

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

OAH Case No. 2015110525

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

---

DECISION

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter on February 1, 2016, in San Leandro, California.

Claimant was present and represented herself, with assistance from Colleen Russell, L.M.F.T, who appeared telephonically.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay (RCEB), the service agency.

The matter was submitted for decision on February 1, 2016.

ISSUE

Is claimant eligible for regional center services because she is substantially disabled due to autism spectrum disorder?

FACTUAL FINDINGS

1. Claimant is an adult with autism who seeks services from RCEB. In a Notice of Proposed Action dated October 21, 2015, RCEB notified claimant of its decision that

she was not eligible for regional center services because she “does not have significant functional limitations in several functional life activity areas.” Claimant appealed, and this hearing followed.

2. Claimant is a 38-year-old female who lived in another state until 2015. She was raised in a religious sect. The sect was strictly controlled and enforced rigid gender roles. Claimant was married within the sect at age 18 and had four children. Around 2010, claimant became completely estranged from the sect. She became homeless and lived for a while in a shelter. Claimant has no contact with her family.

3. Claimant was evaluated by a psychologist in October 2010. Claimant was diagnosed with autism spectrum disorder. The psychologist noted that claimant exhibited difficulties with social interaction, empathy, executive functioning, and is highly sensitive to light, touch, and smell. Claimant was also diagnosed with general anxiety disorder and major depressive disorder at this time.

Claimant returned to this psychologist in 2011 and was diagnosed with dyscalculia (mathematics disorder.)

Claimant saw the psychologist again in 2012. The psychologist noted that claimant had benefited greatly from cognitive behavioral therapy and social skills support therapy aimed at treating autism spectrum disorder.

4. Around the time of her diagnosis, claimant moved into a college dormitory to attend community college. Claimant received accommodations as a disabled student. Claimant transferred to a university and completed her bachelor’s degree in music therapy. Claimant has no history of successful employment.

5. In 2014, claimant sought services in her home state from an agency serving the developmentally disabled. She was examined by a psychologist in February 2014. This psychologist diagnosed claimant with autism spectrum disorder, level 2, with significant cognitive, emotional, interpersonal, sensory, language, and behavioral

deficits. The psychologist recommended claimant for eligibility for services based on her severe social-communication deficits.

6. Claimant suffers from a number of challenging medical conditions and learning disorders, including Crohn's disease, irritable bowel syndrome, auditory processing disorder, anemia, and asthma. She had bariatric surgery in 2014. Claimant has significant visual challenges, including prolonged visual processing speed, photophobia, eye tracking difficulties, poor depth perception, and prosopagnosia (difficulty with facial recognition). An optometrist who assessed her in 2015 concluded that some of her visual difficulties might be the result of acquired brain injuries during her childhood. Claimant is seeking a neurological assessment at Kaiser to follow up on the possibility that she suffered a traumatic brain injury.

7. In early 2015, claimant moved to California. She is pursuing a master's degree in transformational leadership through an online program, and hopes to pursue a Ph.D. Claimant lives by herself in an apartment. She receives SSI and student loans and has a section 8 waiver. She has a driver's license and a car.

8. Psychologist Liza Bathori performed a psychological assessment of claimant on August 7, 2015, for RCEB. Dr. Bathori concluded that claimant meets the criteria for autism spectrum disorder, level 2.

Dr. Bathori assessed claimant's adaptive behavior through the Vineland II Adaptive Behavior Scales. Dr. Bathori identified significant deficits in communication and socialization skills. Claimant's adaptive behavior composite score was 69; a score in the range of 85 to 115 is considered average. Dr. Bathori concluded that claimant will continue to need support to live and function independently.

9. Regional center clinicians Monica Li, Psy.D., and Iriani Sutanto-Dang, M.D., visited claimant at her home on September 29, 2015, to interview her and assess her

eligibility for services. Claimant expressed difficulty in daily living skills and getting her needs met. Claimant avoids crowded places due to her sensory sensitivities. She cannot make change, measure ingredients, or calculate sale prices. She has had trouble with overdrawing her bank account in the past. She now uses automatic bill payment and shops online and is able to keep from overdrawing. Claimant reported difficulties with feeding and nutrition due to her sensory sensitivities and her gastrointestinal disorders. Claimant eats a very limited diet and mainly subsists on liquid protein drinks. Claimant uses an audio program to help her read printed materials. Claimant recently co-authored a research paper. She has given lectures on autism. Claimant is receiving services from the Department of Rehabilitation.

10. Dr. Li and Dr. Dang concluded that claimant's autism did not render her substantially disabled. They noted that claimant had been able to move to California, live independently, pay bills and make purchases online, use Uber for transportation, attend graduate school, and use various forms of technology. They cited these accomplishments as evidence that claimant's autism did not result in significant functional limitations. Dr. Dang acknowledged that the accomplishments were achieved with substantial struggles. Dr. Li explained that in assessing claimant's adaptive functioning deficits, it is difficult to ascertain whether they are attributable to her autism or to her mental illnesses.

11. Claimant has had difficulties establishing medical services since her move to California. She has difficulty communicating due to her autism. Claimant reported that on three different occasions since her move, she has been escorted out of a clinic or pharmacy by security when she has been trying to advocate for herself.

12. Claimant has been attending private therapy and group therapy sessions with Colleen Russell, L.M.F.T., since July 2015. Russell is not an expert on developmental

disabilities. One of Russell's specialties is treating individuals recovering from "high demand groups" such as religious cults. Russell has diagnosed claimant with Post Traumatic Stress Disorder, with dissociative symptoms. Russell has observed claimant's difficulties with social interactions and also believes that she has significant difficulties coping with everyday living skills. It can take claimant hours or days to recover after a medical appointment or other experience interacting with people. She will sit in a dark room or take several showers to soothe herself. Claimant also has difficulty negotiating stairs and driving, especially to new places. When people are talking, claimant can experience pain. She suffers from being misunderstood and mischaracterized by others. Russell believes that claimant is substantially disabled and could benefit greatly from RCEB services.

13. On January 29, 2016, psychologist Faith Tanner conducted an adaptive interview of claimant on behalf of RCEB. Dr. Tanner assessed claimant's adaptive functioning using the Scales of Independent Behavior – Revised. Claimant achieved very low scores in most skill domains measured by this assessment. Claimant scored below one percentile in the motor skills, social/communication, and community living skill domains. She scored in the fifth percentile in personal living, with low scores in eating, dressing, and domestic skills. Claimant's overall measure of broad independence was below one percentile and ranked as equivalent to age 10.8.

14. Claimant seeks eligibility because she would like help organizing her life. She hopes to become more functional and lessen the humiliation she experiences in public situations. She would like help navigating the medical system and with financial decisions.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act

(Act). (Welf. & Inst. Code, § 4500, et. seq.)<sup>1</sup> The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. As defined in the Act, a developmental disability is a “disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.” (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).) Under the Act, the term “developmental disability” includes autism. (*Ibid.*) It is undisputed that claimant has properly been diagnosed with autism spectrum disorder. Claimant’s condition arose before she reached the age of 18 and is expected to continue indefinitely.

3. Under the Act, conditions that are solely psychiatric in nature, or solely learning disabilities, are not considered developmental disabilities. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1)(2).) However, if learning disability and medical and mental illness co-exist with her developmental disorder, they do not preclude her from regional center eligibility.

4. The term “substantial disability” is defined as a condition which “results in major impairment of cognitive and/or social functioning.” (Cal. Code Regs., tit. 17, § 54001, subd. (a).) A disabling condition is substantial if it results in “significant functional limitations in three or more of the following areas of major life activity, as determined by

---

<sup>1</sup> All citations are to the Welfare and Institutions Code unless otherwise indicated.

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.” (§ 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001, subd. (a).)

5. Although claimant has impressive accomplishments, it was established that these accomplishments were achieved with assistance and support and with great struggle. These accomplishments do not prove that she is not disabled by her autism.

6. As a result of claimant’s autism, she is substantially impaired in at least three major life activities: self-care, receptive and expressive language, and economic self-sufficiency. The evidence established that claimant’s disability limits her self-care in that she has difficulty managing her finances, managing her diet, and getting medical care. Her lack of pragmatic language skills makes it extremely difficult for her to communicate with others. Claimant has no history of employment and is limited in her ability to attain economic self-sufficiency. Accordingly, claimant has met her burden of establishing that her autism condition is substantially disabling, as that term is defined by the Act. (§ 4512, subd. (l).) She is therefore eligible for regional center services.

## ORDER

Claimant’s appeal from RCEB’s notice of proposed action dated October 21, 2015, is granted. Claimant is eligible for RCEB services.

DATED: February 8, 2016

\_\_\_\_\_/s/\_\_\_\_

KAREN REICHMANN

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.