

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2015120794

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on February 5, 2016.

Ronald R. House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Claimant's mother appeared on behalf of claimant, who was not present at the hearing.

The matter was submitted on February 5, 2016.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4400 et seq.)?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 17-year-old male. Claimant's mother applied to SDRC to obtain services under the Lanterman Act alleging claimant had an intellectual disability or a

condition closely related to an intellectual disability that required treatment similar to that required for individuals with an intellectual disability. On November 19, 2015, SDRC notified claimant of its determination that he was not eligible for regional center services because the information it reviewed did not establish that claimant had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment needs as an individual with an intellectual disability.

2. On December 22, 2015, claimant filed a Fair Hearing Request appealing SDRC's determination. In the request, claimant requested a "second opinion for psychological evaluation to determine eligibility for services."

3. On January 15, 2016, SDRC held an informal meeting with claimant's mother and claimant's therapist, Shawn Worrlein, LCSW. During the meeting, the parties discussed claimant's eligibility for regional center services. SDRC reviewed the relevant records and obtained additional information from claimant's mother about claimant's developmental and educational history. In addition, Mr. Worrlein provided information related to claimant's educational placement, the progress he has made, and the challenges he faces at school.

4. Claimant's mother submitted additional records that SDRC's Developmental Disability Screening Team reviewed. On January 28, 2016, SDRC notified claimant that it was adhering to its determination that claimant was not eligible for regional center services. The matter proceeded to hearing.

#### EVALUATION BY SHARON WELD, PH.D.

5. SDRC referred claimant to Sharon Weld, Ph.D., for testing and to assess his current level of intellectual and adaptive functioning. Dr. Weld administered tests; reviewed records; and interviewed claimant, claimant's mother, and staff at claimant's school. Dr. Weld prepared a report that was received into evidence.

6. Claimant is an only child who lives with his mother. He is in high school and qualified for special education under the categories of “emotional disturbance” and “speech and language.” Claimant has a significant mental health history, including two psychiatric hospitalizations in 2012 and two in 2013. These hospitalizations involved issues of paranoia, aggressive sexual fantasies, and aggressive and violent behavior. Claimant has reported auditory hallucinations and is on psychotropic medication to help manage these symptoms. He has had diagnosis of psychotic disorder, not otherwise specified (NOS), including auditory hallucinations; ADHD – combined type; and disruptive disorder. Mental health reports from the school district indicated that claimant’s mental health issues have affected his social and academic work. Claimant began receiving mental health support at school since the 8th grade.

7. Dr. Weld spoke with staff at claimant’s day treatment program. They described claimant as polite and well-mannered, but having cognitive limitations that influence his ability to engage with peers. He does not seem to understand what is going on in typical peer relationships, and can become paranoid. He has been hospitalized for aggressive behavior and paranoid thinking. Claimant is able to have surface conversations with his peers, but he is not able to understand the issues or meaningfully engage. His behavior is not age appropriate in group settings, and he is very naïve about the world.

8. Dr. Weld administered the following tests: Wechsler Adult Intelligence Scale – Fourth Edition, Vineland Adaptive Behavior Scales, and Gilliam Autism Rating Scale – 3. Dr. Weld concluded that claimant’s intellectual skills were in the borderline overall range and are significantly below the norm for his age group. Dr. Weld concluded that although claimant can make his needs and desires known, his word knowledge is well below average, and claimant is quite literal in the way he conceptualizes his environment. Claimant does not understand abstract or conceptual material. Claimant is easily distracted and needs assistance from his mother in the area of daily living skills.

9. Dr. Weld concluded that an autism diagnosis is not appropriate. Dr. Weld noted that claimant's early development did not include symptoms consistent with autism, and the pervasive nature of his emotional difficulties is more persuasive in explaining his more recent problems. In conclusion, Dr. Weld wrote: "While [claimant]'s intellectual functioning currently falls in the Borderline range, his limited daily living skills suggest the possible consideration of intellectual disability; however mental health issues may also be a factor in this area as well."

#### TESTIMONY OF HARRY EISNER, PH.D.

10. Harry Eisner, Ph.D., is SDRC's coordinator of psychology services. After receiving his Ph.D., Dr. Eisner worked for approximately nine years in state psychiatric hospitals before joining SDRC in 1988. Dr. Eisner was a member of the team that reviewed claimant's case, and he testified as to the reasons SDRC found claimant ineligible for regional center services.

11. Dr. Eisner did not believe that claimant had a condition that qualified him for regional center services. Dr. Eisner noted that claimant's cognitive functioning falls within the low-average range. Claimant has a demonstrated struggle with learning, for which he received special services early on. However, Dr. Eisner believed that claimant's serious mental health issues and learning disability are the primary impediments to claimant's independence.

12. Dr. Eisner reviewed claimant's school records and noted that claimant began receiving an Individual Education Program (IEP) in kindergarten at age 6. At age 8, claimant's academic performance was placed in average to low average. Claimant was placed in a special day class based on a diagnosis of "specific learning disability." The school continued to evaluate claimant as having a specific learning disability through age 10, and noted low average academics. Dr. Eisner agreed that this diagnosis was reasonable based on the information contained in the evaluations. Additionally, social-

emotional functioning and adaptive skills were at expected levels for his age. Based on the data up to age 11, Dr. Eisner believed that learning disability was a reasonable explanation for claimant's deficiencies.

13. At age 12, claimant was referred for psychological evaluation because the school was considering him for expulsion due to behavioral problems. Rienzi Haytasing, Psy.D., evaluated claimant. Dr. Haytasing identified no concerns in cognitive functioning and found that claimant exhibited near or slightly below expected level of functioning. Dr. Haytasing believed that claimant had a specific learning disability in the cognitive area of attention.

14. In 2011, claimant began experiencing serious mental health problems for which he received counseling. Claimant was diagnosed with psychotic disorder, NOS; disruptive behavior disorder, NOS; and ADHD. Claimant exhibited signs of paranoia and preoccupation with sexual behaviors. Claimant qualified for special education as a student with emotional disturbance.

15. Claimant's final school assessment at age 16 stated that claimant continued to meet the definition as a child with emotional disturbance and specific learning disability. In this evaluation, a previous diagnosis of pervasive developmental disorder (NOS) appeared. Dr. Eisner did not know where this diagnosis originated, as there was no indication that claimant had autism.

16. Dr. Eisner reviewed claimant's mental health records and found them consistent with the school evaluations. According to the school, the pervasive mental health problems significantly impacted academic performance. Dr. Eisner noted that SDRC's evaluation included IQ testing that placed claimant in the low borderline range. Claimant's main deficits were working memory and processing speed. Dr. Eisner believed that mental health issues would likely affect these scores and the main cause for interfering with his ability to marshal his intellectual resources.

17. In conclusion, Dr. Eisner noted that mental health disorders and learning disabilities are specifically excluded from the definition of developmental disability. Dr. Eisner concurred with the school's long-standing assessment that claimant had a learning disability and that his mental health issues are the main cause for driving his deficits and limiting claimant's ability to live independently. Dr. Eisner concluded that the evidence did not support a finding that claimant was eligible for regional center services.

#### TESTIMONY OF CLAIMANT'S MOTHER

18. Claimant's mother testified about claimant's development. She said claimant is intellectually delayed because claimant is always requiring repetition of how to do things. Even things that are simple require that she repeat instructions. Claimant's mother does not believe that claimant could live independently, and as an example, explained that he would not be able to do things such as count money or read instructions.

#### TESTIMONY OF SHAWN WORRLEIN, LCSW

19. Mr. Worrlein has a master's in clinical social work and has been practicing for 12 years. He has worked for the school district for five to six years. For the past two years he has worked in the day treatment setting. Mr. Worrlein is claimant's therapist at the day treatment center and sees claimant every day. He meets with claimant for individual and group therapy and has observed claimant in many different settings. He has worked with claimant for three years. Mr. Worrlein agreed that claimant has a learning disability and mental health issues. However, Mr. Worrlein believed that the intellectual disability component has not been captured in the testing. He noted that claimant's psychiatrist diagnosed claimant with intellectual disorder, NOS, and she would have been able to present a more articulate picture of his disability. Mr. Worrlein has observed stability in claimant's mental health over the last year. Initially, claimant had to be restrained due to sexualized behaviors. However, over the last year, his medication has been stabilized and

his behavioral problems have been reduced. Despite this stability, Mr. Worrlein has not seen an improvement in claimant's cognitive functions. Claimant is extremely concrete and rigid and he has limited ability to adapt to new situations. Mr. Worrlein believed there is a lot that is not being captured. He noted that separating mental health issues, learning disabilities, and intellectual disabilities is not an exact science.

## LEGAL CONCLUSIONS

### THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (People ex rel. Brown v. Tri-Union Seafoods, LLC (2009) 171 Cal.App.4th 1549, 1567.)

### THE LANTERMAN ACT

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) 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. (Welf. & Inst. Code, §§ 4501, 4502; Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384.) The Lanterman 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.)

4. An applicant is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, also defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to [an intellectual disability], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to [an intellectual disability] or to require treatment similar to that required for individuals with [an intellectual disability].

(b) The Developmental 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 [intellectual disability], 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 [intellectual disability].

6. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs . . . ." (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, "the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).) "When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act.

## EVALUATION

8. Claimant's mother believed claimant was eligible for regional center services because of an intellectual disability or a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability (Fifth Category).<sup>1</sup> The Lanterman Act and applicable regulations specify the criteria an individual must meet in order to qualify for regional center services. Dr. Eisner provided a thorough and detailed explanation of claimant's records, and explained his and SDRC's opinion as to why claimant did not qualify for regional center services. Dr. Eisner concluded that claimant's learning disabilities and mental health issues were the source of his cognitive deficits and limitations. There was insufficient evidence to conclude that claimant had a qualifying developmental disability.

9. Mr. Worrlein also presented as a credible and persuasive witness. He has worked with claimant on a daily basis for the past three years, which has given him a unique opportunity to observe and evaluate respondent. He did not dispute that claimant's learning disability and mental health issues have affected claimant's cognitive abilities; however, he believed that intellectual disability has not been appropriately captured or considered.

10. Claimant's mother was sincere and her testimony heartfelt. She is clearly motivated by her desire to help her child and obtain services that she believes are necessary to allow him to function in the world; she undoubtedly has her child's best interest at heart. However, claimant has the burden of proving that he is eligible for regional center services. That is, he must prove it is more likely than not that he has a qualifying developmental disability. The weight of the evidence presented at hearing did

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<sup>1</sup> There was no evidence that claimant qualifies for regional center services because of cerebral palsy, seizures, or autism.

not establish that claimant is substantially disabled because of an intellectual disability or a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability. As such, claimant failed to satisfy his burden of demonstrating eligibility for regional center services under the Lanterman Act at this time.

## ORDER

Claimant's appeal from SDRC's determination that he is not eligible for regional center services and supports is denied.

DATED: February 18, 2016

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ADAM L. BERG

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 ninety days.**