

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014091027

A Proceeding Under the Lanterman

Developmental Disabilities Services Act

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge of the Office of Administrative Hearings, State of California, in Culver City, on February 3, 2015.

Claimant was represented by his father.

Westside Regional Center (Service Agency or regional center) was represented by Lisa Basiri, Fair Hearing Coordinator.

The Service Agency presented the testimony of Thompson Kelly, Ph.D., and Exhibits 1-9, which were admitted into evidence.

Claimant presented the testimony of his father. Claimant did not offer any exhibits, but did use and refer to Exhibits 1-9 during his presentation.

Oral and documentary evidence was received and the matter was submitted for decision on February 3, 2015.

ISSUE PRESENTED

The issue presented for decision is whether claimant is eligible for regional center services on the basis of his diagnosis of autism?

FACTUAL FINDINGS

CLAIMANT'S PRESENT HOME AND SCHOOL LIFE

1. Claimant is a 12-year-old boy who lives with his family in Los Angeles. In this appeal, claimant contends that he is eligible for services from the regional center on the basis that he has a diagnosis of autism. Parents are concerned with claimant's lack of friends, his being bullied at school, and his behavior.

2. Claimant attended a private school through first grade. From second through fifth grade, claimant attended a public elementary school. During this time, claimant received special education services as follows: a full-time "shadow" aide, speech therapy, occupational therapy, and adaptive physical education. Near the end of fifth grade, claimant's parents decided that the special education services being offered by the school district would be insufficient to meet claimant's needs upon his entry into sixth grade. As a result, claimant's parent's transferred him to a private middle school before he started sixth grade.

3. Claimant skipped the sixth grade at his private middle school. He is presently in seventh grade and he is in a combined seventh-eighth grade class. The private school does not fund any special education services for claimant. However, claimant receives nine hours per week of Applied Behavior Analysis services, which are funded by private insurance.

PRIOR EVALUATIONS OF CLAIMANT

4. On December 5 and 19, 2005, Valerie Benvenite, Ph.D. (Benvenite), a regional center consulting psychologist, performed a psychological assessment of claimant. She concluded that claimant had some behaviors consistent with a diagnosis of Autism Spectrum Disorder, but that he did not meet the full criteria

for this diagnosis. Benvenite diagnosed claimant as having Pervasive Developmental Disorder, Not Otherwise Specified.

5. On December 18, 2007, Janet Wolf, Ph.D. (Wolf), a regional center psychologist, performed a psychological assessment of claimant. The purpose of the assessment was to re-evaluate claimant's needs. Wolf diagnosed claimant as having Asperger's Disorder. She offered recommendations related to potential special education services for claimant.

RECENT EVALUATIONS OF CLAIMANT

6. On June 25, 2013, Easter Seals Autism Services conducted an assessment of claimant at the request of his parents. Laura Schwinn (Schwinn), a licensed psychologist, found that claimant has a cheerful and pleasant demeanor. Schwinn reported that claimant enjoys reading and sharing his interests with others, often asking questions and presenting others with information that he finds interesting. Schwinn found, however, that claimant has deficits in building reciprocal relationships and in self-care skills. Claimant has to be constantly reminded to brush his teeth and to bathe. He is also unaware of the social importance of self-care routines. Claimant's scores on the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II), were adequate in the area of communication, although claimant disengages from the discussion when he is not interested in the topic. Schwinn's report includes the following age-equivalent scores: receptive language at 9.6 years and expressive language at 7.6 years, which were at an adaptive level of adequate and moderately low, respectively. Claimant was 10 years and 11 months old at the time of this assessment.

7A. On June 16, 2014, Beth Levy, Ph.D. (Levy), performed a psychological assessment of claimant at the request of the regional center. Levy

used the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), and diagnosed claimant as having Autism Spectrum Disorder, with impaired language functions (social communication), but without cognitive impairment. Levy found claimant to be a very high functioning child whose language skills are an area of strength, but whose communication is impacted by repetitive patterns of interest.

7B. Levy observed that claimant was motivated, verbal, expressive, focused, and wanted to perform well, when she administered standardized testing. On the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), claimant's overall performance yielded a full-scale IQ of 128, which is in the superior range. Levy found that claimant has significantly deflated processing speed abilities, which affect his self-direction skills. Although claimant's processing speed is average, it is approximately only half of his very high verbal, performance, and working memory scores.

7C. According to the Vineland-II testing, which was based on information provided by claimant's father, claimant's domain scores were as follows: communication (moderately low deficit); daily living skills (mild deficit); and socialization (mild-moderate deficit). At the time of Levy's assessment, claimant's age was 11 years and 11 months. Claimant had the following age-equivalent scores in the area of communication: receptive language at 2.2 years, expressive language at 5.10 years, and written communication at 9.6 years. The testing also showed claimant as having deficiencies in the area of self-care. Claimant's daily living skills were at the following age-equivalent scores: personal at 4.1 years, domestic at 1.1 years, and community at 6.5 years.

8A. On August 15, 2014, the Service Agency's intake-eligibility team (team) met to evaluate claimant's eligibility for regional center services. The team

reviewed Levy's report, Schwinn's report, claimant's medical and school history, and other relevant information. Thompson Kelly, Ph.D., clinical psychologist and intake-eligibility manager for the regional center, testified regarding the team's decision-making process. The team first considered Dr. Levy's diagnosis of Autism Spectrum Disorder for claimant. The team agreed with Levy's diagnosis that claimant does have autism, which is a qualifying developmental disability, as defined in Welfare and Institutions Code, section 4512, subdivision (a), and which is one requirement in order to be found eligible to receive regional center services.

8B. The team next considered whether claimant's autism "constitutes a substantial disability" for claimant, as defined by Welfare and Institutions Code section 4512, subdivisions (l)-(7), which lists seven areas of major life activity of which claimant must have significant functional limitations in at least three of the seven areas. The team concluded that claimant has significant functional limitations in only one area, which is self-direction. The team determined that claimant's self-direction deficiencies impact other areas, such as self-care, but that claimant has the ability to perform in the other areas, although he lacks the motivation to do so. The team decided that claimant was not eligible for regional center services because claimant does not have significant functional limitations in three areas of major life activity.

9. On September 2, 2014, the Service Agency notified claimant of the team's determination that he is not eligible to receive services from the regional center. The letter referenced the report of Levy, her diagnosis of Autism Spectrum Disorder, and the eligibility team's decision that claimant does not meet the criteria necessary to establish that claimant has a substantial disability because of his autism.

10. On September 23, 2014, claimant filed a Fair Hearing Request, disagreeing with the regional center's findings and asserting that he should be accepted as a client of the Service Agency. This matter ensued.

11A. At the hearing, the parties stipulated to the following fact: that claimant has a qualifying developmental disability of autism; that claimant has significant functional limitations in the area of self-direction; that claimant is too young to be properly evaluated in the major life activity areas of capacity for independent living and economic self-sufficiency; and that claimant does not have significant functional limitations in the area of mobility. Therefore, in order to be found eligible, claimant was required to establish that he has significant functional limitations in at least two of the following major life activity areas: self-care, receptive and expressive language, and learning.

11B. As to the area of self-care, Levy and Schwinn both found deficits in claimant's self-care skills. Claimant needs constant reminders and supervision in order to complete most routine self-care tasks, such as taking a bath or brushing his teeth. This evidence, combined with father's daily observations of claimant's lack of self-care skills, established that claimant has significant functional limitations in the area of self-care.

11C. As to the area of receptive and expressive language, the evidence presented was unconvincing. In comparing Levy's recent testing to Schwinn's testing, done one year prior, the results were inconsistent. In June 2014, Levy noted the following age-equivalent scores: receptive language at 2.2 years and expressive language at 5.10 years. In June 2013, Schwinn found the following age-equivalent scores: receptive language at 9.6 years and expressive language at 7.6 years. These findings are markedly different despite being made only one year apart. It is difficult to understand how claimant's receptive language skills, in

one year, have fallen from an age-equivalent 9.6 years, which Schwinn described as adequate, to 2.2 years. Claimant's expressive language scores also reflect an unexplained reduction of skills, although not as drastic (1.5 years) as with claimant's receptive language scores. These unexplained discrepancies also conflict with Levy's finding that claimant's language skills are an area of strength. Therefore, the evidence presented did not establish that claimant has significant functional limitations in the area of receptive or expressive language.

11D. As to the area of learning, the evidence presented did not establish that claimant has significant functional limitations. Claimant recently skipped the sixth grade, which would not be expected of a person with significant limitations in learning.

12. Based on Findings 1-11 above, it was established that claimant has significant functional limitations in the major life activity areas of self-direction and self-care. It was not established that claimant has significant functional limitations in any of the other five areas of major life activity.

LEGAL CONCLUSIONS

1. Grounds do not exist under the Lanterman Developmental Disabilities Services Act to grant claimant's appeal to over-turn the decision of the Service Agency in denying eligibility for regional center benefits, in that it was not established that claimant has a developmental disability within the meaning of Welfare and Institutions Code section 4512¹, based on Findings 1-12 above.

2. Section 4512, subdivision (a), defines "developmental disability" as a disability which originates before an individual attains age 18, continues, or can

¹ Section references are to the Welfare and Institutions Code.

be expected to continue, indefinitely, and constitutes a substantial disability for that individual. Developmental disability includes mental retardation, cerebral palsy, epilepsy, and autism, or a condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation (this disability is also referred to as the "fifth category").

3. Section 4512, subdivision (l), defines "substantial disability" as the existence of significant functional limitations in three or more of the seven areas of major life activity, as appropriate to the age of the person. The seven areas of major life activity are: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency.

4. In the present appeal, the preponderance of the evidence did not establish that claimant's autism constitutes a substantial disability for him. He does not have significant functional limitations in three, or more, areas of major life activity. Claimant was able to establish significant functional limitations in the areas of self-care and self-direction only. The evidence supports the conclusion that claimant is not eligible to receive regional center services at this time (Findings 1-12.)

ORDER

Claimant's appeal of Westside Regional Center's determination, that he is not eligible to receive regional center services or benefits, is denied. The decision of the Westside Regional Center is upheld.

Dated: March 6, 2015

_____/s/____

Chris Ruiz

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.