially disabled in the area of self-direction.² At hearing, Claimant agreed with Himber and Pontius.

12(a). Regarding Claimant’s capacity for independent living, Himber and Pontius opined that Claimant’s “poor judgment, impulsive behavior and disorganization contribute significantly to problems in the performance of life skills.” Himber and Pontius provided inconsistent statements on this point. In one portion of their transdisciplinary report, they assert that Claimant’s cerebral palsy is unrelated to any difficulties he experiences in his independent living skills. However, later in the same report, Himber and Pontius opined that Claimant is substantially disabled in this area. They wrote, “Based on [Claimant’s] history, our observations and objective psychometric testing, he is substantially disabled in the following areas of major life activity: Capacity for Independent Living.”

12(b). Claimant asserted that he is substantially disabled in his independent living abilities. He reiterated those deficits described in Factual Findings 9(b) and 10(b) that limit his ability to clean his living space, shop, carry items while walking, and complete his hygiene tasks. Claimant cannot clean his living space appropriately. He does not have the physical capacity to do the necessary tasks. When he engages in

² Pontius opined that Claimant is substantially disabled in self-direction but further opined that this disability emanates from his executive dysfunction and this dysfunction is unrelated to Claimant’s cerebral palsy.

cleaning, he requires multiple hour-long breaks to complete the tasks. Cleaning in this manner takes a significant amount of time and his motor skill deficits result in an incomplete job regardless of the breaks he takes.

12(c). The evidence established that Claimant is substantially disabled in his capacity for independent living due to cerebral palsy.

13(a). Regarding Claimant's economic self-sufficiency, Himber and Pontius noted that Claimant is currently enrolled in a community college and wrote, "Currently, he is successful as a student, and not expected to earn a living wage." Himber and Pontius each asserted at hearing, that since Claimant is a college student, they do not expect him to have a job and therefore do not believe it is necessary or appropriate to assess Claimant's economic self-sufficiency at this time. Himber and Pontius also noted that Claimant has held a "number of jobs with varying success." Claimant has been employed as an illustrator in an art store and as a secretary. The evidence did not establish the dates of employment or the reasons he is no longer employed. Currently, he is not employed. If found eligible, Claimant wants the Service Agency to help him find a job.

13(b). The evidence did not establish that Claimant is substantially disabled in his economic self-sufficiency abilities.

14. Despite Pontius's opinion regarding Claimant's self-direction, as noted in Note 2, the parties agreed that Claimant is not substantially disabled, for purposes of regional center eligibility, in the areas of learning, receptive and expressive language, or self-direction.

15. At an earlier time, Claimant went to an art college in Savannah, Georgia, but he discontinued because he had poor attendance and did not complete assignments. He currently attends Rancho Santiago Community College. He asserts

that he will complete his coursework there in approximately one year and intends to transfer to California State University, Fullerton.

16. Until recently, Claimant has lived with his cousin. He now lives on his own in housing intended for persons with disabilities. He pays for his rent with his sole source of income, Social Security Supplemental Security Income.

17. Given his areas of substantial disability, Claimant's condition results in a major impairment of his social functioning and he will require interdisciplinary planning and coordination of special and generic services to assist him in achieving his maximum potential.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal, as set forth in Factual Findings 1-17 and Legal Conclusions 2-5.

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, similarly defines substantial disability using the same list of major life activities as the Legislature did in Welfare and Institutions Code section 4512, subdivision (l). The regulation provides the following further definition of substantial disability in subdivision (a)(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."

4. As Claimant seeks eligibility, he bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

5. Claimant is substantially disabled in three areas of major life activity due to cerebral palsy: self-care, mobility, and capacity for independent living. (Welf. & Inst. Code, § 4512, subds. (a) & (l); see also Cal. Code Regs., tit. 17, § 54001.) His condition results in a major impairment of his social functioning and he will require interdisciplinary planning and coordination of special and generic services to assist him in achieving his maximum potential. (Cal. Code Regs., tit. 17, § 54001.) His condition

originated before age 18 and will continue indefinitely. Claimant therefore meets the requirements for regional center eligibility; he has a developmental disability. (*Ibid.*)

6(a). Apart from Legal Conclusion 5, it bears noting that the Service Agency's substantial disability analysis, as it relates to two criteria, was faulty. With regard to mobility, Himber opined that if an applicant can ambulate intentionally and independently, the applicant is not substantially disabled. In his testimony, he implied that a person with cerebral palsy would likely require the use of a wheelchair to meet the substantial disability requirement. He failed to address the fact that many persons with cerebral palsy who use wheelchairs are able to move themselves intentionally and independently. Those factors are therefore not the pivotal factors to consider when assessing an applicant's mobility skills.

6(b). With regard to economic self-sufficiency, Himber and Pontius opined that an analysis was unnecessary since Claimant was a college student. But, Claimant could leave college for a myriad of reasons that would leave him obligated to immediately meet his economic needs. Further for many students, economic self-sufficiency while attending college is a reality. Once a person is 18 years old, he or she is economically responsible for him or herself. The Legislature requires that an assessment of an applicant's substantial disability be "appropriate to the age of the person." (Welf. & Inst. Code, § 4512, subd. (l).) Whether an adult applicant is or is not receiving economic assistance from another source is irrelevant to whether that applicant, due to a disability, has adequate abilities to become or strive to become economically self-sufficient. The proper questions are 1) whether an applicant has adequate abilities to become or strive to become economically self-sufficient, and 2) to what degree, if any, are an applicant's skills impaired by an eligible disability. Furthermore, once a person is 18 years old, regardless of being a college student, an analysis of an applicant's economic self-sufficiency is required. (*Ibid.*) In this matter, Claimant had insufficient evidence to

establish that he could not find or hold a job due to cerebral palsy, but the fact that he is enrolled in a community college is not and should not be the deciding factor in such an assessment.

ORDER

Claimant's appeal is granted.

Dated: September 26, 2012

/s/

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.