

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2013120769

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Stockton, California, on June 6, 2014.

Claimant was represented by his mother. Claimant's mother used the services of a Spanish language interpreter throughout the hearing.

Anthony Hill, Assistant Director of Case Management Services, represented the service agency, Valley Mountain Regional Center (VMRC).

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 because he has the substantially handicapping developmental disability of intellectual disability as defined by Welfare and Institutions Code section 4512, subdivision (a)¹?

FACTUAL FINDINGS

1. Claimant is a 12-year-old boy who lives with his parents and brothers in his family's home. He was found eligible for VMRC services at the age of four. At that time, he was given a provisional diagnosis of mental retardation. In 2007 claimant's eligibility for VMRC services was reassessed and claimant was determined not to meet the criteria for eligibility for services. In 2013, claimant's mother asked that the regional center reassess claimant's eligibility for services.

2. On November 25, 2013, VMRC sent a Notice of Proposed Action (NPA) informing claimant that the Interdisciplinary Eligibility Team had completed a comprehensive reassessment to determine claimant's eligibility for VMRC services. The team determined he did not have a developmental disability and therefore was not eligible for services.

3. On December 13, 2013, claimant's mother filed a Fair Hearing Request, appealing VMRC's determination that claimant is not eligible for regional center services.

¹ The Lanterman Act has recently replaced the term Mentally Retarded with the term Intellectually Disabled. The terms have the same meaning.

4. Claimant's mother asserts that claimant is eligible for regional center services under the category of intellectual disability. She does not contend that he is eligible for regional center services under any other category of disability.

PSYCHOLOGICAL ASSESSMENTS REGARDING ELIGIBILITY

5. Jose M. Avila, Ed. D., Licensed Educational Psychologist, assessed claimant at the request of VMRC in October 2013. Dr. Avila used the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) to assess claimant. Claimant's Full Scale IQ score was a 68, with significant weakness in his Verbal Comprehension, where he received a score of 55. However, his nonverbal scores showed relative strengths. His Perceptual Reasoning score was 86 and his Processing Speed score was 83, both within the Low Average range. Dr. Avila concluded that claimant does not present as a person with global developmental delays, rather he has a significant impairment in his verbal abilities. These test results were consistent with the results obtained when claimant was assessed in September 2007.

6. Nancy Brison-Moll, Ph.D., assessed claimant in September 2007 at the request of VMRC. She found that claimant had Mixed Receptive/Expressive Language Disorder, but did not meet the criteria for regional center eligibility. Dr. Brison-Moll administered the Wechsler Preschool and Primary Scale of Intelligence-III (WPPSI-II) to assess claimant's cognitive skills. She found he had a Full Scale IQ of 75, with a Verbal IQ of 61 and a Performance (nonverbal) IQ of 93. Because his nonverbal IQ was 93, Dr. Brison-Moll ruled out a global developmental delay and concluded that claimant has a severe language disorder, but does not suffer from mental retardation.

7. Dr. Brison-Moll's assessment was part of what the VMRC eligibility team used when it determined claimant was not eligible for regional center services in 2007. The Interdisciplinary Eligibility Review notes state:

While consumer presents with splintered skills, his cognitive potential for nonverbal tasks reaches the average range. Thus, these findings rule out MR, conditions similar to MR, and conditions requiring services similar to those required by mentally retarded individuals. No evidence of substantially handicapping autism, CP, or epilepsy. Not eligible for services.

8. Claimant's school district assessed claimant in February 2013. School Psychologist, Scott Fry, M.S., conducted the assessment. Mr. Fry obtained results similar to those obtained through other assessments of claimant. His verbal scores were significantly lower than his nonverbal scores, which were in the low to low-average range. Mr. Fry assessed claimant's academic achievement and found a severe discrepancy between claimant's intellectual ability and his academic achievement, consistent with a learning disability, rather than a global developmental delay. Mr. Fry wrote:

There appears to be a severe discrepancy between [claimant's] intellectual ability and lower achievement levels. Disorders in the basic psychological processes of auditory memory, auditory discrimination, and visual memory

seem to interfere with academic progress.

Examination of all available data suggests that

this specific learning disability cannot be

accommodated through general education

alone and that there is a need for special

education services to be provided to [claimant].

There is no evidence that [claimant's] handicap is

the result of a visual, hearing, or motor handicap;

intellectual disability; environmental, cultural, or

economic disadvantage; limited school

experience and/or poor attendance.

9. As documented in claimant's Individualized Education Program (IEP) dated February 22, 2013, the school district provides claimant with special education services due to a primary disability of Speech or Language Impairment and a secondary disability of Specific Learning Disability. The school district does not classify claimant as a student with intellectual disability, or mental retardation.

10. In March 2014 claimant's mother obtained an assessment from Kaiser Permanente Autism Spectrum Disorders Center. The assessment was completed by Vanessa C. Fonts, Psy.D., Clinical Psychologist, with consultation provided by Fawzia S. Ashar, M.D., FAACAP, Diplomate American Board of Psychiatry and Neurology. The comprehensive assessment ruled out a diagnosis of autism and concluded, "[Claimant] does not meet the criteria for the diagnosis of Autism Spectrum Disorder."

PARENT CONCERNS REGARDING CLAIMANT'S NEEDS

11. Claimant's mother testified at hearing. She is deeply concerned for her son and is seeking some help. She is worried about his mental well-being and his safety. He has been very upset and depressed at times. She sees that he is not able to complete his homework without help. She is very concerned about his future. Sometimes claimant's behavior creates problems at home and when the family tries to do things outside the home.

12. Claimant's family friend, David Garcia, also testified at hearing. He explained that he tries to guide the family through the special education process. Mr. Garcia is deeply concerned about the stress the family is under due to claimant's needs. He noted that claimant's family has a lack of experience and education regarding dealing with a special needs child and this is impacting their ability to cope at home.

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 intellectual disability, cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to intellectual disability or to require treatment similar to that

required for individuals with intellectual disabilities. (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. Evidence provided at hearing supports VMRC's finding that claimant does not suffer from an intellectual disability.

4. Evidence provided at hearing supports the finding that claimant does not suffer from autism.

5. No evidence was offered that claimant suffers from cerebral palsy, epilepsy, or a condition closely related to intellectual disability or requiring treatment similar to that required by people with intellectual disability.

ORDER

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

DATED: June 17, 2014

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).)