

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DANIEL A.

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH NO. 2012100630

DECISION

Administrative Law Judge (ALJ) Humberto Flores, Office of Administrative Hearings, heard this matter in Bakersfield, California, on November 26, 2012.

Jeffrey Popkin, Associate Director, represented the Kern Regional Center (regional center). Daniel A. (claimant) appeared at the hearing and was represented by his mother.

ISSUES

1. Claimant, who is a regional center consumer based on his diagnosis of autism and moderate mental retardation, is requesting eligibility based on a diagnosis of epilepsy.
2. If found eligible on the basis of epilepsy, is claimant entitled to receive transportation services to and from Los Angeles for services and medical appointments that address his epileptic symptoms?

FACTUAL FINDINGS

1. Claimant is a five-year-old boy whose qualifying conditions are autism and moderate mental retardation. According to his Annual Review (exhibit 7), claimant has substantial impairments in communication, self care, learning and self direction. Claimant contends that he should also be found eligible for regional center services based on his diagnosis of epilepsy.

2. Claimant lives with his family in Wasco, California.

3. Claimant is asking the regional center to fund round-trip transportation costs from his home to Kaiser Permanente in Los Angeles, California, where claimant receives treatment related to his epilepsy.

4. Claimant submitted a request for additional regional center eligibility based on his diagnosis of epilepsy. Claimant also requested funding for transportation costs for travel to and from health care facilities and therapeutic facilities to address his epileptic symptoms. On September 12, 2012, the regional center notified claimant in a Notice of Proposed Action of its decision to deny claimant's funding request for transportation costs. The regional center based its decision on California Code of Regulations, title 17, section 54001, which provides that eligibility for regional center services must be based on a qualifying condition that causes a substantial disability.

5. Claimant timely filed a Request for Fair Hearing.

6. Claimant's mother testified that the family lives in a rural area in Kern County where there are no health care professionals who have the expertise to treat claimant's severe epileptic symptoms. Claimant's mother does not have a driver's license and her husband cannot take time off from work to drive claimant to Los Angeles to obtain medical services. Therefore, claimant's mother has had to impose on non-immediate family members to drive to Los Angeles so that claimant can see the neurologist.

7. Claimant's seizures started when he was three years old. In 2011 claimant's

seizures worsened. On July 11, 2011, claimant had five seizures. After the last seizure, claimant was taken to the emergency room at Bakersfield Memorial Hospital for treatment. Claimant had two more seizures in July. On November 13, 2011, claimant had a seizure that lasted 10 minutes. On January 7, 2012, claimant had another 10 minute seizure. On February 22, 2012, claimant had yet another seizure that lasted eight minutes. Pursuant to medical advice, claimant's mother administered medicated suppositories during seizures that lasted more than five minutes.

8. Claimant has been prescribed and is currently taking four different medications to treat his epileptic symptoms.

LEGAL CONCLUSIONS

1. In 1977, the California Legislature enacted the Lanterman Developmental Disabilities Services Act (the Lanterman Act) "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (See, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.). Under the Lanterman Act, the "State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (Welf. & Inst. Code, § 4501.)

2. 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; and
- (7) Economic self sufficiency.

3. 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; and
- (G) Economic self sufficiency.

4. For claimant to be eligible for regional center services, it must be shown 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.

5. Claimant has established that in addition to his autism and mental retardation, he also suffers from epilepsy. He has experienced severe and long lasting seizures over the past year. Claimant has major impairment of cognitive and/or social functioning which has resulted in functional limitations in three or more areas of major life activity. The regional center did not submit legal support for its position to separate one qualifying condition and deny services for that condition when claimant suffers from a combination of three qualifying conditions, each contributing to claimant's substantial impairments. Therefore, pursuant to Welfare and Institutions Code section 4512, subdivision (a), claimant is eligible for regional center services based on his epileptic condition as well as his previously determined qualifying conditions of autism and mental retardation.

6. Claimant established that his visits to and from Kaiser Permanente in Los Angeles, California, were for treatment that was medically necessary and directly related to his diagnosis of epilepsy.

ORDER

1. The decision of the regional center denying eligibility for claimant to receive regional center services based on a diagnosis of epilepsy is overruled. Claimant's appeal is granted.

2. The decision of the Kern Regional Center denying funding for Claimant's transportation to and from the Kaiser Permanente facilities in Los Angeles, California, is overruled. Claimant's appeal is granted. The Regional Center shall provide funding for the above referenced transportation costs.

DATED: December 12, 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.