

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

E.G., Jr.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013070036

DECISION

This matter was heard on August 27, 2013, at the Harbor Regional Center in Torrance, California, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

E.G., Jr. (Claimant) was represented by his parents, E.G. and M.A., (father and mother, respectively, or parents collectively).

Harbor Regional Center (Service Agency or Regional Center or HRC) was represented by Gigi Thompson, Manager Rights Assurance.

Oral and documentary evidence was presented, argument was heard, and the matter was submitted on August 27, 2013.

ISSUE

The parties agreed that the following issue is to be resolved: Is Claimant eligible for services from the Service Agency? Specifically, does Claimant's diagnosis of autism result in him being "substantially disabled" for purposes of eligibility consideration?

FACTUAL FINDINGS

1. Claimant had his third birthday in June 2013. He had previously participated in the Regional Center's Early Start program. In May 2013, the Regional Center sent Claimant a letter informing him and his family that he was not eligible for services provided by the Regional Center. In June 2013, Claimant filed a Fair Hearing Request which led to the instant hearing.
2. The Regional Center staff has evaluated Claimant. They have concluded that he has a diagnosis of autism spectrum. However, the Regional Center contends that Claimant is not eligible for services because, despite his qualifying diagnosis, he is not "substantially handicapped or disabled" because of his disability. In its evaluation of Claimant, and in determining whether or not Claimant is "substantially disabled" in a particular area, the Regional Center looked for a 33 percent delay, or greater, in at least three of the five following categories: communication skills, learning, self-care, mobility, and self-direction. Dr. Karen Kelly's psychological report found no substantial disability in any of these five areas. Her report was prepared in January 2013, over approximately nine months ago.
3. However, the Regional Center acknowledged that in some of the five areas, it was a "close call." As such, the Regional Center offered to reevaluate Claimant in September 2013, but parents declined this offer. Susan Laird, Manager-Intake Team, testified that because parents are reporting some of Claimant's conduct has changed, and because Dr. Kelly's report was done when Claimant was only two years and five months of age, Claimant's condition may have changed now that he is almost three years and three months of age. She continues to believe that Claimant should be reevaluated for eligibility. Ms. Laird's candid testimony was convincing.

4. Claimant resides with his parents and will begin school on September 4, 2013. He will be attending a special education class. Parents are very caring and loving people who want what is best for their son. Mother testified that Claimant repeats his words, does not make eye contact, is aggressive, and only plays by himself. However, the parents' testimony alone was not sufficient to establish that Claimant's diagnosis of autism result in him being "substantially handicapped/disabled" as the law requires. No other documents, such as other medical reports, were offered by Claimant.
5. Various statutes and regulations relating to eligibility may apply to Claimant's request for services. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability.
6. "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.
7. As relevant here, California Code of Regulations (CCR), title 17, section 54000, defines "developmental disability" and requires that the disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

8. These three exclusions from the definition of "developmental disability" CCR, title 17, section 54000, are further defined therein. Impaired intellectual or social functioning which originated as a result of a psychiatric disorder, if it is the individual's sole disorder, would not be considered a developmental disability. "Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning has been seriously impaired as an integral manifestation of the disorder."
9. Nor would an individual be considered developmentally disabled whose only condition was a learning disability (a significant discrepancy between estimated cognitive potential and actual level of educational performance) which is not "a result of generalized mental retardation, educational or psycho-social deprivation, [or] psychiatric disorder" Also excluded from the definition of "developmental disability" are solely physical conditions such as faulty development, not associated with a neurological impairment, which results in a need for treatment similar to that required for mental retardation.
10. Also useful are the following provisions of CCR, title 17, section 54001:
 - "(a) „Substantial handicap’ [as required to find a "developmental disability" under CCR section 54000] means a condition which results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential."
 - "(b) Since an individual's cognitive and/or social functioning are many-faceted, the existence of a major impairment shall be determined through an assessment which shall address 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;
- (7) Economic self-sufficiency.”¹

11. It was not established that the Service Agency’s denial of eligibility was incorrect. Claimant does have a qualifying developmental disability, namely autism, but it was not established that his disability results in him having a “substantial disability or handicap.”

LEGAL CONCLUSIONS AND DISCUSSION

1. Throughout the applicable statutes and regulations (Welfare & Institution Code §§ 4700 - 4716, and CCR, title 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Particularly in this instance, where Claimant seeks to establish his eligibility for services, the burden is on the appealing Claimant to demonstrate that he is eligible, and that the Service Agency's decision to deny eligibility is incorrect. See, also, Evidence Code section 500.
2. Throughout the applicable statutes and regulations, found in Welfare & Institution Code sections 4700-4716, and CCR, title 17, sections 50900 - 50964, the state level fair hearing is referred to as an appeal of the regional center’s decision. In this instance, where the Claimant seeks to establish his eligibility for services, the burden

¹ The sixth and seventh categories were not considered because of Claimant’s age.

is on him to demonstrate that he is eligible. The burden of proof is by a preponderance of the evidence. (Evid. Code, §§ 115 and 500. Thus, Claimant had the burden of proof to establish his eligibility.

3. With regard to the issue of eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (Mason v. Office of Administrative Hearings (2001) 89 Cal.App.4th 1119, 1127.) In Mason, the court focused on whether the claimant's expert witnesses' opinions on eligibility "sufficiently refuted" those expressed by the regional center's experts that claimant was not eligible. (Id, at p. 1137.)
4. Based on the above, Claimant has not met his burden of proving that he has a qualifying developmental disability because of the reasoning stated in Factual Findings 1-11 and Legal Conclusions 1-3

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ORDER

Claimant has not established his eligibility for services. Claimant's appeal of Harbor Regional Center's determination that he is not eligible for services is denied. However, this order in no way prevents Claimant from requesting that the Harbor Regional Center reevaluate him for eligibility purposes.

DATED: September 11, 2013

A handwritten signature in black ink, appearing to read 'CRUZ', is positioned above a horizontal line.

CHRIS RUIZ

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.