

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2016040337

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on July 21, 2016, in Campbell, California.

Claimant's mother advocated for him at the hearing. Claimant was not present.

James Elliott represented service agency San Andreas Regional Center (SARC).

The matter was submitted on July 21, 2016.

ISSUE

Is claimant eligible for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act)?

FACTUAL FINDINGS

1. Claimant is seven years old. In November 2015, claimant's mother asked SARC to evaluate his eligibility for services under the Lanterman Act. After evaluating claimant, SARC issued a Notice of Proposed Action informing claimant that SARC had

determined that claimant was not eligible for Lanterman Act services. Claimant appealed and this hearing followed.

2. Claimant's gross motor skills and speech skills developed somewhat later than average. He did not crawl until he was 15 months old, and learned to walk at 19 months. He spoke his first word at 24 months and did not use multi-word phrases until he was close to four years old.

3. Claimant started kindergarten in the 2014–15 school year, when he was five years old. He did not learn sight words, numbers, or letters as well as other children in his class and had difficulty following directions or cooperating with other students.

4. Claimant moved to first grade for the 2015–16 school year, but continued to struggle both with attention to classroom activities and with academic learning. In October 2015, his school district evaluated his eligibility for special education services. Because of significant discrepancies between claimant's apparent cognitive abilities and his academic achievement, district personnel concluded that he has a learning disability relating to auditory processing and a speech and language impairment. The school district evaluation did not conclude that claimant had a more generalized intellectual disability.

5. In this special education evaluation, claimant's teachers commented on his poor social behavior among his first-grade peers. They noted that claimant "is disruptive to his tablemates and frequently argues over pencils, erasers, etc. He licks the glue sticks so others won't use them, and crawls under the table to touch other students' legs. He constantly hums or talks while others are trying to listen to instruction or work. . . . In response to peer conflict, he cries and has punched students on two occasions." Finally, the evaluation report noted that "School staff and parents have observed meltdowns when [claimant] is separated from his mother."

6. The school district's evaluation also assessed whether claimant might suffer from an autism spectrum disorder. The evaluation concluded that claimant was not eligible for special education services as a student with an autism spectrum disorder. Although his verbal communication skills and emotional regulation were generally poor, "atypical behavior was not observed throughout the numerous observations and testing sessions with multiple school personnel. . . . [Claimant] demonstrates interest in peers, initiates play, and exhibits eye contact and joint attention with others."

7. Also in October 2015, a team at Kaiser Permanente's San Jose Autism Spectrum Disorders center evaluated claimant. This team's conclusions aligned generally with the school district's conclusions, identifying significant learning disability without generalized intellectual disability, attention deficit hyperactivity disorder (ADHD), and anxiety disorder.

8. Kaiser Permanente evaluator Catherine Sancimino, Psy.D., administered the Autism Diagnosis Observation Schedule, Second Edition (ADOS-2), a structured screening protocol for autism spectrum disorders. Dr. Sancimino reported that claimant displayed few behaviors during the ADOS-2 that were consistent with an autism spectrum disorder. The Kaiser Permanente team's report noted that reports from claimant's mother and teachers identified autism-like behaviors at school and at home, including "difficulty engaging with peers in age-appropriate activities requiring cooperation and turn-taking," inability to sustain social interactions after initiating them, and stubborn adherence to routine (including limits on what he will eat and what he will wear). Overall, however, this evaluation concluded that claimant did not meet diagnostic criteria for an autism spectrum disorder, attributing claimant's academic delays and social difficulty to his learning disability, ADHD, and anxiety.

9. Around Thanksgiving 2015, as part of claimant's special education Individualized Education Program (IEP), claimant's school district moved him back to

kindergarten, with regular daily individualized support. His classroom behavior improved somewhat, although his academic results did not. For the 2016–17 school year, claimant’s IEP calls for him to be in a special education classroom rather than in a general education first-grade class.

10. A different team of Kaiser Permanente staff members re-evaluated claimant in January 2016. Based on reports from claimant’s mother and his teachers as well as on an ADOS-2 administered by Marzieh Forghany, Psy.D., this team concluded that claimant did meet diagnostic criteria for an autism spectrum disorder. They concluded that claimant “demonstrates persistent deficits in social communication and interaction and presents with restricted, repetitive behaviors and interests.”

11. Azelin Ellis, Psy.D., is a clinical psychologist with expertise in autism spectrum disorders. She is a member of SARC’s eligibility evaluation team. Dr. Ellis and the team reviewed several documents in evaluating claimant, including both Kaiser Permanente evaluation reports and the evaluation report from claimant’s school district. Dr. Ellis also met with claimant and his mother, observed claimant at school, and interviewed claimant’s teacher.

12. No evidence suggested that claimant has epilepsy or cerebral palsy. Instead, the SARC team’s evaluation focused on determining whether claimant has an autism spectrum disorder, an intellectual disability, or any other condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disabilities.

13. Dr. Ellis observed claimant at SARC on November 5, 2015, and again at his school on February 10, 2016. On both occasions, claimant used frequent and appropriate eye contact to interact with Dr. Ellis and with others in the room. He listened to and initiated conversations and made jokes with peers at school.

14. Claimant's 2015–16 kindergarten teacher reported that claimant displayed some disruptive and anxious behaviors in the classroom but that he did not become upset about changes in routine. She described him as being "behind academically but not socially."

15. Dr. Ellis testified to several reasons for considering the January 2016 Kaiser Permanente evaluation to be less reliable than the October 2015 Kaiser Permanente evaluation or than the October 2015 evaluation by claimant's school district. She explained that autism spectrum disorders in children claimant's age typically involve maladaptive behaviors that are present in multiple settings, but that the maladaptive behaviors in claimant that the January 2016 Kaiser Permanente evaluation attributed to an autism spectrum disorder occurred almost exclusively at home or in a family setting.

Dr. Ellis noted as well that "perseverative or stereotyped behaviors" are hallmarks of autism spectrum disorders in children claimant's age. Claimant's teacher has observed no such unusual or age-inappropriate behavior in claimant. The only such behavior the January 2016 Kaiser Permanente evaluation identified was an "excessive" interest in video games, which no report either before or after that evaluation corroborated.

Finally, Dr. Ellis observed that both the school district's evaluation and the October 2015 Kaiser Permanente evaluation had described claimant as having a learning disability, ADHD, and an anxiety disorder. Both evaluation teams had concluded that these diagnoses explained claimant's academic delays and social and emotional challenges. Although the January 2016 Kaiser Permanente evaluation adds a diagnosis of autism spectrum disorder, it describes claimant's autism presentation as "subtle" and identifies no new or different maladaptive behavior that the prior evaluations had not observed and explained fully with reference to other conditions.

16. Dr. Ellis's testimony was persuasive and credible. The evidence did not establish that claimant suffers from an autism spectrum disorder, from intellectual

disability, or from any condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disabilities. Instead, the evidence established that claimant has a significant learning disability, compounded by ADHD and anxiety.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including SARC. (*Id.*, § 4620.)

2. A “developmental disability” qualifying a person for services under the Lanterman Act is “intellectual disability, cerebral palsy, epilepsy, [or] autism,” or any other condition “closely related to intellectual disability or [requiring] treatment similar to that required for individuals with an intellectual disability.” (Welf. & Inst. Code, § 4512, subd. (a); see Cal. Code Regs., tit. 17, § 54000, subd. (a).)

3. Conditions that are solely psychiatric in nature, or solely learning disabilities, are not “developmental disabilities” under the Lanterman Act, even if they cause significant intellectual or social impairment. (Cal. Code Regs., tit. 17, § 54000, subds. (c)(1), (c)(2).)

4. As set forth in Findings 4, 7, 12, 15, and 16, the evidence did not demonstrate claimant’s eligibility for services under the Lanterman Act.

ORDER

Claimant’s appeal from SARC’s decision deeming him ineligible for services under the Lanterman Act is denied.

DATED: July 29, 2016

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This decision is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.