

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2014110823

DECISION

This matter was heard before Administrative Law Judge Margaret Broussard, State of California, Office of Administrative Hearings, in Redding, California, on February 6, 2015.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Linda M. Carpenter, Chief Counsel.

Claimant was self-represented.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 6, 2015.

ISSUE

Is Claimant eligible to receive regional center services and supports as an individual with autism pursuant to Welfare and Institutions Code section 4512?<sup>1</sup>

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

## SUMMARY OF DECISION

Claimant appealed from an FNRC determination that he was not eligible for services and supports. Claimant appealed based on the contention that he met the criteria for autism<sup>2</sup> and should be eligible. Claimant did not meet his burden to show that he met the criteria for a diagnosis of autism at this time and that the condition existed prior to age 18, and therefore did not show that he was eligible for services and supports from FNRC.

## FACTUAL FINDINGS

1. Claimant is a 21year-old young man who applied for services and supports with the FNRC for the first time in 2014, due to concerns of an autism spectrum disorder. He is employed part-time as a dishwasher at a local restaurant and, until recently, lived with his father, step-mother and younger brother, who has been diagnosed with autism spectrum disorder.

2. He has a self-reported history of difficulty with social interactions, few friends and extensive knowledge about music history. He has challenges making eye contact, difficulty falling asleep and is a picky eater. He screams at whoever is nearby when he feels overwhelmed or at times of change. He repetitively paces and rocks, is

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<sup>2</sup> The term autism has been redefined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) and is referred to in the DSM-5 as autism spectrum disorder. The DSM-5 is the 2013 update to the American Psychiatric Association's (APA) classification and diagnostic tool and serves as a universal authority for psychiatric diagnosis. The terms autism and autistic spectrum disorder are used interchangeably for the purposes of this decision.

often “in his own world” and is sensitive to light and crowds. He has trouble with social cues and interacting with others.

3. Claimant had been eligible for special education services when he was in school and was served by his local educational agency pursuant to an individualized education plan. However, the eligibility category and nature of services he received is unknown to Claimant and FRNC. FRNC did not review any educational records, including assessments for Claimant. Claimant felt bullied in school, had few friends and performed poorly academically. He moved from a local elementary school to home schooling. That failed in a short period of time and he transferred to a home based charter school. He finished only ninth grade and later received a GED.

4. Claimant has no current contact with his mother, who is described as an alcoholic and abusive. He has had recent conflict with this father and step-mother regarding his use of time, independent living and isolation. Claimant’s father does not have information regarding Claimant’s history prior to becoming his main caregiver when Claimant was 15 years old, because of limited contact prior to that time. There is a history of marijuana use by Claimant and the current extent of that use, if any, is unknown.

5. Claimant has a history of suicidal and homicidal ideations. He has had several hospital admissions for this behavior and has mental health diagnoses that include depression, attention deficit hyperactivity disorder, bipolar disorder, adjustment disorder with disturbance of emotions and conduct, and social anxiety disorder. Several mental health practitioners have documented impressions consistent with autism spectrum disorder. On November 9, 2014, Dr. Scott Nichols, M.D., gave Claimant a diagnosis of Autism Spectrum disorder, in a report that was part of hospital records from Claimant’s stay after suicidal ideation. However, in an amended report completed later in the stay by another physician, autism spectrum disorder was listed as a “rule out”

diagnosis, meaning that there was not enough information to make a clear diagnosis at that time.

6. FNRC completed two assessments. The first was a social assessment by intake specialist Wendy Bell. FNRC did not call Ms. Bell to testify and it is unknown what Ms. Bell's education, experience and credentials are. Ms. Bell did find that Claimant displayed characteristics consistent with Autism Spectrum Disorder.

7. The second assessment was completed by Dr. Monica Silva, Ph.D. FNRC did not call Dr. Silva to testify and it is unknown what Dr. Silva's education, experience and credentials are, with the exception of the designation of Ph.D. next to her name on her report.

8. FNRC did call Dr. Robert Boyle, staff psychologist, to discuss Dr. Silva's report. However, he had not used the test given by Dr. Silva, had not diagnosed anyone with autism spectrum disorder using the DSM-5, had not assessed Claimant and had not spoken with Dr. Silva regarding her report. Dr. Silva concluded that Claimant did not meet the diagnostic criteria for autism spectrum disorder. With the exception of noting her conclusion, the report is not given any weight in this decision. First, as discussed below, the burden of proof is on Claimant to show that he has a qualifying condition, in this case autism. Claimant did not show, with the documents and evidence presented in this hearing, that he has a diagnosis of autism spectrum disorder. Therefore, the substance of Dr. Silva's report is not at issue. Second, the report, without additional supporting evidence of proper procedures being followed, correct scoring of tests, and information regarding the education and experience of the assessor, falls below the standard necessary to rely on the document alone.

9. The FNRC Eligibility Team determined that claimant did not meet the eligibility criteria for regional center services. As a result of that determination, a Notice of

Proposed Action (NOPA) was issued on October 22, 2014, informing claimant that FNRC determined he was not eligible for regional center services. The NOPA stated:

Proposed action: Close Case.

Reason for action: [Claimant] does not have 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.

Psychological records show evidence of Bi-Polar Disorder, Attention Deficit Hyperactive Disorder, Major Depressive Disorder and Generalized Anxiety Disorder [sic] but those are not qualifying conditions for regional center services. Eligibility Review (multi-disciplinary team) determined on 10/22/2014 that [Claimant] is not eligible for FNRC services based on Psychological evaluations dated: 9/24/14 by Monica Silva, Clinical Psychologist, 5/21/14-8/18/24 by Dr. Andrews, [sic] Intake Summary dated 8/13/14 by Wendy Bell, Intake Specialist.

10. Claimant filed a Fair Hearing Request dated November 21, 2014, disputing his ineligibility for regional center services. The reason for requesting a fair hearing was, "Additional information/Medical Evaluations which may help determine Autism/Asperger's. Misdiagnosis by referred Clinical Psychologist Monica Silva dated 9/24/14."

## LEGAL CONCLUSIONS

1. 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, 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 intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability [commonly known as the “fifth category”], but shall not include other handicapping conditions that consist 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.

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

5. Claimant bears the burden of establishing that he meets the eligibility requirements for services under the Lanterman Act.<sup>3</sup> Although there is some evidence

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<sup>3</sup> Neither the Lanterman Act nor its implementing regulations (Cal. Code Regs., tit. 17 § 50900 et seq.) assigns burden of proof. California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each

that he may be a person who could be diagnosed with autism spectrum disorder, he did not meet the burden to show that he had this condition at the time of the hearing and prior to age 18, through competent medical evidence. Regional center services are limited to those individuals meeting the stated eligibility criteria. There was no evidence to support a finding of autism or autism spectrum disorder based on current information provided at hearing. Accordingly, claimant did not show that he is eligible for regional center services at this time.

## ORDER

Claimant's appeal from FNRC's denial of eligibility for services is denied. Claimant did not show that he is eligible for regional center services under the Lanterman Act at this time.

DATED: February 11, 2015

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MARGARET BROUSSARD  
Administrative Law Judge  
Office of Administrative Hearings

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fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."