

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAM D.,

Claimant,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2013010669

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Fresno, California, on March 13, 2013.

Claimant's mother represented claimant.

Shelley Celaya, Client Appeals Specialist, represented the service agency, Central Valley Regional Center (CVRC).

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is claimant eligible for regional center services?

FACTUAL FINDINGS

1. Claimant is a nine-year-old boy who lives with his family, and receives special education services from his local school district.

2. On January 30, 2012, claimant was referred to CVRC for an assessment of eligibility for regional center services. Specifically, the referral was made to determine whether claimant was eligible under three categories of eligibility: autism, mental retardation, or the "fifth category." The so-called fifth category is for people who suffer from a disabling condition similar to mental retardation or who require treatment similar to that required for individuals with mental retardation.

3 An intake assessment occurred on March 28, 2012, and a psychological evaluation was conducted May 9 and July 19, 2012. On December 13, 2012, CVRC's eligibility team determined claimant was not eligible for CVRC services

4. On December 13, 2012, CVRC issued a Notice of Proposed Action, informing claimant that CVRC had determined claimant was not eligible for regional center services.

5. On January 22, 2013, claimant's mother filed a Fair Hearing Request, appealing CVRC's determination that claimant is not eligible for services.

PSYCHOLOGICAL ASSESSMENTS OF CLAIMANT'S INTELLECTUAL ABILITY

6. Carol Sharp, Ph.D., staff psychologist at CVRC, reviewed claimant's records and testified at hearing. The most recent assessment of claimant was done by Stanley F. Littleworth, Ph.D. Dr. Littleworth assessed claimant on May 9 and July 19, 2012. He administered the Wechsler

Intelligence Scale for Children – Fourth Edition (WISC-IV) and found claimant to have a verbal comprehension score of 81 (Borderline), a perceptual reasoning score of 98 (Average), a working memory score of 80 (Borderline), a processing speed score of 75 (Borderline), and a full scale IQ score of 80 (Borderline). Regarding claimant's intellectual ability, Dr. Littleworth concluded:

Intellectual testing conducted during the current evaluation suggests that [claimant] is functioning in the Borderline to Average range of intelligence. He achieved a Full Scale IQ of 80 on the WISC-4. [His] nonverbal abilities are superior to his verbal abilities which cause his Full Scale IQ to be vulnerable as a measure of overall intellectual functioning. [His] Perceptual Reasoning/nonverbal IQ of 98 is likely the most reliable measure of his true abilities.

On April 24, 2008, when claimant was four years, six months old, he was assessed by Laurie Rabens, Ph.D. Dr. Rabens administered the Leiter International Performance Scale, an assessment of nonverbal intellectual abilities. Claimant obtained a Nonverbal IQ score of 113 (high average) at that time.

7. Dr. Sharp testified that people with mental retardation have IQ scores under 70. She also testified that people eligible for regional center services under what is referred to as the "fifth category," typically have IQ scores near 70. The fifth category of eligibility is for people who have a

condition closely related to mental retardation or requiring treatment similar to that required of people with mental retardation. Because claimant's non-verbal IQ scores have been 113 (high average) and 98 (average) Dr. Sharp does not believe claimant suffers from mental retardation or condition closely related to mental retardation.

PSYCHOLOGICAL ASSESSMENT OF CLAIMANT RELATED TO AUTISM

8. Dr. Sharp testified that she based her conclusions about claimant's eligibility primarily on a review of claimant's records. She did meet claimant in her office, but did not conduct a formal assessment of him. She does not believe claimant suffers from autism. Claimant has the ability to be very concerned about the feelings of others, and to demonstrate empathy. This ability is typically not found in people with autism. Dr. Sharp also stated that, to her knowledge through review of claimant's records, he has never been given a diagnosis of autism.

9. Dr. Littleworth also assessed claimant for autism and concluded that he does not have autism but does have Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS). Dr. Littleworth administered tests and rating scales including the Vineland Adaptive Behavior Scales – Second Edition (Vineland –II), the Social Communication Questionnaire (SCQ), and the Gilliam Autism Rating Scale – Second Edition (GARS-2).

Dr. Littleworth obtained information for the Vineland –II through an interview with claimant's mother, clinical observation of claimant, and a review of records. On the Vineland II, claimant received an Adaptive Behavior Composite score of 68, which places his overall adaptive functioning within the range of Mild Deficits.

The SCQ is a 40 question screening test utilized as part of a complete assessment for the presence of an Autistic Disorder. A total score of 15 and above suggests the probability of behaviors which are consistent with an Autistic Disorder. Claimant's mother completed this questionnaire, and claimant received a total score of 31, which is significantly elevated, suggesting claimant's mother perceives him as a child exhibiting a significant array of behaviors consistent with autism.

The GARS-2 is a standardized instrument designed for assessment of persons with autism and other severe behavioral disorders. The GARS-2 was completed by claimant's mother. On the GARS-2, claimant received an Autism Index of 151, placing him above the 99th percentile compared to other individuals his age who display symptoms of autism. This score places claimant in the Very Likely range for the presence of autism.

In his assessment report, Dr. Littleworth compared the data he obtained regarding claimant with the Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition (DMS-IV) criteria for autism. The DSM-IV is published by the American Psychiatric Association and provides a common language and standard criteria for the classification of mental disorders. His report states:

Children with Autism share some critical developmental and behavioral characteristics. In particular, they have deficiencies in Communication, Socialization, and may exhibit Stereotyped Behaviors. Children who meet at least 6 of the 12 DSM-IV criteria outlined below may qualify for a diagnosis of Autism. Those

who meet less than 6 criteria may qualify for a lesser diagnosis of Pervasive Developmental Disorder, NOS. The following is a comparison of [claimant's] behavior with the DSM-IV criterion for Autism.

- 1) Qualitative impairment in social interaction, as manifested by at least two of the following:
 - a. Marked impairment in the use of multiple non-verbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction. *[Claimant] has consistently shown problems with inconsistent eye contact. He continues to have difficulty with modulating his gaze, although he appears to have improved with training at home and in school. **Criterion Partially Met.***
 - b. Failure to develop peer relationships appropriate to developmental level. *[Claimant] has average nonverbal intelligence. His overall intellectual level is likely in the upper Borderline to low Average range of functioning. [Claimant's] school records describe him as "loving to play with friends at recess...He does cry at times if he feels he is not getting the attention he needs from peers. He sometimes misinterprets body language of peers thinking that they are mad at him when they are not." **Criterion Not Met.***
 - c. A lack of spontaneous seeking-to-share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, pointing out objects of interest). *Prior evaluations have*

*reported mixed observations as to whether or not [claimant] engages in activities which may be defined as Joint Attention. On the SCQ, [claimant's mother] reported that at ages 4 to 5 he did not show her things that interested him to engage her attention. Most of the time during playtime in the office, he wandered around the room and did not play with the toys. He did not engage with the examiner in activities of joint attention. **Criterion Met.***

- d. Lack of social or emotional reciprocity. [Claimant] appears to recognize some basic feelings of others. He pats his mother affectionately when she is sad or upset. **Criterion Not Met.***
- 2) Qualitative impairments in communication as manifested by at least one of the following:
- a. Delay in, or total lack of, development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). [Claimant's mother] recalls that [claimant] uttered single words by 16 months, but did not use meaningful, communicative phrases until after age 2. At age 4 to 5, his mother describes [claimant] as using gestures to communicate. **Criterion Not Met.***
- b. In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others. [Claimant] is willing to converse with others, however, it is difficult for him to sustain a conversation. He has trouble staying on topic, and may ask a series of inappropriate questions. **Criterion Met.***

- c. Stereotyped and repetitive use of language or idiosyncratic language. *[Claimant's] language development has been characterized by echolalia and repetitive speech. He continually asks his father how old he is. He also repeats words which seem out of context. **Criterion Met.***
 - d. Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level. *This is a major area of deficiency for [Claimant]. He does not engage in spontaneous make-believe play or social imitative play appropriate to his developmental level. His play is more on a functional level rather than on an imaginative/make-believe level. **Criterion Met.***
- 3) Restricted, repetitive and stereotyped patterns of behavior, interests, and activities as manifested by at least one of the following:
- a. Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal whether in intensity or focus. *[Claimant] has had a period when he was preoccupied with shapes. In school there are times when he fixates on certain toys and will only play with them. Otherwise he does not appear to manifest this behavior to the extent indicated. **Criterion Not Met.***
 - b. Apparently inflexible adherence to specific, non-functional routines or rituals. *[Claimant] is reported to be very routine oriented as indicated previously. For example, he showers himself nightly and is "exceedingly neat and his things are kept*

*very orderly.” His mother states that he has certain things that he compulsively does every day. He doesn’t appear to follow any non-functional routines or rituals. **Criterion Not Met.***

- c. Stereotyped and repetitive motor mannerisms (e.g. hand or finger flapping, or twisting, or complex whole-body movements). *[Claimant] runs with his arms out from his sides as if trying to balance himself as he runs. When excited or frustrated, he tenses his fists and raises the backs of them to the sides of his cheeks. **Criterion Met.***
- d. Persistent preoccupation with parts of objects. *[Claimant] has been observed to line his cars up and spin car wheels. However, he doesn’t appear to have a strong preoccupation with parts of objects. **Criterion Not Met.***

(Italics and bold in original)

10. Dr. Littleworth concluded that claimant meets only five of the six criteria needed to make a diagnosis of Autistic Disorder, and therefore diagnosed claimant with Pervasive Developmental Disorder, NOS, and not Autistic Disorder.

TESTIMONY OF CLAIMANT’S MOTHER

11. Claimant’s mother testified at hearing. She is very concerned about her son. She testified that his school staff calls her at home when he is upset or is behaving inappropriately and they need her assistance. He cries and tells her he believes “everyone hates him.” She is requesting help from CVRC because “his academic level is dropping” and he is acting like a six or seven year old.

DISCUSSION

12. While claimant's mother has concerns about claimant's development, the assessments and evaluations conducted by the experts do not show that claimant qualifies for regional center services under any of the three categories identified by claimant's mother. Consequently, claimant's mother did not establish that claimant is eligible for services from CVRC.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for providing services and supports for persons with developmental disabilities and an obligation to help them, which it must discharge. (Welf. & Inst. Code, § 4501.) As defined in the act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely, and that constitutes a substantial disability for the individual. Developmental disabilities include mental retardation, cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a)).

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54001, subd. (c).)

2. "Substantial handicap" is defined by regulations to mean "a condition which results in major impairment of cognitive and/or social

functioning.” (Cal. Code Regs., tit 17, § 54001, subd. (a).) Because an individual’s cognitive and/or social functioning is multifaceted, regulations provide that the existence of a major impairment shall be determined through an assessment that addresses aspects of functioning including, but not limited to: (1) communication skills; (2) learning; (3) self-care; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. (Cal. Code Regs., tit. 17, § 540001, subd. (b).).

3. Claimant has the burden of proof in this matter.

4. Evidence provided at hearing supports CVRC’s finding that claimant does not have autism, mental retardation, or a condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

5. No evidence was offered that claimant suffers from cerebral palsy, or epilepsy.

//

//

ORDER

Claimant’s appeal from CVRC’s decision that claimant is not eligible for regional center supports and services under the Lanterman Act is DENIED.

DATED: March 25, 2013

ELAINE H. TALLEY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)