

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ENRIQUE F.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2012070973

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on September 24, 2012, in Lancaster, California.

Enrique F., claimant, was represented by his uncle, who is also his guardian.

Rhonda Campbell, Contract Officer, represented the North Los Angeles County Regional Center (regional center).

Evidence was received and the matter was submitted for decision.

ISSUE

Is claimant eligible for regional center services based any of the four qualifying conditions¹ or on "the fifth category" (a disabling condition found to be closely related

¹ The four qualifying conditions for regional center services are autism, cerebral palsy, epilepsy, and mental retardation.

to mental retardation or to require treatment similar to that required for individuals with mental retardation) pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

FACTUAL FINDINGS

1. Claimant is a 15-year-old boy who is requesting eligibility for regional center services based on a possible diagnosis of Autistic Disorder. Although not specifically requested, there was evidence presented that claimant might suffer from a disabling condition found to be closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation, also known as the "fifth category."

2. The Service Agency determined that claimant is not eligible for regional center services because he does not suffer from autism, mental retardation, cerebral palsy, epilepsy, or from a disabling condition under the "fifth category" as set forth in Welfare and Institutions Code section 4512, subdivision (a), or California Code of Regulations, title 17, section 54000. Based on the above determination, the Service Agency denied services to claimant under the Lanterman Act. Claimant filed a request for a hearing and this matter ensued.

3. Claimant's uncle testified that claimant exhibits certain behaviors on a daily basis. For example, claimant must be reminded to do his chores; he has a poor memory; he does not follow directions; and he does not communicate well because he has difficulty articulating words. In addition, claimant's uncle noted that claimant is not concerned with personal safety.

4. Claimant's aunt testified that claimant loses interest or becomes easily distracted when engaged in an activity; he spins and rocks back and forth; he is easily intimidated; he does not process information well; and needs to be reminded to practice good hygiene.

5. On June 6, 2012, Larry Gaines, Ph.D., a clinical psychologist, evaluated claimant. Dr. Gaines assessed claimant utilizing the Wechsler Intelligence Scale for Children-IV; Autistic Diagnostic Interview - Revised; the Autism Diagnostic Observation Scale Module 3; and the Vineland Adaptive Behavior Scales (Vineland). During the evaluation, claimant made good eye contact, answered questions and cooperated well, although he exhibited a "restricted language style." In his report, Dr. Gaines noted that previous psychological evaluations ruled out Autistic Disorder and indicated that claimant was functioning in the average to low average range of intellectual ability.

- (a) On the WISC-IV, claimant achieved a Verbal Comprehension of 79; a Perceptual Reasoning of 73; and a Full Scale of 74. According to Dr. Gaines, claimant was functioning in the borderline range of intellectual ability. Dr. Gaines noted that claimant performance has deteriorated over time. Dr. Gaines speculated that this deterioration could be a reflection of the impact of behavioral difficulties interfering with his acquiring new knowledge and information.
- (b) On the Vineland regarding claimant's adaptive behavior, claimant's language skills fell within the mild range of deficiency. Claimant was able to talk in sentences, and could describe experiences and have a conversation, although he used a simplistic sentence structure. Claimant's daily living adaptive behavior fell within the borderline range of performance. He is able to take care of his basic self-help needs. He knows how to feed himself, dress himself, and care for personal hygiene. However, he does require assistance with taking medication. Claimant was able to identify day and date, and can tell time on a digital clock. He uses money but does not make change correctly. He is not yet trusted to be dropped off to go shopping or to see a movie.

- (c) On the Vineland in the area of social functioning, claimant's skills fell within the borderline range of performance. Claimant reported that he has friends at school but did not have friends visit the family house. Dr. Gaines noted in his report that claimant was described as having the symptoms of Attention Deficit/Hyperactivity Disorder. He has a short attention span, and impulse control problems, which are exhibited by his proclivity to interrupt and disrupt in the classroom. Claimant could identify friends, and he indicated that he was happy when interacting with family and friends.
- (d) Dr. Gaines also evaluated claimant for Autistic Disorder. Based on Dr. Gaines observations and interview with claimant's uncle, Dr. Gaines opined that claimant did not meet the clinical criteria of Autistic Disorder. Claimant was able to share aspects of his experiences, was able to describe aspects of a picture, was able to recognize facial expressions, and showed good mimicking of emotion. Claimant was also able to coordinate instruction, make eye contact, and gesture while performing a demonstration task. During the evaluation, claimant did not exhibit idiosyncratic language.
- (e) Based on his evaluation, Dr. Gaines opined that claimant does not meet the DSM IV criteria for Autistic Disorder. Dr. Gaines diagnosed claimant with Attention Deficit/Hyperactivity Disorder, Phonological Disorder under Axis I, and Borderline Intellectual Functioning under Axis II. Dr. Gaines deferred diagnosis to mental health for behavior disorders involving lying and stealing.

6. Sandi Fischer, Ph.D., testified at the hearing on behalf of the regional center. Dr. Fischer reviewed numerous school records and prior evaluations of claimant. Dr. Fischer testified that based on her review of these records, claimant did not qualify for regional center services. For example, a preschool assessment report in 2002, noted that claimant exhibited certain autistic behaviors but did offer a clear diagnosis of Autistic Disorder. In August 2002, Mandana Moradi, Psy.D., performed an evaluation of

claimant. Dr. Morandi opined that claimant did not have Autistic Disorder, but that claimant had significant delays in expressive language. In July 2007, Christine Tanimura, Psy.D., evaluated claimant and diagnosed claimant with Pervasive Developmental Disorder, Not Otherwise Specified. Dr. Tanimura noted in her report that claimant exhibited inattention, impulsivity, and hyperactivity. However, Dr. Tanimura did not cite any common symptoms associated with Autistic Disorder. Claimant's Individualized Education Program (IEP) dated February 23, 2011, indicates that claimant qualified for special education based on a specific learning disability. Claimant's IEP dated May 31, 2011, also cites a specific learning disability as the qualifying basis for special education.

7. Dr. Fischer considered all of the records set forth in Factual Findings 5 and 6. Dr. Fischer also reviewed the criteria for regional eligibility based on the fifth category, as well as the DSM IV criteria for Autistic Disorder and Mental Retardation. Dr. Fischer opined that respondent did not meet the eligibility requirements for regional center services because claimant does not have Autistic Disorder or Mental Retardation. Further, claimant does not qualify based on the fifth category. Dr. Fischer's testimony was thorough and convincing.

8. Claimant has difficulty relating to his classmates at school and at times engages in disruptive conduct by talking loudly during class to gain attention. Claimant also suffers from speech and language delays. This is evidenced by his uncle's testimony and the documented observations set forth in claimant's IEP. However, the evidence did not establish that claimant suffers from Autistic Disorder or from a condition that is similar to mental retardation or that requires treatment similar to that required for individuals with mental retardation.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 17, section 54000 defines "developmental disability" as a disability attributable to mental retardation, cerebral

palsy, epilepsy, autism, or other conditions closely related to mental retardation, or that require treatment similar to that required for individuals with mental retardation. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as follows:

(l) "Substantial disability" means 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 determined by the regional center, and as appropriate to the age of the person:

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

2. California Code of Regulations, title 17, section 54001 defines substantial disability as follows:

- (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.

3. For Claimant to be eligible for regional center services, it must be determined that he suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical.

4. Claimant does not have cerebral palsy, epilepsy or mental retardation, and the evidence did not establish that claimant suffers from Autistic Disorder. Therefore, claimant is not eligible for regional center services based on any of the above conditions pursuant to Welfare and Institutions Code section 4512, subdivision (a),

5. Claimant is not eligible for regional center services based on the fifth category because the evidence did not establish that he suffers from a disabling condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000.

6. In this case, since claimant did not prove that he has a qualifying condition, it is unnecessary to determine whether he has a major impairment of cognitive and/or social functioning which has resulted in functional limitations in three or more of the above referenced areas. Claimant's evidence relied primarily on school evaluations that referenced his autistic-like behaviors and characteristics, but this

evidence did not describe him as person with a qualifying condition under the Lanterman Act. In any event, the standard for finding a child eligible for special education services is different and more inclusive than the standard for finding a child eligible for regional center services.

ORDER

The North Los Angeles County Regional Center's determination that claimant is not eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: October 15, 2012

A handwritten signature in black ink that reads "Humberto Flores". The signature is written in a cursive style and is positioned above a horizontal line.

HUMBERTO FLORES

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.