

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GINA T.,

Claimant,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2013020583

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Chico, California, on April 23, 2013.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Phyllis J. Raudman, Attorney at Law.

Claimant was present and represented herself

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

ISSUE

Is claimant eligible for regional center services based on a qualifying condition of autism pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?¹

FACTUAL FINDINGS

1. Claimant is a thirty-four-year old woman seeking services from FNRC because she believes she qualifies as an individual with autism. She apparently sought evaluation for autism at the encouragement of a friend, Jeff Daub, who has researched autism and believes claimant possesses characteristics similar to those exhibited by individuals with autism. Claimant has been diagnosed and treated for Bipolar II Disorder and has a history of major depression, manic episodes and panic attacks. She has been treated with various medications, including Lithium and Abilify, to help stabilize her condition. Claimant lives independently and has three children who currently live with their father.

2. The FNRC Eligibility Review Team met on January 9, 2013, and, after reviewing claimant's medical records, Social Assessment dated January 3, 2013, and parental input, concluded that claimant did not have a qualifying developmental disability. Therefore, she was found "not eligible" for regional center services. The Team also determined that "an assessment/evaluation for autism is not needed due to no evidence of autism prior to age 18."

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

3. As a result of the eligibility team determination, a Notice of Proposed Action (NOPA) was issued on January 9, 2013, informing claimant that FNRC determined she is not eligible for regional center services. The NOPA stated:

Reason for action: [Claimant] does not have an intellectual disability and shows no evidence of epilepsy, cerebral palsy, autism, or disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability. Eligibility Review Team has determined that an assessment/evaluation for autism is not needed due to no evidence of autism prior to age 18. Eligibility Review (multi-disciplinary team) determined [claimant] was not eligible for FNRC services based on Medical dated 02/14/11-04/20/11 by Ahmed Abouesh, M.D. Social assessment dated 01/03/13 by Sue Wagner, Intake Specialist. Parental input dated 12/26/12 by [C.T.], parent.

4. Claimant filed an undated Fair Hearing Request which contained the following reason for requesting the hearing:

They could not find my doctor or school records and base all information on my 79 year old mother that was in denial that I have autism. (She has pages of symptoms proven [sic] that I have it).

Claimant sought:

My school records and doctor records found as well as more people's feedback besides my mother.

5. An informal meeting was held on February 20, 2013, with claimant, her friend Jeff Daub², and FNRC Case Management Supervisor Marlene McCollum in attendance. At this meeting claimant informed the regional center that she had pursued an independent autism assessment with Sutter Health in Sacramento, and received an Autism Spectrum diagnosis. She signed a release of information to allow FNRC to review the Sutter Health record. She also shared symptoms she had and was experiencing that she believed were associated with an Autism Spectrum diagnosis.

Based on the information presented at this informal meeting, the regional center's Executive Director, Laura Larsen, deferred the eligibility decision pending an autism assessment and a review of records from Sutter Health.

6. FNRC requested educational records from El Dorado Union High School District and received the following response, dated December 5, 2012, from the Records Department:

You have requested records for [claimant]. We have no records for [claimant]. Records of this nature would have to be obtained from the student themselves. We have no records dating back that far.

7. Claimant was referred to Sutter Health by Maria C. Cottrell, M.D. for an evaluation for autism. The evaluation was conducted by Shubhangi Chitnis, M.D., on February 15, 2013. Dr. Chitnis' report, dated March 5, 2013, noted that claimant was there "for an evaluation for autism. She has received several different psychological diagnosis

² Mr. Daub is also referred to as claimant's "significant other" throughout the records.

since young age including ADHD, OCD, Bipolar, schizoaffective disorder, anxiety, etc.”
“[Claimant] is on disability for mental illness.”

Dr. Chitnis concluded as follows:

ASSESSMENT:

[Claimant] is a 34 year old female with history and symptoms suggestive of more psychological symptoms likely anxiety, personality or mood related disorder rather than autism.

8. There was no evidence of an Autism Spectrum diagnosis by Sutter Health.
9. Clinical Psychologist J. Reid McKellar, Ph.D. evaluated claimant on March 25, 2013. Dr. McKellar reviewed documents, consulted with claimant’s friend, Mr. Daub, and administered the following testing instruments:

Autism Diagnostic Observation Schedule-2 Module 4 (ADOS-2)

Wechsler Adult Intelligence Scale-IV (WAIS-IV)

Adaptive Behavior Assessment System-Second Edition (ABAS-II)

10. Dr. McKellar’s report dated April 15, 2013, contained the following summary and conclusions:

[Claimant] presented for evaluation at the request of the Far Northern Regional Center. [Claimant] is being treated for Bipolar II Disorder and she requested evaluation due to her

belief that she meets diagnostic criteria for Asperger's Disorder.

[Claimant] was recently evaluated for an Autism Spectrum Disorder by Sutter Health in Sacramento, and the evaluators concluded that [claimant's] functional impairment was due to the presence of Bipolar Disorder, and potentially from the presence of personality disturbance.

During this evaluation process, [claimant] presented as having a very strong desire to be diagnosed with Asperger's Disorder and [claimant's] significant other verbalized an unequivocal opinion that [claimant's] primary diagnosis should be Asperger's Disorder.

[Claimant's] childhood history had been reported to be within developmental expectations until [claimant] was in adolescence, at which time she reportedly exhibited symptoms of Obsessive Compulsive Disorder. [Claimant] did not allow the writer access to [claimant's] parents to corroborate the report [claimant's] mother made during the Far Northern Regional Center assessment process, thus the diagnostic conclusions made as a result of this evaluation are based largely on a review of collateral documentation and [claimant's] evaluation results.

During evaluation, [claimant] spoke at length about her symptoms of Asperger's Disorder, the majority of which were

more symptomatic of an attention deficit issue. Symptoms that [claimant] related that could be consistent with an Autism Spectrum Disorder were not exhibited by [claimant] during evaluation, and in fact were in large part contradicted during the evaluation process. The same holds true of the information provided by [claimant's] significant other. Other than [claimant's] purposeful, verbally choreographed effort to briefly demonstrate a repetitive behavior, she presented as a woman with very good communication skills, excellent integration of verbalizations and gestures, fair social insight and affectively congruent facial expressions.

During the administration of both the WAIS-IV and the ADOD-2, [claimant] seemed to intentionally produce symptoms for a purpose, and her self awareness during these attempts belied [claimant's] contention that she engages in involuntary "Autistic" behaviors.

[Claimant] did present during evaluation with a neurotic self centered style of relating, and a corresponding need to be unique, that suggested the presence of personality disturbance. [Claimant] is quite aware of her need for validation and attention, her tendency to get easily frustrated and her impulsive behavior. [Claimant] acknowledged a history of cutting, a history of unstable relationships, poor boundaries, mood instability, suicidal ideation and unstable self image.

Clinical records indicate that [claimant] also has a history of transient psychotic symptoms.

The results of the ADOS-2 and DSM-IV ³symptom review clearly do not support the presence of an Autism Spectrum Disorder. However, [claimant] does meet diagnostic criteria for a cluster B personality disorder, specifically Borderline Personality Disorder.

Clinical Diagnoses:

AXIS I: 296.89 Bipolar II Disorder

AXIS II: 301.83 Borderline Personality Disorder

³ The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) is the current standard for diagnosis and classification. It is a multi-axial system which involves five axes, each of which refers to a different domain of information as follows:

Axis I	Clinical Disorders
	Other Conditions That May Be a Focus of Clinical Attention
Axis II	Personality Disorders
	Mental Retardation
Axis III	General Medical Conditions
Axis IV	Psychosocial and Environmental Problems
Axis V	Global Assessment of Functioning

AXIS III: deferred

AXIS IV: I

AXIS: 60

11. DSM-IV-TR section 299.00, Autistic Disorder, states:

The essential features of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests. Manifestations of the disorder vary greatly depending on the developmental level and chronological age of the individual... The impairment in reciprocal social interaction is gross and sustained . . .The impairment in communication is also marked and sustained and affects both verbal and nonverbal skills.

To diagnose Autistic Disorder, it must be determined that an individual has at least two qualitative impairments in social interaction; at least one qualitative impairment in communication; and at least one restricted repetitive and stereotyped pattern of behavior, interests, or activities. One must have a combined minimum of six items from these three categories. In addition, delays or abnormal functioning in at least one of the following areas, with onset prior to age three, is required: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.

12. In analyzing claimant's functioning in relation to this criterion, Dr. McKellar found that in the area of Reciprocal Social Interaction, "[claimant] meets criteria for one item at sub-threshold." In the Communication area, "[claimant] meets criteria for one item at sub-threshold." In the Restricted and Repetitive Behaviors, Interests or Activities domain, "[claimant] does not meet criteria for any of the items".

In summary, Dr. McKellar found that “the DSM-IV review of symptoms indicates [claimant] meets criteria for two items at sub-threshold,” which would be insufficient for a diagnosis of Autistic Disorder.

13. Dr. McKellar explained that the Autism Diagnostic Observation Schedule, Second Edition is a semi-structured, standardized assessment of communication, social interaction, play/imaginative use of materials, and restricted and repetitive behaviors for individuals referred due to the possible presence of an Autism Spectrum Disorder. He concluded that “[claimant’s] performance on the ADOS-2 resulted in a total score of 4. “[Claimant’s] obtained score is well below the cutoff for an Autism Spectrum ADOS-2 classification. Although [claimant] detailed numerous symptoms that she felt are part of her Autistic presentation, she exhibited almost none of these behaviors with the exception of a poor attention span.”

14. The ABAS-II is an instrument designed to provide a norm-referenced assessment of adaptive skills for individuals ages birth to 89 years with a range of adaptive skills and broad domain scores corresponding to the specifications identified by the America Association on Mental Retardation and the DSM-IV-TR. Claimant did not return the ABAS for scoring.

15. The WAIS-IV is an individually administered clinical instrument designed to assess cognitive capacity. Claimant attained a Full Scale score of 79, which is in the borderline to low average range of intelligence. However, Dr. McKellar concluded that claimant “did not seem to give her best effort on the testing administration” and her “resultant scores likely represent an underestimate of her cognitive potential.”

16. Lisa Benaron, M.D., FAAP, FACP, is the Medical Director for FNRC. She has extensive experience with Autism Spectrum Disorders. Dr. Benaron provided extensive testimony regarding the requirements for an autism diagnosis and reviewed and explained the testing results from both Sutter Health and Dr. McKellar. She discussed the DSM-IV

criteria noting that claimant scored “well below the cut-off for an Autism Spectrum Disorder.” Dr. Benaron stated that the type of symptoms claimant is experiencing are more likely attributed to her psychological conditions and opined that claimant’s “constellation of psychological conditions have caused her issues.”

Dr. Benaron also reviewed reports from Chico Behavioral Health and Therapeutic Solutions which documented claimant’s history of diagnosis and treatment for her Bipolar Disorder. These reports contain information outlining claimant’s condition as well as medication management

Dr. Benaron testified persuasively that claimant does not meet the criteria for an Autism Spectrum diagnosis. She agreed that claimant has significant needs and offered to meet informally with claimant at the conclusion of the hearing to offer suggestions for assistance. Claimant agreed to this informal meeting.

17. There was no evidence presented that claimant has autism. Nor was there evidence of mental retardation, cerebral palsy, epilepsy, or a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500, et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability as follows:

“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....[T]his 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 [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

2. California Code of Regulations, title 17, section 54000, further defines the term "developmental disability" as follows:

- (a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.
- (b) The Development Disability shall:
 - (1) Originate before age eighteen;
 - (2) Be likely to continue indefinitely;
 - (3) Constitute a substantial disability for the individual as defined in the article.
- (c) Developmental Disability shall not include handicapping conditions that are:
 - (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
 - (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental

retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

- (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

3. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as:

- (l) The existence of significant functional limitation 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.

4. California Code of Regulations, title 17, section 54001, provides:

(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 functional limitation, 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:
 - (1) Receptive and expressive language.
 - (2) Learning.
 - (3) Self-care.
 - (4) Mobility.
 - (5) Self-direction.
 - (6) Capacity for independent living.
 - (7) 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, parents, guardians/conservators, 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.

5. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512. Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

6. It was not disputed that claimant exhibits functioning deficits or impairments. She has been diagnosed with Bipolar II and has a history of various

psychological concerns. However, regional center services are limited to those individuals meeting the stated eligibility criteria. The evidence presented did not prove that claimant's current impairments resulted from a qualifying condition which originated and constituted a substantial disability before the age of eighteen. There was no evidence to support a finding of autism, mental retardation or a condition closely related to mental retardation, or requiring treatment similar to that required for individuals with mental retardation. It was not established that claimant has cerebral palsy or epilepsy. Accordingly, she does not have a developmental disability as defined by the Lanterman Act.

7. Claimant does not meet the eligibility requirements for services under the Lanterman Act and is therefore not eligible for services through FNRC.

ORDER

Claimant's appeal from the Far Northern Regional Center's denial of eligibility for services is denied.

DATED: May 1, 2013

SUSAN H. HOLLINGSHEAD

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 the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)